

# DISOBEYING THE LAW

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Is it ever right to disobey the law in a democracy? This question has been raised a lot lately, especially in the wake of the U.S. Supreme Court decision legalizing same-sex marriage.

There are two concepts of law that need to be considered: the positive law and the natural law. The positive law is that which the government posits, or says, is the law. The natural law is the moral law, rooted in conscience. Government is obliged to uphold the positive law, but problems emerge when it can be reasonably maintained that a particular law is morally unjust. Must we obey it?

Aristotle is the father of natural law, or what he called the “universal law.” He contended that all human beings, regardless of their culture or station in life, instinctively knew that some things were morally wrong. St. Thomas Aquinas agreed. He gave natural law a more Christian cast, saying that the two great commandments, love of God and love of neighbor, were the “first and common precepts of the natural law.” Both Aristotle and Aquinas believed that clear notions of right and wrong were inscribed in our hearts.

An obvious example where the positive law violates the natural law occurred in Nazi Germany. Under Hitler, Nazis were obliged to murder Jews; the positive law demanded that they do so. After the war, at the Nuremberg trials, some high-ranking Nazis were put on trial. Their defense attorneys argued, quite rightly, that they were just following orders. But it was their contention that they should not therefore be prosecuted that proved debatable. This position was rejected by the courts: it was held that they knew that what they did was morally wrong.

Today we have another showdown between the positive law and the natural law. Enter Kim Davis. This Kentucky county clerk invoked her Christian-held beliefs as the basis of refusing to issue marriage licenses to gay couples. Was it fair to arrest her? Yes. Did they have to put her in jail? No. Was she right to refuse? Yes. I hasten to add that had she taken this job after the high court ruled on this issue, I would not defend her (to take a job one cannot in conscience do is indefensible). However, that was not the case: When she was elected to this post, gay marriage was illegal and those who elected her were opposed to it. The court changed, not her or her backers.

The authorities have a duty to arrest law breakers, independent of their motives. To argue otherwise is to sanction anarchy. So yes, she should have been arrested. But she could have been fined, or told not to return to work until a hearing was granted. In all honesty, I am delighted she was thrown in the slammer. It only dramatized the issue.

Everyone knew that this decision by the Supreme Court would create religious liberty issues. In the oral arguments, held months before the ruling, the U.S. Solicitor General was asked if religious liberty problems would follow if gay marriage were legalized. He admitted they would. When the decision was rendered, justices on both sides warned that these problems would not go away. They haven't, and they won't.

Was the ruling a just one? In terms of process, it certainly was. But a good case can be made that the five unelected judges left us with an unjust law.

Nowhere in the Constitution do the words marriage, family, or sexual orientation appear. It has generally been understood that when rights are not mentioned in the Constitution, it is up to the states to rule on them, not the federal government. In his dissent, Chief Justice John Roberts wrote that the right of two men to marry was a "right imagined by the

majority," one that is not "actually spelled out in the Constitution."

Rev. Martin Luther King, Jr. was sent to a Birmingham jail for violating what he called "unjust laws." There he wrote a famous letter citing St. Augustine, who said, "An unjust law is no law at all." Well said.

The day the high court decision legalizing gay marriage was made, Archbishop Joseph Kurtz, the president of the bishops' conference, said, "It is profoundly immoral and unjust for the government to declare that two people of the same sex can constitute a marriage." The *Catholic Catechism* is also definitive on this subject: "If rulers were to enact unjust laws or take measures contrary to the moral order, such arrangements would not be binding in conscience."

If civil disobedience is to be legitimately exercised, those who violate what they hold is an unjust law must do so only when there are no legal avenues of redress left. They must be non-violent and not resist arrest. Their goal is moral suasion, not intimidation. Ms. Davis met those conditions.

It is striking how little sympathy this woman is receiving from our elites. But when it came to the "Occupy Wall Street" thugs—urban anarchists who assaulted innocent persons, raped women, provoked the police, and defecated in the street—the same people criticizing Davis either defended these barbarians or said nothing.

Kudos to Kim Davis for standing on principle.