

# Christian Businesspeople, Gay Weddings, and the Ethics of Co-operation in Wrongdoing

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## Abstract

With the recent Supreme Court enforcement of the recognition of homosexual unions (aka “gay marriage”) has come a serious moral concern for businesspeople whose work is commonly associated with weddings and who view such unions to be immoral. This paper aims to subject these moral intuitions to a philosophically rigorous evaluation to determine whether refusal to lend such support is morally obligatory or merely optional. David Oderberg’s method of analysis will be used for this task.

## Introduction

The government-mandated authorization of homosexual unions<sup>1</sup> has caused serious legal and moral concerns for many Christians who operate a business commonly associated with weddings (e.g., bakers,<sup>2</sup> photographers,<sup>3</sup> jewelers,<sup>4</sup> DJ’s, musicians, and florists<sup>5</sup>), because homosexual activists are actively seeking opportunities for litigation if refused such services.<sup>6</sup> In light of these challenges, it will be helpful to put the issue through an objective, philosophically rigorous, evaluation.

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<sup>1</sup> "Obergefell et al. v. Hodges, Director, Ohio, Department of Health, et al." June 26, 2015.

<sup>2</sup> A famous case involves the Christian owners of an Oregon bakery ordered to pay a \$135,000 fine for refusing to bake a wedding cake for a lesbian couple ([www.christiantoday.com/article/oregon.bakers.fined.135000for.refusing.gay.wedding.cake.will.not.relent/58628.htm](http://www.christiantoday.com/article/oregon.bakers.fined.135000for.refusing.gay.wedding.cake.will.not.relent/58628.htm)).

<sup>3</sup> Less well known, photographers are experiencing similar treatment (e.g. [www.breitbart.com/big-government/2013/08/22/new-mexico-court-christian-photographer-cannot-refuse-gay-marriage-ceremony-next-stop-u-s-supreme-court/](http://www.breitbart.com/big-government/2013/08/22/new-mexico-court-christian-photographer-cannot-refuse-gay-marriage-ceremony-next-stop-u-s-supreme-court/)).

<sup>4</sup> The political motivation behind many of these actions was illustrated by the case of a Canadian jeweler who made a pair of custom engagement rings for a lesbian couple who, when they discovered that the jeweler opposed homosexual unions, demanded their money back ([www.theamericanconservative.com/dreher/heads-lgbt-win-tails-christians-lose/](http://www.theamericanconservative.com/dreher/heads-lgbt-win-tails-christians-lose/)).

<sup>5</sup> Both DJ’s, musicians, and florists were called out by Governor Cuomo’s representative of New York as examples of business owners who could legitimately be sued by a same-sex couple for refusal of service (<http://nypost.com/2011/07/18/gay-nay-marriage-clerks-say-i-dont/#ixzz1SUMwHbT1>).

<sup>6</sup> This is part of a strategy laid out in the late 1980’s with the publication of Marshall Kirk’s and Hunter Madsen’s book *After the Ball: How America Will Conquer Its Fear and Hatred of Gays in the 90’s* (Plume, 1990). Part of the strategy includes vilification: “In any campaign to win over the public, gays must be cast as victims in need of protection so that straights will be inclined by reflex to assume the role of protector. . . . At a later stage of the media campaign for gay rights-long after other gay ads have become commonplace-it will be time to get tough with remaining opponents. To be blunt, they must be vilified.”

## Method

The general question at hand is what exactly constitutes illicit cooperation in a wrongful act. In order to flesh out such a question and make it relevant to contemporary moral thought, I will consider the specific example of a Christian baker being requested to create a wedding cake for a homosexual couple.<sup>7</sup> While numerous ethical systems might be applied to the issue, here I will rely on David Oderberg's *The Ethics of Co-operation in Wrongdoing*.<sup>8</sup> I have chosen Oderberg's article because it is one of the few that focuses precisely on cooperation-in-wrongdoing and not simply wrongdoing-as-such (i.e., its identification). Such an analysis is a better reflection of the issue at hand - for regardless of one's position on homosexual activities or homosexual unions, baking a cake is hardly performing such acts. Nevertheless, many Christian bakers feel that providing a cake illicitly contributes to those acts.<sup>9</sup>

What I wish to do here is put such thinking into perspective, and help those faced with such a decision to evaluate whether or not refusal to cooperate is morally *obligatory* or merely *optional* (albeit admirable) for them. My hope is also that this analysis will be beneficial to those on the other side of the issue - for even those who disagree over the moral status of a homosexual union may at least reach an understanding of the perceived moral implications of such cooperation.

