

Institution: University of York		
Unit of Assessment: 21 - Sociology		
Title of case study: Law, society and sexual orientation equality		
Period when the underpinning research was undertaken: 2012-2017		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Paul Johnson	Professor	2012 - present
Period when the claimed impact occurred: 2014-2020		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact (indicative maximum 100 words)		
<p>Professor Paul Johnson's research on sexual orientation and law has been utilised extensively by legislators and the judiciary to address aspects of discrimination and inequality relating to sexual orientation, and has attracted substantial attention from policymakers, NGOs and the media. This body of research has had a direct impact on: (1) the repeal of statute law by the UK Parliament relating to homosexuality and the armed forces; (2) the enactment of legislation in the UK Parliament granting disregards and pardons for historic homosexual offences; (3) the overturning of legislation, by a landmark judgment of the Supreme Court of Bermuda, that discriminated against same-sex couples in respect of the adoption of children.</p>		
2. Underpinning research (indicative maximum 500 words)		
<p>Johnson, through his sociological research, has been drawing attention to sexual orientation discrimination and law since 2007. Through the publication of three monographs and 30 peer-reviewed journal articles, Johnson has forged a new agenda for asking sociological questions about the relationship between law, aspects of sexual orientation (such as personal identity, bodily autonomy, and public expression) and discrimination in the UK, Europe, and the Commonwealth. These questions focus on how the social organization of sexual orientation (in terms of both the subjective experience of sexual orientation, as well as its manifestations in society) is shaped by law and, crucially, how law can be utilized to reshape this social organization. As such, Johnson has proposed ways in which legal instruments can be used to, for example, challenge the heteronormative social organization of marriage to achieve marriage equality for same-sex couples.</p> <p>Johnson's status as a world leading sociologist of law has been recognized by the award of a Leverhulme Fellowship (Oct 2015-Sept 2016; RF-2015-105), which was granted to enable him to undertake the innovative study <i>Going to Strasbourg: An Oral History of Sexual Orientation Discrimination and the European Convention on Human Rights</i> [E]. This monograph combines in-depth legal research, oral history fieldwork, and sociological analysis, and provides the definitive account of the role that the European Convention on Human Rights (ECHR) has played in eradicating discrimination and establishing legal equality on the grounds of sexual orientation in the UK. Johnson has published extensively on sexual orientation and the ECHR [A][B][C][E] providing sociological analysis of various aspects of ECHR jurisprudence and how it shapes the lives of LGBT in Europe and beyond.</p> <p>Johnson's work combines rigorous and comprehensive "black letter" analysis of law with sociological analysis. This approach has provided the basis for a sustained track record of socio-legal research which includes his monograph <i>Law, Religion and Homosexuality</i> [D]. This book explores how religion shapes the making of statute law by the UK Parliament, which regulates the lives of gay men and lesbians, and systematically analyses how sexual orientation equality continues to be restricted by faith-based beliefs.</p> <p>Johnson's research has regularly highlighted how discriminatory law within the UK [F], Europe and the Commonwealth is made and sustained. Johnson has, for example, shown the influence of the Church of England on the making of legislation that enables discrimination on the grounds of</p>		

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sexual orientation, the ways in which the Parliament of Uganda sustains discrimination against LGBT people, and how laws in the Russian Federation have been developed to curtail expression of non-heterosexual sexual orientation in the public sphere.

Johnson is recognized as a leading expert on sexual orientation discrimination and law. Evidence of this is Johnson's invited Third Annual Belfast Pride Law Lecture on 1st August 2019 at Queen's University.

3. References to the research (indicative maximum of six references)

[A] Johnson, P. (2012) 'Adoption, homosexuality and the European Convention on Human Rights: *Gas and Dubois v France*'. *Modern Law Review*. 75(6): pp.1136-1149
<https://doi.org/10.1111/j.1468-2230.2012.00939.x> (peer-reviewed)

[B] Johnson, P. (2013) *Homosexuality and the European Court of Human Rights*. Abingdon: Routledge (returned as double-weighted to REF 2014)

[C] Johnson, P. (2014) 'Sociology and the European Court of Human Rights'. *The Sociological Review*. 62(3): pp.547-564 (peer-reviewed, shortlisted for the Sociological Review Prize for Outstanding Scholarship) <https://doi.org/10.1111%2F1467-954X.12180>

[D] Johnson, P. and Vanderbeck, R.M. (2014) *Law, Religion and Homosexuality*. Abingdon: Routledge

[E] Johnson, P. (2016) *Going to Strasbourg: An Oral History of Sexual Orientation Discrimination and the European Convention on Human Rights*. Oxford: Oxford University Press (funded by Leverhulme Trust Research Fellowship, RF-2015-105)

