

## The rise of litigious religion: Courts and the generation of religious publicity

*Religiously-motivated litigation – or “religitation” – is on the rise in the UK. These cases, many of which pit religious freedom against sexual equality, often captivate the public imagination, highlighting the uneasy truce between law and religion in a country which maintains an established Church but is wary of those looking to ‘do God’ in public. Here **Méadhbh Mclvor** argues that winning in court is not the most important consideration to these Christian activists. Rather, it is the opportunity courts give to broadcast their Christian faith that is central. Religious litigation then is not just an example of public religion but also a means of garnering religious publicity.*



The ‘gay cake’ case. Daniel McArthur speaking outside Belfast County Court. Image: The Christian Institute. All Rights Reserved.

In the spring of 2014, Sesame Street’s Bert and Ernie **made headlines** throughout the United Kingdom.

Or, rather, their absence did. In May of that year, Gareth Lee, a volunteer with Northern Ireland-based LGBT advocacy group **QueerSpace**, walked into a Belfast bakery to place an order for a custom-made cake. The **proposed cake**, which had been commissioned to mark **International Day against Homophobia**, was to feature a smiling Bert and Ernie under the message ‘Support Gay Marriage’.

After initially accepting the order, Ashers Baking Co – a Christian-owned bakery run by husband and wife Colin and Karen McArthur, which takes its name from the Biblical tribe of Israel that baked bread ‘fit for a king’ (Genesis 49:20) – contacted Mr Lee to declare themselves unable, on grounds of **religiously-informed conscience**, to fulfil his order. Bert and Ernie, saccharine though they may be, would not be immortalised in icing sugar.



Thus began another chapter in the United Kingdom's culture wars. Backed by the **Equality Commission for Northern Ireland**, Mr Lee sued the bakery for unlawful discrimination on grounds of sexual orientation. The McArthurs, supported by the **Christian Institute** (a Newcastle-based evangelical lobby group), denied that their decision had been motivated by the fact of Mr Lee's homosexuality. They had objected to the cake's *message*, they argued, not the person making it. This distinction failed to convince the court. Mr Lee **won his case**.


The 'gay cake' case, as it has come to be known, divided commentators in the legal community. While many welcomed the ruling as '**a victory for equality**', others questioned the implications of a legal precedent that seemed to set **consumer demand above the dictates of conscience**. If Christian bakers were unable to reject an order on the basis of their deeply held beliefs, where would the law draw the line? Would a pacifist printer be required to produce recruitment literature for the Armed Forces, or a socialist party planner to cater the National Front's annual gala?

Clashes between the right to religious freedom and the right to non-discrimination raise complex questions for lawyers, scholars, and policy-makers (and, of course, the wider communities of which they are a part). With both categories protected under UK equality law, efforts to strike a 'balance' between them are fraught with practical, political, and ethical challenges. But regardless of one's opinions on religion, tolerance, or Bert and Ernie's living arrangements, one thing is clear: the Belfast cake controversy is not a one-off. In council offices, county courts, and employment tribunals up and down the United Kingdom, religiously-motivated litigation – **religitigation** – is on the rise.

Anti-discrimination law is often associated with minority groups, and cases falling under its rubric continue to be brought by Britons of minority faiths, such as **Islam** and **Sikhism**. Yet many of the claimants in today's most high-profile religious freedom challenges are not adherents of these '**imported religious beliefs**'. Rather, they are members of the majority faith: Christianity, particularly (although not exclusively) of the evangelical Protestant variety. Their cases, many of which pit religious freedom against sexual equality, tend to captivate the public imagination, highlighting the uneasy truce between law and religion in a country which maintains an established Church even as it is wary of those looking to 'do God' in public.