There are three major factors that go into evaluating the morality of cooperation:

- (1) Assessing the *morality* of the principal act.
- (2) Identifying and evaluating the *nature* of the assistance.
- (3) Determining the assistant's *duty* to accept / refuse cooperation.

Evaluating factor (1) will not be necessary, for it will be taken as a starting point that homosexual unions are considered gravely immoral by the Christian businesspeople in view here.<sup>10</sup> Instead, this article will focus on factors (2) and (3).

## Terminology / Taxonomy

The various categories of agents, actions, and intentions in Oderberg's article can be bewildering, so I will begin with a summary of the terminology below.<sup>11</sup>

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<sup>7</sup> As bakers have been the primary public targets, they will be my working example here. Note that "example" is not "exemplar" – specific roles each require their own particular analysis.

<sup>8</sup> David Oderberg. "The Ethics of Co-operation in Wrongdoing", in A. O'Hear (ed.) *Modern Moral Philosophy* (Cambridge: Cambridge University Press, 2004; Royal Institute of Philosophy Annual Lecture Series 2002-3): 203-27.

<sup>9</sup> Oderberg has a forthcoming article discussing the difficulties inherent in religious conscientious objection cases. At issue is the objector's right to define for herself the rightness of (subsidiary) participation in a (primary) act, when there is no clear religious rule governing participation as such. He argues that taking mere sincerity of belief as a neutral standard would result in litigious chaos. Instead, these second-order questions should be able to be objectively and rationally analyzed.

<sup>10</sup> See Ryan T. Anderson's *Truth Overruled: The Future of Marriage and Religious Freedom* (Regnery, 2015).

<sup>11</sup> While such categorical distinctions are helpful in discussion, the lines are not always perfectly clear, and some can even overlap. For example, William Newton notes that, "some would argue that immediate material cooperation is always illicit, and that, in fact, it is equivalent to formal cooperation." ("Avoiding Cooperation with Evil: Keeping Your Nose Clean in a Dirty World" *Homiletic and Pastoral Review*, Sept. 21, 2012).

1. **ACTION** – whatever act is under consideration.
  - a. Moral Locus:
    - i. ***Intrinsic*** – when the morality of an act is based on the nature of the act itself, regardless of effects.
    - ii. ***Extrinsic*** – when the morality of an act is based on its effects, regardless of its nature.
  - b. Gravity:
    - i. ***Serious*** – when an act produces a large impact (figured quantitatively or qualitatively) upon an agent or third party.
    - ii. ***Non-Serious*** – when an act produces a small impact (figured quantitatively or qualitatively) upon an agent or third party.
  
2. **AGENCY** – the persons who are involved in an act.
  - a. **Principal** – the primary agent who commits the act (PA).
  - b. **Assistant** – secondary agents who cooperate in some way with the PA.
  
3. **COOPERATION** – Assisting in the commission of an act.
  - a. **Material** – Having a different intent than the PA in the commission of an act.
  - b. **Formal** – Having the same intent as the PA in the commission of an act.
    - i. ***Implicit*** – Acting in tacit support of the purpose the PA.\*
    - ii. ***Explicit*** – Acting in overt support of the purpose the PA.\*

\*(Whether or not such purpose is desired for the same reason(s) as the PA).
  - c. **Negative** – The non-hindering of the commission of an act.
  - d. **Positive** – The assisting of the commission of an act.
    - i. ***Physical*** – Assisting the commission of an act by direct action.
    - ii. ***Psychological*** – Assisting the commission of an act by communication.<sup>12</sup>
  
4. **INFLUENCE**
  - a. **Immediate** – Assistant's action is directly ordered toward the Principal's act.
  - b. **Mediate** – Assistant's action precedes or follows the Principal's act.
    - i. ***Proximate*** – Assistant's action is closely linked to Principal's act.
    - ii. ***Remote*** – Assistant's action is distantly linked to Principal's act.
  - c. **Dispensable** – Assistant's cooperation replaceable.
  - d. **Indispensable** – Assistant's cooperation irreplaceable.
  
