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Abstract

The legal and administrative framework for film exhibition in Scotland has been viewed through the prism of practices adopted in the rest of the United Kingdom despite the existence of a separate legal system North of the English border. This article is the first to identify and explain the discrepancy that existed between the British and Scottish regulatory frameworks, covering the period from the passing of the 1909 Cinematograph Act to the publication of the *Edinburgh Cinema Enquiry* in 1933. Discussing hitherto neglected documents, such as the Scottish Office Precedent Books, municipal records, education authority minutes and local newspapers, the article adopts a social historiographical methodology. It contends that the discrepancy was the result of a decentralised tradition of governance and political motivations to maintain the integrity of Scotland's legal system. This means that the full implementation of the 1909 Cinematograph Act was resisted in Scotland, leading to a *laissez-faire* approach in the realm of film censorship that was heavily criticised by local pressure groups. The article will first establish the historical context of regulating places of public entertainment in Scotland and subsequently discuss the emergence of film censorship practices in the rest of the UK following the passing of the 1909 Cinematograph Act. The second half will explain the different legal interpretation of the 1909 Act in Scotland and its consequences for the applicability of the British Board of Film Censors' 'A' certificate.

Keywords: Scotland, film censorship, 1909 Cinematograph Act, BBFC, A certificate, early cinema

On 28 March 1910, cinema exhibitor John Stewart was prosecuted at the Edinburgh Burgh Court for an infringement of the 1879 Edinburgh Municipal and Police Act following his

staging of ‘bioscope or other public entertainments’ on ‘Sabbath, 6th March 1910’ (*Scotsman* 1909: 9). In his defence, Stewart referred to the recently passed 1909 Cinematograph Act, arguing that ‘none of the conditions attached to the Cinematograph Act dealt with the question of Sunday opening’ (ibid.). He had assumed, therefore, that the licence taken out under the new Act would override the local licence granted under the earlier 1879 Act. The presiding judge took a different view, interpreting the 1909 Cinematograph Act merely as an additional legal instrument to safeguard the public from the danger of inflammable films and deciding that all other conditions remained subject to existing municipal legislation. The 1909 Cinematograph Act was, thus, ‘simply ... an Act [that] had been added to the 1879 Act for a specific purpose – to safeguard the public’ (ibid.). He consequently fined the exhibitor 5s for infringing the 1879 Act’s stipulation on Sunday opening. While the consequences of this contravention were fairly nominal for Stewart, the court’s decision had further reaching and long lasting consequences for the way cinemas were regulated in Scotland. The case set a precedent for the continued validity of municipal laws to control the social conditions of cinema-going and the limited applicability of the 1909 Cinematograph Act as merely a supplementary measure to manage fire safety (Griffiths 2012: 59). Although it was not yet considered here as such, film censorship became an important part of the social regulation of cinema in subsequent decades and the 1909 Act was routinely used in other parts of the UK to implement censorship recommendations (Robertson 1985; Kuhn 1988). From 1913, such recommendations were made by the British Board of Film Censors (hereafter BBFC), an institution that has received extensive scholarly attention (for example: Richards 1984; Robertson 1985 and 1989; Petley 2011; Lamberti 2012). What is often forgotten is that during its early years the board struggled to gain widespread acceptance. As the BBFC was not a statutory body, but set up and financed by the cinema industry, it possessed no legal authority. To implement its decisions the board required the recognition of local authorities,

the only agencies able to set legally binding guidelines as part of the UK's cinema licensing system (Hunnings 1967: 48-140). In addition it needed the acceptance of cinema exhibitors, the key intermediaries between the cinema trade, local authorities and the public. Neither was forthcoming during the immediate years following its inception. In 1914, a mere 24 out of over 500 British licensing authorities acknowledged the BBFC as central censor (Kuhn 1988: 23; Robertson 1985: 7). In Scotland, the only two authorities officially accepting the BBFC at this stage were Falkirk and Perth (Griffiths 2012: 63; Bohlmann 2015: 42). Acceptance among cinema exhibitors was equally scant.¹ An institutional view of censorship, focusing on decisions made by the BBFC, does not do justice to the multifaceted and dynamic web of relationships negotiating this form of cinema regulation in the UK. This applies even more to Scotland where authorities and cinema exhibitors deliberately diverged from practices adopted South of the border, an approach this article seeks to explore and explain.