For outsiders, this sort of litigation can appear self-defeating. Legal commentator Joshua Rozenberg, for example, has been outspoken in his **critique** of the religigious nature of the lobby groups that fund these legal challenges. Given a fairly consistent body of precedent in this area – when it comes to the provision of services to homosexual customers or clients, the McArthurs are certainly not the first Christians to be told by the courts that they are in violation of equality law (see for example **Ladele** or **Bull v Preddy**) – Rozenberg posits that perhaps evangelical zeal has blinded Christian activists to the reality of the situation: '**Christian bodies that fund litigation of this sort may wonder whether fighting cases that are bound to fail is really a good use of their resources.**'

What accounts like this miss, however, is the missionary intent behind Christian legal activism. For all the jokes about the spiritual bankruptcy of those who practice law – *when God decided to take the devil to court, He couldn't find a lawyer who'd made it up to heaven* – lawyers play a prominent role in the New Testament. Consider the Acts of the Apostles, the Biblical book that gives an emic account of the spread of Christianity (and which many evangelical Christians view as a model of the sort of fearless evangelism that they themselves ought to be undertaking). For the protagonists of Acts, courts of law seemed to represent an evangelistic opportunity. The Apostles arrested for preaching the Christian message used their day in court to do just that: to preach once more.

So, too, do those who style themselves as their twenty-first century descendants. For many of the Christian lawyers, activists, and claimants with whom I carried out fieldwork during my doctoral research, what made an otherwise costly, time consuming, and emotionally draining court case worth it was the chance to publicise Christianity. For activists with '**a passion to see the United Kingdom return to the Christian faith**', legal battles are an opportunity to witness to a fallen  world.

Christian claimants go to great lengths to explain what they call 'God's plan of salvation' to the journalists, television chat show hosts, radio disc jockeys, and visiting anthropologists who express an interest in their situation. Some even manage to evangelise in court, answering the questions they are asked in such a way that they are preaching not from the pulpit, but from the witness stand. In this way, the law itself can become a means of broadcasting the Gospel message; not just an example of **public religion**, but a means of garnering **religious publicity**. From this perspective, the likelihood of winning or losing in court is rarely the most important consideration. Evangelising is what counts.

The point of evangelising, of course, is to convert one's listeners. And the result of conversion – in evangelical theory, at least, if not always in practice – is complete transformation; a spiritual rebirth so profound that not only is the individual convert transformed, but so is their social world. As my activist interlocutors often used to say, 'Changed people change cultures.' For this reason, the strategic religitigation funded by groups like the Christian Institute can usefully be understood in terms of what the anthropologist John Comaroff has called 'legal theology', that is, the use of the law to remake civil society '**in the image of the sacred**'.

Comaroff argues that legal theology is a global phenomenon. This transnationalism is certainly evident in its UK variants. Just as Christian organisations in the UK draw inspiration from the legal strategies of their peers in the United States, where 'Christian interest' litigation has been pioneered by groups like **Alliance Defending Freedom**, so too have their cultural opponents. Mr Lee's proposed cake design, for example, speaks to the purchase of Bert and Ernie as global cultural icons; and, in some contexts, as symbols of LGBT love.

This is particularly so in America, where longstanding rumours about Bert and Ernie's ambiguous sexuality and status as 'roommates' were mobilised in the fight to legalise gay marriage. Indeed, *The New Yorker* marked the US Supreme Court's spate of decisions on this issue with an **image** of the puppets snuggled together in their New York apartment, watching coverage of the historic cases.

Although the piece is titled 'Moment of Joy', cynical onlookers might be tempted to wonder how long this joy will last. After all, no sooner had the Supreme Court declared same-sex marriage bans unconstitutional than conservative legislatures rushed to push through 'Religious Freedom Restoration Acts' that legalised discrimination on grounds of sexual orientation – so long as it was **religiously motivated**. Controversy over these instruments paves the way for a new wave of religiously-inspired legal challenges.

Despite Mr Lee's victory in court, Northern Ireland's gay cake case remains unsettled. At the time of writing, the McArthurs and their legal team are awaiting the outcome of an appeal against the original ruling. But whether or not the ruling stands, transnational Christian religitigation is here to stay. That's true on America's Main Street, the UK's High Street – and, of course, Manhattan's Sesame Street.

### About the author



**Méadhbh Mclvor** has recently completed a PhD in anthropology at the London School of Economics, where her research focused on law, Christianity, and the politics of religious freedom in the UK. Her thesis, 'To fulfil the law: evangelism, legal activism, and public Christianity in contemporary England', is the result of twenty-two months of participatory fieldwork split between a Christian lobby group and a conservative evangelical church in London. She will be taking up a Teaching Fellowship in the Department of Anthropology, University College London, in September 2016.



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