5. **RESPONSIBILITY**
  - a. **Unjust** – Act is wrong in that it harms a third party.
  - b. **Unlawful** – Act is wrong in that it is a violation of law.
    - i. ***Natural Law*** – describes the relation of acts to the good of a thing.
    - ii. ***Positive Law*** – describes statutes put in place by community authority.

<sup>12</sup> This category was called “Moral” in Oderberg’s earlier paper and changed to “psychological” in his forthcoming paper. I have avoided the former’s potentially confusing title here.

## Factor 2: Cooperation Identification and Evaluation

### *Cooperation Identification*

#### *Agency*

The first issue regards the various agents involved in a given act. Assuming a homosexual union includes a ceremony that mimics a traditional marriage, it will be conducted by (at minimum) an officiant and a couple. These, then, would seem to constitute the PA's. However, in a traditional marriage ceremony, it is actually the *couple* who are the "ministers" of the marriage – not the officiant (who rather acts in the role of an authoritative witness). Thus, while it might seem that the officiant is the Principal and the couple his Assistants, if the homosexual union is seen as equivalent to marriage, that is not the case.<sup>13</sup> Thus, the PA's are clearly among these three agents.

Persons in a support role are, by definition, not PA's, and bakers play a merely supporting role. Bakers are usually not even present at wedding ceremonies, and, more importantly (but rarely discussed), the cake is not technically part of the wedding ceremony at all – it is provided for the wedding *celebration* (i.e., the reception).<sup>14</sup> Thus, the baker would be considered an **Assistant Agent**.

#### *Cooperation*

The second consideration has to do with the nature of the cooperation. Despite its title, providing a "wedding cake" is not actually a positive contribution to a wedding ceremony - but rather to the reception that follows upon its completion. Thus, even if a Christian baker filled a cake order for a "gay wedding," this would not actually indicate formal cooperation with it. Indeed, it seems it *could not*, for the simple reason that a cake is not a component of the "wedding" ceremony. Further, given that an objecting Christian baker would not share the moral intent of the PA, and that the provision of a wedding cake is neither sufficient nor necessary for a wedding ceremony, providing a cake for a homosexual union reception should be classified as **Positive Material** cooperation with the reception (or perhaps merely **Negative** cooperation with the ceremony).<sup>15</sup>

#### *Influence*

The third factor is influence. As stated above, the cake the baker provides is not part of the ceremony proper, but is involved in that act's celebration. Since it seems clear that the celebration of an act assumes that the act is already completed, the baker is actually providing support for an act *following from* the Principal's act. It is thus a *mediate* influence. As to its proximity to the follow-up act, the cake seems to be quite close, as it is uniquely required for a standard portion of this particular event (as something like janitorial services or lighting would not be). Thus, it seems the cake baking would be of

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<sup>13</sup> It should be kept in mind that in the eyes of the general public, the officiant will likely be seen as a PA and this fact should be taken into consideration when determining participation in wrong doing for the officiant.

<sup>14</sup> Persons in roles such as photographer or musician who are to be involved with the actual ceremony will need to adjust their participation analysis respectively.

<sup>15</sup> "Negative" because the cake is not associated with the ceremony proper, and so its provision does nothing to stop the ceremony from proceeding nor does it support it. This judgment may not ameliorate scandal, however, as the reception is a celebration of the ceremony.

**Proximate Mediate Influence** with the reception (or **Remote Mediate Influence** regarding the ceremony).

Concerning dispensability, while the availability of wedding cakes will certainly vary by locale, it is likely that a particular baker's cooperation would not often be absolutely necessary.<sup>16</sup> Unless the couple wanted a cake that very few bakers could provide (e.g., something requiring specialized skills or equipment), it is doubtful that any one baker's lack of cooperation would make it impossible for a couple to obtain it. Further, the cake itself is neither necessary nor sufficient for the reception itself. Thus, it seems that a given baker's cooperation would be considered **Dispensable Influence**.