A landmark study that contributed to an understanding of the complexities and dynamics of British film censorship is Annette Kuhn's work *Cinema, Censorship and Sexuality* (1988). In recognising censorship as a power play between the Home Office, film trade organisations, the BBFC, local authorities and non-governmental pressure groups, Kuhn's work made an important intervention into an academic field that defined censorship as a static system of prohibition determined by the dictate of the BBFC. Focusing on 'the years between 1909 and 1925', she emphasises the fluidity of censorship practices during the early cinema period, calling it:

... a period of uncertainty – even of struggle – over the means by which cinema was to be understood, defined and regulated. (1)

Following this uncertain period, the co-ordination of censorship between the government, local authorities and the BBFC stabilised to some extent. Nonetheless, a number of studies

highlight the continued influence of local censorship committees and non-governmental pressure groups in undermining the verdict of the BBFC and, hence, maintaining some of the uncertainties and inconsistencies associated with the early cinema period. Examining local film censorship during the 1930s, Rock finds diverging practices in Derbyshire. While Derby's local watch committee left film censorship to the BBFC, neighbouring Smethwick occasionally undermined the Board, for example, when approving the exhibition of *The Wizard of Oz* (Fleming, 1939) under 'U' certificate rather than the recommended 'A' certificate conditions' (Rock 2017: 135). Hally similarly discovers discrepancies between recommendations made by the BBFC and local decisions made in Manchester and Sale during the later decades of the 1950s and 60s. Whereas Manchester's authorities displayed a more liberal attitude than the BBFC 'in matters of nudity, sex and language'², Sale's councillors preferred a stricter stance, especially in regard to films rated with the new X certificate (Hally 2013: 16). Barber offers a cross-regional comparison, emphasising in particular the impact of social and political structures on local censorship decisions. Her article 'Exploiting local controversy: regional British censorship of *Last Tango in Paris* (1972)' is of particular interest as it examines contrasting responses of councillors in Belfast, Oxford and Newport in South Wales to outside pressure exerted by pro-censorship lobby The Festival of Light. Led by Mary Whitehouse, the pressure group aimed to suppress the X-rated film locally and successfully exploited the religious and political tensions in Belfast, resulting in a ban of the film for commercial cinemas situated there (Barber 2016: 596). The same tactics met with opposition in Oxford and Newport, however, where the film remained in circulation. In the Welsh town the group's intent to tap into local sentiment to cause moral outrage against the film backfired and instead triggered entrenched indignation, revealing 'a council deeply resentful of outside influence and keen to assert their own regional and national independence' (ibid.: 598). As this article will demonstrate, a similar sense of

autonomy drove Scottish authorities to resist pressure by the Home Office and other agencies to align Scottish censorship practices with those prevalent in the rest of the UK. But a crucial difference in the Scottish case is that such resistance was not confined to an individual municipality but inscribed into the broader legal and administrative framework for film exhibition.

Despite the existence of a separate legal tradition film censorship in Scotland has been viewed through the prism of practices adopted in the rest of the UK. Neville March Hunnings, for instance, has detailed the relationships between *Film Censors and the Law* (1967) in England. Though his account does include some important information on Scotland, it does not offer a coherent understanding of the prevailing legal and administrative framework for film exhibition. The first study to tackle this is Trevor Griffiths' *The Cinema and Cinema-Going in Scotland 1896-1950* (2012) where the particularities of the Scottish framework are teased out with a particular focus on the child audience (55-97). The present article builds on Griffiths' work by analysing the role of key agencies in producing and maintaining this framework. The argument put forward here is that film censorship in Scotland during the early cinema period was intertwined with political tension over the autonomy of its legal system. The article will assess the origins of this tension and explain how this framework facilitated a noninterventionist approach among local licensing authorities and exhibitors towards film censorship. It will focus on the years between 1909, when the Cinematograph Act was passed, and 1933, when the *Edinburgh Cinema Enquiry* brought the divergence of the Scottish approach to the attention of a wider audience. First though, the following sections will entangle overlapping British and Scottish regulatory practices and discuss hitherto neglected primary source material relating to Scotland.

The Regulation of Places of Public Entertainment in Scotland before 1909

The first cinema shows taking place in fixed places of popular entertainment in Britain were subject to the Disorderly Houses Act of 1751, an act originally passed to prevent theft and misconduct in so-called disorderly houses (Hunnings 1965: 29-35). The measure was initially only used to enforce the licensing of illegitimate theatres and music halls in the cities of London and Westminster. But from 1890, other British local authorities were allowed to adopt similar measures (Kuhn 1988: 15).

