



“The vice of distant knowledge”: Licensing and the geography of jurisdiction on the Scottish wartime Home Front



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ARTICLE INFO

Keywords:
Jurisdiction
Legal geography
Licensing
Motherwell
Scale
Scotland

ABSTRACT

This article considers how licensing law conceives and practices jurisdiction. It examines the limits of attempts to define and exploit jurisdiction in the regulation of social problems connected to alcohol. Using the case study of a prohibition on the sale of spirits in the Scottish town of Motherwell during the First World War, it analyses how ‘vertical’ legal appeals through higher courts intersected with everyday ‘horizontal’ challenges to the jurisdiction of the local licensing magistrates as the ban pushed drinkers and the problems of drunkenness onto neighbouring authorities. Those higher court challenges importantly confirmed the localness of licensing, but they could not guarantee the effectiveness of the magistrates’ policy. By showing the potentially disruptive daily habits of ordinary citizens and urban infrastructure, the article promotes a social and material legal geography of licensing. In conclusion, it calls for a critical examination of the ‘local’ in local government, and the political geographies that result from appeals to space and scale in the division of governance functions.

1. Introduction: Licensing and the geography of jurisdiction

The subject of Licensing is in many respects highly technical, and in past administration, whatever it may be in future, complicated, so much so that it is in accordance with almost universal experience that different interpretations of certain statutes and sections of statutes have prevailed according to locality, and even in the same locality, we frequent find uncertainty in administration, of what even to the technical legal mind should be certain.

Campbell (1903, p. 9)

Licensing is a defiantly local mode of governance. From firearms to food-trucks, and adult stores to alcohol outlets, this governmental technology that variously licences people, places and things facilitates the regulation of behaviours otherwise held to threaten social order (Koch, 2015, p. 1232). Through it, central government can devolve the responsibility for managing potential problem behaviours and people down through the local jurisdictions that issue and rescind licences and on to individual licensees, who are thus tasked with preventing or militating against the ill effects of such activities (Valverde, 2003, p. 236). That devolution leaves licensing open to local interpretations, as Angus Campbell’s 1903 observation on Scottish practice makes abundantly clear. The field of action, crucially, is not simply the scale of the city or county level jurisdiction of its officers. Local concerns mark discretionary encounters in urban life at the neighbourhood and even

street corner scale of the licensee and marks the everyday activities of citizens (Beckingham, 2017, p. 44). Smooth functioning licensing regimes rely on sorting the interplay between authorities, operating at different vertical jurisdictional scales, and horizontal tensions within and between neighbouring jurisdictions. This article uses the case study of a prohibition on the sale of spirits in the Scottish town of Motherwell during the First World War to interrogate developments and definitions of the ‘local’ in municipal regulation and unpack the role of scale in the apparently smooth functioning of licensing jurisdiction. It establishes the relationship between such sorting ‘effects’ of jurisdiction and the broader place-making power of law on the regulation and experience of urban social life (Braverman et al., 2014, p. 18).

The scalar sorting of justice functions has attracted attention from critical legal scholars and legal geographers.¹ Mariana Valverde, for example, examines how such functions appear, somehow naturally, to be the province of courts with particular national or local jurisdictions (Valverde, 2009, p. 150; also see Valverde, 2014, p. 387). The action of such taken-for-granted assumptions betrays a bounded geographical imagination, as if jurisdictions are ‘discrete areal units’ (Williams, 2016, p. 104). Importantly, the notion and practice of jurisdiction ‘distinguishes more than territories and authorities’, ‘more than the where and the who of governance’. Jurisdiction works as a device for sorting and distributing ‘the “what” of governance’ (Valverde, 2009, p. 144). The significance of such accounts is to show that scale is not a given but

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¹ This echoes theorisations of the state that challenge vertical theorisations of power, exercised by an agency somehow detached from society (Mitchell, 1991; Painter, 2006; MacLeavy and Harrison, 2010; Jeffrey, 2015), as well as questions of the ontological status of scale (Marston et al., 2005; Moore, 2008; Legg, 2009).

rather a ‘device manifesting in legal practice as jurisdiction’ (Williams, 2016, p. 98). It is ‘as much a tool of government as a way of doing law’ (Carr, 2016, p. 207). There is, therefore, an active ‘politics of scaling’ (Green, 2016, p. 89, my emphasis), a ‘scalecraft’ made manifest in repeated reorganizations of governmental functions (Pemberton, 2016, p. 1306).

The operation of government through law relies on a ‘performance’ of scale (Blomley, 2013, p. 7), as functions are settled on and actioned through local administrative bodies such as licensing authorities. Turning to appeal court cases, to challenges to the settlement of government functions, can usefully reveal these performances and show how they rely on a scalar as well as spatial imagination of jurisdiction (Delaney, 2010, p. 17). Hae (2011, p. 133), for example, documents the dismissal of legal challenges to New York’s ‘cabaret law’, which requires the licensing of social dancing. In these challenges, the appeal courts rejected claims that dancing is a constitutionally protected ‘freedom of expression’ and upheld the municipality’s ability to regulate through licensing. Hubbard (2012) has drilled down to the scale of the individual licensee, citing the example of a London publican who used the public order function embodied in licensing to police same-sex-intimacy on their licensed premises, a local defeat over national equalities legislation. Scaling out from similar case study work of individual premises, Brown and Knopp (2016, p. 355) have shown how the daily operations of the Washington State Liquor Control Board reflected and reproduced moralised anxieties around sexuality, class and race. Such normative preoccupations, enacted through licensing, are implicated in the local ‘construction and governance of marginalized populations’, they show. The performance of scale translates into significant daily differential experiences – within, never mind between, jurisdictions.