### ***Responsibility***

Quite a bit of the controversy over the morality of providing a cake for a homosexual union has to do with whether such an act is immoral in the first place. Because the morality of a homosexual union is more or less tied to the corresponding morality of homosexual acts in general, this is where such a judgment would come into play. Again, it is not the place of this article to make that judgment, as I am only interested in the role of a baker who believes a homosexual union (and hence its corresponding ceremony / celebration) is immoral.

The *justness* of a given act is defined by Oderberg as being based on its effect on third parties, and this is a difficult matter to assess when it comes to homosexual unions. In fact, it is the alleged lack of effect on third parties that is often used as a means of promoting the unions themselves (i.e., "How does gay marriage affect your marriage?"). Further, it may be argued that the holding of a homosexual union ceremony does not change what immoral actions would be occurring anyway (i.e., the couple would be performing them whether their relationship was officially recognized or not). One may argue, however, that no acts are ultimately performed in a vacuum, and neither do the acts' effects remain limited to the agents performing them. Given the importance gay activists place on forcing others to affirm their activities, it is safe to say that most would uphold this latter principle in practice if not in theory. If this route is taken, a judgment of *unjust* would follow.

It seems to me, however, that the impact of national laws regarding homosexual unions are far more problematic than holding of the ceremonies (which basically only affect participants). Thus, I would consider them to be *unlawful*. Since in many places (and in all places where the present consideration is relevant) homosexual acts / unions are not illegal, cooperating with a homosexual union would not be positively unlawful. Rather, where homosexual activity is judged to be against nature itself, a homosexual union would likely be considered contributing to something **Naturally Unlawful**, and the same might be thought of its affirmation or celebration.<sup>17</sup>

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<sup>16</sup> Note that this consideration is actually the opposite of the common excuse given for participation in wrongdoing – namely that, non-participation won't stop the action from occurring. Whether or not a given AA's non-participation will impede the PA has little bearing on the morality of the AA's cooperation.

<sup>17</sup> In the cases of religious objection, "Supernatural Law" might also be invoked – but as the results are the same for Christians, it need not enter into the decision matrix here.

## Cooperation Evaluation

The evaluative guidelines for assessing these categories are fairly intuitive, as these examples show:

- **Intrinsically** evil acts are always immoral, because evil is directly caused by the agent.
- The greater the **Gravity** of an immoral act, the worse it is to cooperate.
- **Formal** cooperation with an evil act is always immoral, because the AA has the same evil intent as the PA. Material cooperation is evaluated according to other distinctions.<sup>18</sup>
- **Explicit Material** cooperation with an evil act is worse than **Implicit Material** cooperation, because in the former the AA is clearly in league with the PA.
- **Positive Material** cooperation with an evil act is worse than **Negative Material** cooperation, because in the former the AA is an active participant with the PA.<sup>19</sup>
- **Immediate** cooperation with an evil act is worse than **Mediate** cooperation, because in the former the AA is working more closely with the PA.
- **Indispensable** cooperation with an evil act is worse than **Dispensable** cooperation, because in the former the AA has a good chance of stopping the act via non-cooperation.
- **Unjust** acts are worse than (merely) **Unlawful** acts, because the former harms those uninvolved in the act.
- **Naturally Unlawful** acts are worse than (merely) **Positively Unlawful** acts, because the former is a violation of a higher-order law, whereas the latter may only violate a morally-neutral statute, or be only indirectly involved with a thing's good.

## Factor 3: Duty Determination

Once the type of cooperation with a given act has been settled, the other significant factor in determining the morality of cooperation is *duty*. While directly committing (or willing) an intrinsically evil act is never to be considered moral even if good may result (and thus refusal is morally obligatory), when it comes to assistance, things get a lot muddier. Given that partaking in a given act can have varying requirements and consequences, the overall context needs to be taken into consideration, and two additional factors (the *Principle of Double Effect* and *Personal Threat*) enter heavily into the analysis. Oderberg's deliberations will be summarized below.

