

WASHINGTON Examiner

Think tank: Cake-baking is an expressive art form

December 4th, 2018

Ilya Shapiro and Patrick Moran for the Cato Institute: Is cake-baking art, and if so, can someone be compelled to bake one in violation of his or her religious beliefs? More specifically, can a Christian baker refuse to design a wedding cake for a same-sex couple due to her sincere religious objections to same-sex marriage?

Wait, didn't the Supreme Court already resolve these questions in the Masterpiece Cakeshop case earlier this year? Actually no; the Court declined to answer these and related important issues, instead ruling narrowly in the baker's favor because the state civil rights commission displayed animus toward his religious beliefs. There was even unresolved disagreement over whether the baker refused to sell the couple a custom cake or any cake. In short, the Court's decision was really a minor work, not a masterpiece.

... An Oregon case involving another baker has reached the Supreme Court's doorstep. Melissa and Aaron Klein are practicing Christians who owned and operated a bakery where they made and sold custom wedding cakes. An administrative law judge fined them \$135,000 (!) for refusing to make a wedding cake for a same-sex couple, putting them out of business. Even though the Kleins had gladly served the couple in the past, and merely objected to helping celebrate this particular ceremony, Oregon state appellate court upheld the fine.

But freedom of expression, as protected by the First Amendment, doesn't only secure the ability to say what you wish. It also prevents the government from compelling you to say something you don't agree with. Cake-baking, as anyone who has seen one of countless TV shows based on the profession can confirm, is an expressive art form.

Alec Stapp for the Niskanen Center: In 1983, Bruce Yandel, the executive director of the Federal Trade Commission (FTC), wrote an article in which he coined the term "bootleggers and Baptists" to describe regulations that are supported by a coalition with both virtuous and venal interests. In his canonical example, he observed that bootleggers supported laws prohibiting the sale of alcohol on Sundays because they were good for business; Baptists, on the other hand, were in favor of the same laws for moral or religious reasons. This kind of diverse coalition can prove very effective in passing and maintaining welfare-reducing regulations.

When European Commissioner Věra Jourová traveled to Silicon Valley last year to meet with American tech firms, including Google and Facebook, she expected to hear grumbling about the General Data Protection Regulation (GDPR), the European Union's new baseline privacy law. Instead, she said, "They were more relaxed, and I became more nervous. They have the money, an army of lawyers, an army of technicians and so on." Compliance with GDPR would not be a problem for Big Tech. ... While these are significant costs to Big Tech, they also

represent regulatory barriers to entry for small- and medium-sized enterprises trying to become the next Facebook or Apple.

Big Tech has entered into a “bootleggers and Baptists” coalition with privacy fundamentalist groups to support new omnibus regulations in the United States. ... From the perspective of multinational incumbent technology firms, this is the rational position to take on privacy regulation. Since the European market is large and regulatory compliance costs are fixed, it is often more efficient for global corporations to comply with European regulations everywhere than it would be to meet the local regulatory minimum in each market. This phenomenon where Europe becomes the de facto global regulator via market mechanisms is known as the “ Brussels effect.” (When this occurs domestically, it’s known as the “ California effect”). Incumbents lobbying to spread de jure GDPR-style regulations to other countries is an obvious strategy to prevent would-be rivals from entering the market.

Regulation is among the most effective ways of raising a rival’s cost. Indeed, economists Avi Goldfarb and Catherine Tucker found that smaller and more general websites were hit the hardest in the wake of European privacy regulation in the late 2000s.

Repurpose retraining

Andrew Stettner for the Century Foundation: While the number of jobs that could be lost is not precisely known, the impact of automation is anticipated to be quite severe. ... Add to the mix the difficulty of completely switching careers later in life, it’s clear that, just as we must continue to nurture our country’s role as a leader in technology, we must also provide adequate support to Americans whose lives and livelihoods are displaced by technological progress.

A thoughtful policy response to assuage the effects of technology-related job loss should include providing retraining, extended income support, case management, health care protection, wage insurance, and relocation assistance. As luck would have it, an existing program, the trade adjustment assistance (TAA) program, is already well-positioned to step in and provide this response. Its constellation of services, including most of the facets mentioned above, addresses the fact that a lack of income support is one of the main reasons unemployed workers cannot complete training: the basic twenty-six weeks of unemployment benefits simply isn’t enough time for most workers to find, enroll in, and complete a meaningful training course. TAA allows for a wide variety of training options, spanning from classroom training to apprenticeship — and it is one of the only retraining programs that would provide long enough retraining for a dislocated worker to claim a post-secondary credential. While some have criticized TAA, the fact is that employment placement and training completion rates come out higher than those of the WIOA displaced worker program.

We propose properly funding the TAA and improving some of its key benefits — including wage insurance and training waivers — as well as making the process for certifying one’s occupation easier, improving notifications to workers whose roles may be at risk, and prioritizing on-the-job training and apprenticeships, among other improvements. Then, by adding an extra “T” — technology — to TAA, we recommend expanding certification to cover technology-related job loss as a type, tailoring services towards resiliency in those industries currently experiencing or prone to technology-related change.