The 1751 Disorderly Houses Act applied only to a limited extent in Scotland where public entertainment was subject to a separate legal system, preserved under the 1707 Act of Union:

[T]he Court of Session, or College of Justice, do, after the Union, and notwithstanding thereof, remain, in all time coming, within Scotland, as it is now constituted by the Laws of that Kingdom, and with the same Authority and Privileges, as before the Union ... (*The Act of Union 1707* quoted in Cooke et.al. 1998: 10)

Scotland's burghal structure, reaching as far back as the twelfth century, also remained intact after the Union. As urban historian R. J. Morris noted, this tradition fostered the development of a fragmented form of governance that was determined by local power structures rather than central agencies and meant that Scottish burghs were granted more autonomy than was common in England, Wales and Ireland (1990: 92-3). This localisation of power increased during the eighteenth and nineteenth centuries as Scottish towns witnessed an unprecedented growth in population caused by rapid industrialisation. Dislocation, poverty and overcrowding brought social problems that local authorities sought to manage through strengthening their policing systems (Morris 1990: 91-2). Nowhere was this situation more ubiquitous than in Glasgow where more than ten Police Acts were passed between 1800 and

1900. Accordingly, places of public entertainment such as theatres and music halls were brought under the supervision of Glasgow's magistrates under the Further Powers Act of 1892. The Act

enabled by-laws to be made for the safety and comfort of the public and for the maintenance of order in theatres, public shows, billiard and bagatelle rooms; [and] it extended the powers of the police regarding entry ... to unlicensed theatres and to gaming houses (Lindsay 1909: 29).

While Glasgow Corporation's action followed a central measure, known as the 1892 Burgh Police (Scotland) Act, other towns passed a string of local acts to increase the control of the magistrates over venues offering public entertainment. In Edinburgh, for instance, these were subject to the 1879 Municipal and Police Act, and in Dundee theatre and music hall owners had to obtain licences under the Dundee Corporation Acts of 1871 and its subsequent amendments (Griffiths 2012: 57-8). Consequently, and crucially for developments in later decades, when cinema shows were staged for the first time in Scotland in 1896, these were subject to the respective local licensing practice. Licences for public shows were usually granted annually, following an inspection of the premises by the local Burgh Engineer and/or Firemaster. After checking 'that arrangements for audience safety and the maintenance of good order were adequate', the inspector would advise the magistrates committee in regard to granting a licence (*ibid.*: 57). Building regulations further maintained the adherence to licensing conditions as any alteration had to be approved by the local Dean of Guild Courts. This practice was to ensure that the audience was at all times safe from the risk of fire and that enough emergency exits were available. Similar preparations had to be made for temporary shows in churches, temperance halls and other venues, effectively preventing the

emergence of so-called nickelodeons and penny gaffs, the small shop conversions common in some American cities and in London before 1910 (Musser 1990; Burrows 2004).

The continuation of a separate legal tradition did not mean that British legislation was not applicable at all in Scotland; the two legal systems overlapped to a certain extent. While granting courts in Scotland some discretion, the 1707 Act of Union earmarked that Scottish law was

subject nevertheless to such Regulations for the better Administration of Justice, as shall be made by the Parliament of Great Britain (*The Act of Union 1707* quoted in Cooke et.al. 1998: 10).

This means that a dual if not multi-layered legal structure existed in Scotland. Forming the outer layer was legislation passed by the British parliament while the inner layers referred to practices that were adopted by Scotland's municipal authorities and confirmed by Scottish courts. Initially, the duality of British-Scottish legal structures did not affect the regulation of cinema entertainments in Scotland as these were only subject to the inner layers – the regulation of places of public entertainment administered by local licensing authorities as outlined above. But the passing of the Cinematograph Act in 1909 complicated this set up.

The 1909 Cinematograph Act and the emergence of film censorship in the UK

In London, the 1751 Disorderly Houses Act was quickly found obsolete as it did not cover film screenings in such makeshift venues as penny gaffs which, due to a casual approach to building regulations, sprang up in the British capital around the turn of the century (Kuhn 1988: 15). The cheapness of admission of such cinemas meant that they were more accessible than other places of entertainment and quickly morphed into spaces where children,

immigrants and the working classes socialised outwith the control of authorities. James Robertson and Jon Burrows argue that the increasing number of such venues in London's East End led the Metropolitan Police to pressure the Home Office to bring in new legislation dealing exclusively with cinematograph shows (Robertson 1989: 1-2; Burrows 2004: 173). Additional support for new legislation came from sections of the trade pursuing the betterment of the cinema's public image which already suffered from attacks on the content of films, some of them criticised for glorifying crime (Kuhn 1988: 14; Robertson 1989: 1). A more tangible threat calling for a dedicated measure was the risk of fire from the highly inflammable nitrate content of celluloid films. Although London City Council (hereafter LCC) had issued fire safety legislation for licensed theatres as early as 1898, a more universally applicable law was needed to ensure the physical safety of all cinema audiences in the UK (Kuhn 1988: 15; Hunnings 1967: 37-8). Hence, in spring 1909 the Home Office proposed the Cinematograph Bill, subsequently passed by Parliament and receiving Royal Assent in November.