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<sup>18</sup> Agent intent is a major factor in moral assessment, even when considered apart from the act. Thomas Aquinas states, "If we speak of the goodness which the external action derives from the will tending to the end, then the external action adds nothing to this goodness . . . [or if] a man wishes to do something for a good or an evil end, and is hindered by some obstacle, whereas another man perseveres in the movement of the will until he accomplish it in deed; it is evident that the will of the latter is more lasting in good or evil, and in this respect, is better or worse." (*Summa Theologiae* I-II, Q.20, A.4). Alphonsus Liguori says that cooperation in wrongdoing "is formal which concurs in the bad will of the other, and it cannot be without sin," but is, "material which concurs only in the bad action of the other, apart from the cooperator's intention." (*Theologia Moralis*, II, §63).

<sup>19</sup> The degree of immorality in this scenario must include ability and responsibility to act. For example, an armed police officer's negative material cooperation with a bank robbery is far more serious than that of an unarmed private citizen's (See Thomas Aquinas, *Summa Theologiae* I-II, Q.6, A.3).

## *Principle of Double Effect*

Simply because some evil may come as the result of a given act, that does not make an act evil. This is an imperfect world, one in which virtually any intrinsically good action could produce some extrinsically evil effect. The relative “amount” of good and evil expected and produced by a given action must therefore always be measured (whether qualitatively or quantitatively) in a moral analysis. Adding to this difficulty is the fact that a single act may produce both good and evil effects. This is where the *Principle of Double Effect* (PDE) comes into play.<sup>20</sup> In its basic form, the PDE holds that so long as (1) the action itself is morally good or neutral, and (2) the bad effect is not willed but only permitted, and (3) the bad effect is produced as the good effect is achieved (i.e., the good does not flow from the bad), and (4) the good effect is proportional to the bad effect, then an act producing some extrinsic evil may be morally chosen.<sup>21</sup> So, for example, a soldier who throws himself on a live grenade to save the lives of others acts morally, while a person who commits suicide because they are depressed does not.

It has already been established that the immorality of a homosexual union will be taken as a given for the present analysis of cooperation. In these cases, then, it is likely that the only reason the job would be considered is the presence of some greater good. In these cases, then, the questions concerning cooperation in wrongdoing will be an application of the Principle of Double Effect (PDE) - for if no greater good existed, an objecting agent would simply refuse to cooperate and be done with it. The question for the Christian baker, then, is which factors weigh in to the good/evil balance in the PDE analysis.<sup>22</sup>

PDE Rule 1 concerns the intrinsic moral status of the cake itself. Because the PDE cannot justify intrinsically evil acts, the Christian baker must evaluate the product itself - and a given cake may or may not be seen as intrinsically evil depending on whether the requested cake is “message-neutral.” Providing a cake with rainbow-colored flowers is different than a cake with a same-sex couple topper or one that obviously communicates support for such a union (perhaps in written form). Positively presenting a homosexual union will likely be seen as intrinsically evil by a Christian baker and thus would violate PDE Rule 1.<sup>23</sup> In that case, the PDE would cease to be relevant.<sup>24</sup> Our example assumes that both PDE Rules 1 and 2 are being followed, and thus only PDE Rules 3 and 4 (which are closely tied in this case) remain to be investigated.

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<sup>20</sup> See Thomas Aquinas, *Summa Theologiae* II-II, A.64, Q.7

<sup>21</sup> It is possible that a personal threat may even be considered elevated to the level of coercion wherein the agent’s will is compromised such that they are no longer held morally accountable for their action – such as when a bank robber threatens to kill a hostage unless a vault code is given.

<sup>22</sup> N.B., “The doctrine of double effect and material cooperation can be expressed in terms of a person having a “proportionate reason” to cooperate with the evil deeds of another. By expressing things in this way, it is very important that this notion of ‘proportionate reason’ should be distinguished from the condemned moral theory of *Proportionalism* . . . [which] claims that a person can chose to do what is evil as a means to attaining a good goal when he judges that the proportion of good to evil realized in his so acting justifies such action.” (Newton, 2012). The PDE (= material cooperation) never includes the willing of an intrinsically immoral act.