[F] Johnson, P. (2019) 'Buggery and Parliament: 1533-2017' *Parliamentary History* 38(3): pp.325-341 <https://doi.org/10.1111/1750-0206.12463> (peer-reviewed)

4. Details of the impact (indicative maximum 750 words)

(1) Armed Forces

In October 2015, Johnson submitted evidence (arising from research in **[D]**) to the UK Parliament's Select Committee on the Armed Forces Bill asking its members to introduce an amendment to the Armed Forces Bill 2015/16 to repeal two sections of the Criminal Justice and Public Order Act 1994 which made provision for a member of Her Majesty's armed forces to be discharged for engaging in a "homosexual act" **[1a]**. The Select Committee gave extensive consideration to the submission and questioned a wide range of witnesses on it, including General Sir Nick Carter (Chief of the General Staff), who were asked their "view on Professor Johnson's proposals to repeal sections [in] the Criminal Justice and Public Order Act 1994, under which it is possible to dismiss a person from the armed forces for homosexual acts" **[1b]**. At Report stage of the Bill in the House of Commons, the Government introduced an amendment that met the request made in Johnson's submission **[1c]**. In doing so, the Minister thanked Johnson "for raising this important issue in [his] evidence to the Bill's Select Committee" **[1c]**. The amendment was agreed and enacted as Armed Forces Act 2016, s 14.

The significance of the repeal is that it removes from statute law discriminatory provisions relating to homosexuality and the armed forces. A wide range of MPs and Peers in the House of Lords agreed with the agenda set by Johnson and were in support of the repeal **[1c][1d]**. For example, as Kirsten Oswald MP put it: "It is scarcely credible that we are discussing this in 2016. The existing provision is discriminatory and it is offensive that it exists ... [W]e welcome the fact that the Government are finally removing the provision, as they should, because it has clearly infringed the rights of LGBT people over a number of years" **[1c]**.

(2) Disregards and pardons

In 2016, Johnson's work (with Vanderbeck [D]) led to significant changes in respect of the legislation providing the so-called "Turing Pardons" to people previously convicted of "homosexual offences". Johnson's work underpinned provisions in the Policing and Crime Act 2017 that:

- 1) provide living persons convicted of or cautioned for certain now abolished offences in Northern Ireland with the ability to apply to have a conviction or caution disregarded and, if successful, to be pardoned for any offence;
- 2) provide posthumous pardons for those deceased persons convicted of or cautioned for now abolished offences in Northern Ireland;
- 3) provide a power for regulations to be made (in England and Wales, and Northern Ireland) to extend the disregard scheme in the future to enable those convicted of or cautioned for other "homophobic" offences to have a conviction or caution disregarded and, if successful, to be pardoned for any offence;
- 4) ensure that those convicted of certain abolished offences under service law are eligible to receive posthumous pardons in the same way as those convicted under civil law.

These provisions, underpinned by Johnson's research on the historical criminalization of same-sex sexual acts [D], which gained widespread attention, are of considerable significance in providing redress to those persons who, over several centuries, suffered state-sponsored persecution on the basis of their sexual orientation.

Northern Ireland pardons and disregards

In October 2016, based on his wider research [D][E], Johnson drafted amendments to the Policing and Crime Bill to make provision to grant pardons for those convicted of or cautioned for "homosexual offences" in Northern Ireland, and to extend to Northern Ireland the "disregard scheme" in respect of such offences that had been operating in England and Wales by virtue of the Protection of Freedoms Act 2012. These amendments were tabled in the House of Lords by Lord Lexden on 25 October 2016 [2a], debated on 9 November 2016 in Committee of the Whole House [2b], and agreed (in revised form) on 12 December 2016 [2c]. Lord Lexden stated: "*It is his [Johnson's] work [...] that will now confer on gay people in Northern Ireland the equal rights arising from this major reform, which they want and deserve*" [2c]. The agreed amendments were enacted as Policing and Crime Act 2017, ss 168-71. As part of this process Johnson liaised extensively with the Department of Justice in Northern Ireland, providing them with expert advice on the "age of consent".

Extension of disregard scheme

In October 2016, Johnson drafted amendments to the Policing and Crime Bill to, *inter alia*, make provision to extend the "disregard scheme" (as described above) to include the offence of "solicitation by men". These amendments were tabled in the House of Lords by Lord Cashman on 7 November 2016 [2d] and debated in Committee of the Whole House on 9 November 2016 during which, in respect of one amendment, Baroness Williams (Minister of State, Home Office) stated that she was willing to meet with Johnson and Lord Cashman to discuss the matter further [2e]. For that meeting, Johnson provided the Minister with a written "expert opinion" [2f]. As a consequence of these discussions, Lord Cashman re-tabled a revised amendment, supported by the Government, to make provision to enable the Home Secretary to exercise a power to create regulations that extend the disregard scheme to include, *inter alia*, the offence of "solicitation by men" [2g]. On moving the amendment, Lord Cashman said that Johnson's work was "*invaluable in shaping our approach*" [2g]. The agreed amendment was enacted as Policing and Crime Act 2017 s 166.