These are all excellent examples of the way in which law ‘works through localisation’. Luke Bennett expresses that localisation as law’s ‘em-placement and embodiment into things and places’ (Bennett, 2016, p. 184, original emphasis). That emphasis on ‘things’ is vital to my argument about the ability of urban life to disrupt licensing law’s performance of scale. It comes from the traumatic days of war, when there were repeated calls from temperance campaigners for the tighter regulation of drinking and drunkenness. The state responded by creating the Central Control Board (Liquor Traffic) (or CCB), to oversee the drink traffic in areas where the effects of alcohol were held to be particularly injurious to the war effort (BPP, 1914-6 [Cd. 8117] XXV.1, p. 4). At its most interventionist, it nationalised the drink trade in specific sites, such as around the major cordite works at Gretna (see Gutzke, 1994; Duncan, 2013). Its influence was much more widely felt, however, as it had powers to introduce stricter rules such as shorter hours of sale in ‘scheduled’ areas (BPP, 1916 [Cd. 8243] XII.493, p. 18; see Cooke 2015, p. 161). By the summer of July 1915, there were ten such areas in England and two in Scotland (BPP, 1916 [Cd. 8243] XII.493, p. 6) and over the course of the war the Board’s ‘restrictive orders’ would affect most of Britain (Carter, 1919, p. 134). The West of Scotland region came under the Board’s oversight on 23 August 1915 (BPP, 1914-6 [Cd. 8117] XXV.1, p. 5). The following spring, filled with the temperance spirit, Motherwell magistrates took their bold decision to ban the sale of spirits in the town’s pubs.

The innovation was clearly at odds with the broader scale management of drink that the CCB’s powers enabled, yet it gave the Board a chance to investigate the effects of the kind of prohibition that temperance groups had demanded. It despatched its Scottish inspector Kenneth Greenhill to Motherwell. I use Greenhill’s report, held in the CCB materials at the National Records of Scotland (NRS), newspapers, and municipal and legal records to reconstruct the fallout.² Section two establishes the development and localisation of licensing to Motherwell, and the municipal context through which this ban became possible. It

demonstrates the scalecraft at the heart of the organisation of local government. The paper then proceeds along two axes. Section three considers the immediate legal challenge of the town’s publicans, upwards, through the higher courts. While they were convinced of and indeed subsequently confirmed in their jurisdiction, Motherwell’s magistrates failed to anticipate the everyday practical challenges to their ban. Denied of their spirits, Motherwell’s drinkers reportedly took to the trams to slake their thirsts in neighbouring licensing jurisdictions. Section four shows how the legal vertical imagination of jurisdiction was practically undone by these material and mobile ‘horizontal tensions’ (Blomley, 2013). It draws on assemblage ideas from studies of alcohol and urban geography to theorise these mobile drinkers’ drunkenness, which confounded the ban by effectively resisting its ‘embodiment’ (Bennett, 2016, p. 184). Taken together, these challenges exemplify a series of tensions over scale and locality, showing how jurisdiction is a powerful scalar and spatial tool of place making, and not simply law making.

2. Motherwell: A wartime place in formation

This place-making power of law is particularly important in the context of my case study, because population growth in the county of Lanarkshire meant that the map and locus of local governance needed to be redrawn. Administrative units such as the burgh might feel unfamiliar, yet the rescaling represented by their creation was and remains a central feature of British statecraft. According to Tom Crewe (2016, p. 6), for example, ‘[t]he creation of the British state was a municipal project’. Indeed the creation of new municipal authorities was a vital response to Victorian and Edwardian urbanisation, and legal mechanisms were at the heart of that project: a way not only to legislate for their creation but also to react to associated social anxieties in them. It provided urbanising towns such as Motherwell with powers to take charge of governance tools from existing county-level administrations. While its growth is hardly iconic, the development of policing and licensing in Motherwell typifies the important broader role that jurisdiction played in the development and delineation of towns, cities and civic identities (see Dykes, 1907, pp. 18–19 for a contemporary guide to Scottish needs).

Motherwell expanded with the coming of the railways, conveniently located at the junction of lines to Glasgow and Edinburgh (see Fig. 1). The population of the parish of Dalziel in which it was situated had numbered 5738 in the 1861 census, with just 2925 in the town (BPP, 1862 [3013] L.945, p. 75). By 1916 Motherwell had expanded to around 40,000 people (North Lanarkshire Council Archives (NLCA), UJ/1/01/23, Burgh of Motherwell, Town Council Minutes, 4 January 1916, p. 3). The early stages of that growth had already changed Motherwell’s relationship with older county levels of administration. For example, the town qualified under mid-century legislation to become a police burgh, a status it achieved in 1865. This allowed for the election of local commissioners – their policing being the promotion of order, health and welfare through tasks like street cleansing and lighting rather than simply disciplining disorder through uniformed forces (Barrie and Broomhall, 2014a, p. 79, pp. 84–87, p. 105; Maver, 2007, p. 35; see Valverde, 2003). Reforms to determine new local scale police court jurisdictions disrupted older geographical administrative units such as the parish and the burgh (examples include 1850 Police of Towns (Scotland) Act (13 & 14 Vict. c. 33); and 1862 General Police and Improvement (Scotland) Act (25 & 26 Vict. c. 101)). According to Barrie and Broomhall (2014b, p. 7), these changes importantly ‘imposed a new way of conceptualising and partitioning the city’. Through the creation of units such as police burghs, law was thus instrumental in reshaping the political geographies of urban governance but also the social geographies that stemmed from their daily enactment.

While it would be some time before legislation addressed licensing, various acts worked to reshape other governmental functions. The 1892 Burgh Police (Scotland) Act (55 & 56 Vict. c. 55), for example,

² Greenhill’s report is in documents collated in August 1940, suggesting civil servants and politicians were seeking lessons from the First World War (NRS, HH31/7/19).

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