<sup>23</sup> Note that this principle is not biased against homosexual unions alone – what baker would be expected to promote racism, pedophilia, or rape with her cakes? This “message loophole” may be stated in such a way as to exclude certain kinds of messages from the start, thereby allowing Christian bakers refusal rights that might otherwise seem ad hoc when applied to homosexual unions.

<sup>24</sup> Whereas a cake that is message-neutral might be seen simply as a good thing being used for a bad purpose in the context of a homosexual union.

Oderberg's analysis continues with some adjustments to the PDE rules which account for the additional considerations necessary to rule on cooperation. These follow from the considerations above and are fairly straightforward and intuitive (although none are open to a simple mathematical calculus).<sup>25</sup> In the example we are considering here, the "greater good" in these equations is often the avoidance of personal litigation and loss. This is where personal threat enters the picture.

### ***Personal Threat***

Under threat of personal loss, a good act may be avoided or an evil act permitted without incurring moral guilt - provided that the threat is properly proportionate to the act. Thus, one may avoid performing a good act if it would be of serious threat of loss – or even mere inconvenience – depending on the nature of the act in question. So, for example, one need not take a second job in order to have extra money to give to charity, nor would an unarmed citizen be expected to take on a gang of gun-wielding criminals to keep them from robbing a bank. The fact of great personal threat to a Christian businessperson has become a major factor in the moral analysis of cooperation in a homosexual union, as they are being publicly targeted in order to force compliance or ruin them. Oderberg discusses various factors in the scale of seriousness in his article, and once again all are fairly intuitive - coming down to *proportion* (viz., only a personal threat of greater gravity than the evil of an act can be used to justify cooperating with that act).<sup>26</sup>

The gravity of evil one assigns to a homosexual union and the proportional threat one is exposed to (or perceives) will vary greatly between individual cases. For example, even under the assumption that homosexual activity is intrinsically and gravely immoral, the ceremony itself might not accrue the same level of evil (as it is merely an official recognition of a relationship that is distinct from the activity that one judges to be immoral).<sup>27</sup> Another mitigating factor would be the overall effect of a worst-case scenario. The total ruin of a bakery business might be catastrophic to a family where the income it generates is a major portion of the budget, whereas it might be only an unfortunate annoyance to someone who is only baking as a paid hobby.<sup>28</sup> Finally, other, less obvious, harms following from any kind of cooperation with wrongdoing must also be considered.<sup>29</sup>

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<sup>25</sup> Oderberg lists four examples:

- (1) The more ***serious*** the principal wrong, the greater the good of cooperation must be.
- (2) The more ***proximate*** to principal wrong the cooperation would be, the greater the good of cooperation must be.
- (3) The greater the ***dependence*** the principal wrong has on the cooperation, the greater the good of cooperation must be.
- (4) The more ***certain*** the wrong, the greater the good of cooperation must be.

<sup>26</sup> It is important to remember here that cooperation with is not commission of, as this would violate PDE Rule 1.

<sup>27</sup> The evil effects of such recognition also need to be taken into account, but this is beyond the scope of this paper.

<sup>28</sup> In addition to these factors, others (such as public scandal, business backlash, or decisions made as a Christian employee of a secular bakery) might also come into play.

<sup>29</sup> Possible dangers include those threatening the AA (e.g., corruption of the AA's moral sense), others (e.g., direct harm to others, or the possibility of scandal - encouragement to participate in immoral actions), and even to the PA (e.g., by lending a perceived approvals to his evil deeds which, in turn, could make him more corrupt).



## Analysis and Evaluation of the Present Case

### *Analysis*

If the above analysis is correct, for the Christian baker who views homosexual unions as immoral, providing the cake would be categorized as an act of **material, negative, dispensable, proximate, mediate**, cooperation in a **gravely naturally unlawful** act. Thus, it might be an act of either **intrinsic evil** or **moral neutrality** (i.e., *extrinsic* - depending on the nature and role of the cake)<sup>30</sup> - and avoidance of such act could very well (i.e., has high certainty) involve **serious personal threat**.<sup>31</sup> In the case at hand, some areas are more difficult to assess than others.