Service (military) offences

In December 2016, Johnson identified a significant flaw in a provision in the Policing and Crime Bill which concerned posthumous pardons for those convicted of certain repealed offences under service (military) law. Johnson pointed out that the Bill would, if enacted, grant pardons only to those convicted as far back as 1866 and that this was inadequate because same-sex sexual acts

had been criminalized by service law as far back as 1661. Johnson's point was raised by Lord Lexden in the House of Lords [2h] and, consequently, the Government tabled amendments (based on research by Johnson, subsequently published in Johnson [F]) that extended posthumous pardons to those convicted under Naval law from 1661 onwards [2i], which were debated and accepted on 19 December 2016 [2j]. This was enacted as Policing and Crime Act 2017 s 164. Johnson raised the further concern that equivalent provisions had not been included in respect of the Army and Royal Marines and subsequently wrote a Private Member's Bill for Lord Cashman to address these outstanding pardons which received its First Reading on 23 October 2019 [2k].

(3) Supreme Court of Bermuda

Johnson's research [A] was cited in a landmark judgment issued by the Supreme Court of Bermuda (SCB). In *A. and B. v Director of Child and Family Services and Attorney General* [3], the SCB found in favour of a same-sex couple who complained that their inability to jointly adopt a child, who they had been raising together, constituted unlawful discrimination. Under Bermuda law, the couple could not jointly adopt the child because joint adoption was available only to married couples (and, at that time, same-sex couples could not marry in Bermuda). Hellman J held that denying the couple the opportunity to make a joint application amounted to direct discrimination against unmarried couples because of their marital status, and indirect discrimination against same-sex couples because of their sexual orientation. In concluding that the prohibition on adoption by unmarried couples was not justifiable, Hellman J "*decline[d] to follow the reasoning*" [3, para 32] of the European Court of Human Rights (ECtHR) in *Gas and Dubois v France* (judgment of 2012). In reaching this decision, and rejecting the jurisprudence of the ECtHR, Hellman J cited Johnson's "trenchant criticism" of the *Gas and Dubois* judgment [3, para 35], quoting Johnson's socio-legal analysis that the ECtHR's approach to this issue "*will strike many people as perverse or obtuse*" [A]. As a result of the judgment of the SCB, a joint application to adopt a child could be made by a same-sex couple.

The landmark judgment of the SCB in *A. and B.* was very significant in ending one aspect of discrimination against same-sex couples in Bermuda. It produced the direct outcome that "*a joint application to adopt a child may be made by an unmarried couple, whether same-sex or different-sex*" [3, para 43]. However, its significance extends beyond Bermuda and will potentially impact on same-sex couples across 47 member states of the Council of Europe. This is because Bermuda is a British Overseas Territory within the ECHR system and, in declining to follow the jurisprudence of the ECtHR, the SCB has presented a significant challenge to the ECtHR's approach when considering complaints about discrimination by same-sex couples who are denied access to marriage and its rights and benefits.

5. Sources to corroborate the impact (indicative maximum of 10 references)

[1] **Armed Forces** (a) [Johnson's evidence submitted to the Armed Forces Bill Select Committee in the UK Parliament](#); (b) [Armed Forces Bill Select Committee putting Johnson's proposal to expert witnesses](#); (c) [House of Commons \(Report stage\) adoption of Government amendment](#); (d) [House of Lords debate of amendment](#)

[2] **Disregards and Pardons - Northern Ireland pardons and disregards:** (a) [Amendments written by Johnson and tabled by Lord Lexden](#); (b) [House of Lords debate of amendments written by Johnson and tabled by Lord Lexden](#); (c) [House of Lords debate and adoption of Lord Lexden's amendments](#)

Extension of disregard scheme: (d) [Amendments written by Johnson and tabled by Lord Cashman](#); (e) [House of Lords debate of amendments written by Johnson and tabled by Lord Cashman](#); (f) Johnson's written "expert opinion"; (g) [House of Lords debate and adoption of Lord Cashman's amendment](#)

Service (military) offences: (h) [House of Lords debate on point raised by Johnson](#); (i) [Amendments tabled by Baroness Williams to extend posthumous pardons to those convicted of](#)

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[Naval offences from 1661 onwards](#); **(j)** [House of Lords debate on above amendment](#); **(k)** [Armed Forces \(Posthumous Pardons\) Bill 2019, written by Johnson](#)

[3] Supreme Court of Bermuda: [Judgment in A. and B. v Director of Child and Family Services and Attorney General \(\[2014\] SC \(Bda\) 11 Civ](#)