The cake's *proximity* is questionable, because it is not technically part of the principal act (the ceremony); however, if it is considered by the baker to be so, or if the reception is thought to contribute substantially to the principal act by its celebration of said act, then a higher personal threat would be required for the baker to morally cooperate. One might even argue from two valid positions here: On the one hand, it seems that the reception is removed by a couple degrees removed from the actual evil act in question because a homosexual union ceremony is not homosexual activity,<sup>32</sup> and the ceremony's celebration is yet another degree removed. On the other hand, it can be argued that positive affirmation of an evil act could be even more immoral than its affirmation (after all, some evil acts are performed out of weakness, not malice), and thus accrue more guilt via scandal.<sup>33</sup>

Finally, if producing such a cake is considered to be only a *negative* cooperation (allowance or tolerance) with regard to the *ceremony*, this would diminish the baker's guilt in choosing to cooperate, for the baker is not in a position that morally requires interference. This lowers the personal threat requirement for the baker to morally cooperate. However, if it is thought to be a *positive* physical cooperation with the *reception*, such guilt might remain (the relative amount of which would correspond to the immorality of the celebration of the ceremony and the scandalous status of such cooperation).<sup>34</sup>

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<sup>30</sup> Because one is obligated to avoid intrinsically evil acts, if the requested cake was one that by itself and in any context would clearly promote homosexual unions, the baker would be morally obligated to decline unless under serious personal threat (e.g., loss of livelihood). If, however, the cake itself was message-neutral, then the threat to personal loss could be substantially lower (e.g., business decline) to justify cooperation.

<sup>31</sup> Even this analysis is somewhat subjective. As Oderberg points out, it is important to note here that no moral evaluation process is one of mathematical precision. There is no simple numerical scale upon which to place moral considerations, even if their general values are objective and knowable. Thus, even in seemingly identical cases, the outcomes might differ due to any variable's individual interpretation.

<sup>32</sup> Such a ceremony could, in theory, be completely disconnected from homosexual activity should the couple remain sexually inactive.

<sup>33</sup> "Scandal is an attitude or behavior which leads another to do evil. . . . Scandal can be provoked by laws or institutions, by fashion or opinion. . . . This is also true of business leaders who make rules encouraging fraud, teachers who provoke their children to anger, or manipulators of public opinion who turn it away from moral values." (*Catechism of the Catholic Church*, 2284-2286) Cf. Mk. 9:42; Rom. 1:32, 14:13-23.

<sup>34</sup> Here the difficulty of citing allegedly "parallel" cases comes into sharper focus. Comparing extreme (yet relevantly similar) cases of moral decision making to those which are seemingly less clear is often helpful. However, arguments of the form "If you would not do X, then you ought not do Y" assume that the numerous, nuanced factors involved are all sufficiently similar to warrant equivalent conclusions. As this paper has demonstrated, such cases are rare.

## Evaluation

The result of applying moral analysis is a ruling of moral obligation or option. A moral *obligation* cannot be morally avoided – for to do so incurs guilt, while acting on a moral obligation results in moral goodness. A moral *option*, on the other hand, can be morally avoided resulting in moral neutrality, while acting upon it makes for moral heroism. For example, if a citizen was able to call the police to report a bank robbery without personal threat, it would be immoral not to do so; however, it would not be immoral to refrain from trying to stop the robbery single handedly (although it might be considered morally heroic).

If the above analysis is correct, then the factors that require a simple judgment of immorality are avoided, as well as several others: the cake baker is *not the principal agent*, the baker is *not cooperating formally*, and cake-provision is *neither intrinsically evil, nor immediate to, nor necessary for*, the homosexual union ceremony (if the baker is considered to be involved with it at all). In many of these scalable categories, the baker skews to the more moral side of the equation (see bold underlined below).<sup>35</sup>

	Immoral <-----> Moral	
<b>Action:</b>	<u>Immoral</u> <sup>α</sup>	Moral
	↳ <i>Intrinsic</i> ----- <u>Extrinsic</u>	
	Gravity	
	↳ <u>Serious</u> ----- Non-Serious	
<b>Agency:</b>	Principal	<u>Assistant</u>
<b>Cooperation:</b>	Formal	<u>Material</u>
	↳ <i>Explicit</i> ----- <i>Implicit</i>	
	<b>Positive</b> <sup>β</sup>	<u>Negative</u>
	↳ <u>Physical</u> ----- <i>Psychological</i>	
<b>Influence:</b>	Immediate	<u>Mediate</u>
		↳ <u>Proximate</u> ----- <i>Remote</i>
	Indispensable	<u>Dispensable</u>
<b>Responsibility:</b>	Unjust	<u>Unlawful</u>
		↳ <u>Natural</u> ----- <i>Positive</i>
<b>Personal Threat:</b>	Non-Serious	<u>Serious</u>

<sup>35</sup> N.B., I use “more moral” here because such judgments do not necessarily equate to “moral” – hence the diagram’s lack of simple columns. (α) The classification of “Immoral” corresponds to the homosexual union *ceremony* and is assumed for the sake of analysis. (β) Classification is “Positive-Physical” if the act is corresponded to the *reception* instead.

## Conclusion

In the case of the Christian businessperson cooperating with a homosexual union, then, it seems that only at certain extremes does moral *obligation* enter in - and even the morally *optional* decisions remain fairly one sided. Obligatory cases revolve around two primary factors: the *intrinsic moral status of the requested cake* and the *potential personal threat to the baker*. Conveniently, it is often only these two factors that significantly vary from case to case. In my estimation, these factors can be assessed according to the answers to these two related questions:

**(1) Does the requested action intrinsically support homosexual unions?**

**Yes:** Decline (*Morally Obligatory*).

**No:** Decline (*Morally Optional* – per next question).



**(2) Might refusal to cooperate pose a serious personal threat?**

**No:** Decline (*Morally Obligatory*).

**Yes:** Accept (*Morally Optional*).

In cases where the requested action would constitute direct support for homosexual unions and / or there existed no proportionately serious threat of personal loss for refusal, the Christian businessperson would have the moral obligation to decline cooperation.<sup>36</sup> Only if the requested act was morally-neutral *and* there existed proportionately serious threat of personal loss for refusal would the Christian businessperson have the moral *option* to cooperate.<sup>37</sup> Thus, declining a morally-neutral action request under threat of proportionately serious personal loss would not be morally obligatory, even if it was morally admirable (say, to avoid scandal – per above).

Finally, it bears repeating that even the results of a philosophically detailed moral analysis can vary due to several highly context-sensitive factors. No analysis, therefore, will reach mathematical certainty. The above conclusion, then, should not be thought to represent an absolute guide for all situations - each case needs to be carefully weighed according to its particular circumstances. In the end, one's informed moral intuition should not be ignored regardless of the "numbers."<sup>38</sup>

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<sup>36</sup> The Catholic *Congregation for the Doctrine of the Faith* agrees: "In those situations where homosexual unions have been legally recognized or have been given the legal status and rights belonging to marriage, clear and emphatic opposition is a duty. One must refrain from any kind of *formal cooperation* in the enactment or application of such gravely unjust laws and, as far as possible, from *material cooperation* on the level of their application. In this area, everyone can exercise the right to conscientious objection." ("Considerations Regarding Proposals To Give Legal Recognition To Unions Between Homosexual Persons" at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20030731\\_homosexual-unions\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html) Access date: August 4, 2015. Emphasis mine.)

<sup>37</sup> Note that such a threat need not manifest in order to count toward this analysis. The very fact that Christian businesspeople are being nationally targeted for just such litigation is enough to warrant its consideration.

<sup>38</sup> This is why the virtue of prudence must be cultivated in each individual's life – for it is "right reason about things to be done" (Thomas Aquinas, *Summa Theologiae* I-II, Q.56, A.3).