From 1910, the new Cinematograph Act required that every film exhibitor in Britain, including Scotland, had to apply annually for a cinematograph licence, granted by the county council or other local authorities. While intentions behind its creation sprang from physical as well as social safety concerns, the Act itself only laid out the physical conditions necessary to run a licensed cinema. A cinematograph licence could be obtained after the existence of certain safety measures had been confirmed, such as the appropriate 'number and location of exits, ... enclosure of the projector, ... encasement of films, ... type of lightening used, ... placement of fire appliances ...' (Kuhn 1988: 17). Similar rules were applicable to Scotland, where the Scottish Secretary circulated detailed regulations in March 1910. The new rules 'included the provision of adequate exits, indicated by illuminated signs' and demanded that 'the enclosure from which the cinematograph apparatus was to be operated' be located

‘outside the auditorium’ or otherwise separated from the audience by ‘a barrier of at least 2ft’ (Griffiths 2012: 58-9).

Despite its focus on fire safety measures, in England, Wales and Ireland (before independence), the legal scope of the Cinematograph Act was interpreted generously, empowering licensing authorities to attach additional conditions transcending the realm of physical safety. For instance, the LCC immediately and successfully prevented cinema shows on Sundays testing the scope of the Act in a law case against the Bermondsey Bioscope Company Limited in the English High Court which approved of the Council’s actions (Kuhn 1988: 17-8; Hunnings 1967: 39). The case bears striking similarities with the Scottish case cited above as both centre on the issue of Sunday opening. However, the London court case assured the applicability of the 1909 Cinematograph Act – a central legislative measure – to regulate social conditions such as Sunday opening, while the Edinburgh court case confirmed the continued validity of the local municipal police act. The outcome of the *LCC v. Bermondsey Bioscope Co. Ltd.* law case had wide implications for the ensuing interpretation and application of the Cinematograph Act in London and elsewhere in the UK. Only a year after the Cinematograph Act came into force, the LCC used the Act to enforce other social conditions, including the restriction of opening hours and limits on the admission of children at evening performances. Crucially, the High Court’s approval of the LCC’s application of the Act in London had repercussions beyond the capital’s boundaries as it meant that exhibitors residing anywhere in England, Wales and Ireland could potentially be prosecuted or their cinema licences withdrawn for non-compliance with rules added by the respective licensing authority, even if these conditions regulated the social rather than the physical nature of cinema performances. Despite its focus on physical safety the Cinematograph Act became thus an important key stone for the social regulation of cinemas and ‘opened a legal path to certain practices of film censorship’ (Kuhn 1988: 18). Such practices had to be

constantly negotiated between central and local authorities, the cinema trade and various pressure groups. The inconsistency this caused soon became a problem for cinema exhibitors, especially those owning circuits in more than one jurisdiction. As a first step to alleviate this issue and prevent government intervention, the Cinematograph Exhibitors Association (hereafter CEA) was formed in 1912. The Association pursued an agenda of self-regulation which manifested itself in the establishment of British Board of Film Censors shortly after. The 'voluntary' censorship board was financed by the Incorporated Association of Kinematograph Manufacturers and, after successful persuasion by the CEA and other trade bodies, received very tentative support from the Home Secretary Reginald McKenna (ibid.: 21-2; Hunnings 1967: 50-5).

Introducing a basic classification system, the BBFC offered to categorise films according to their suitability for general and adult audiences. A film marked with 'U' signified that the picture was appropriate for a general audience, while films marked with an 'A' indicated its suitability for adults. Moreover, the board refused to give certificates to films deemed sexually, religiously or politically offensive. Research on the acceptance of BBFC decisions on the local level is often lacking in histories of the Board. Considering that the BBFC was not wholeheartedly endorsed by the Home Office or the LCC and lacked any legal authority, the effectiveness of its censorship decisions during these early years is questionable. This is confirmed by evidence from Scotland. During the 1910s, two of the most prominent Scottish cinema exhibitors, A.E. Pickard and J. J. Bennell, were in favour of a censor that was more firmly backed by the Home Office than the BBFC. Both Pickard and Bennell owned large circuits of cinemas which brought them in contact with a number of different local authorities and thus different sets of regulations (Velez-Serna 2012).³ The BBFC was only worth supporting if it was able to override local regulations, standardise conditions for film exhibition and make business more predictable. As the Board lacked such power, it was met

with scepticism by exhibitors. Bennell even considered the advantages of a state censor. As founder of the CEA Glasgow branch who had links with social reform movements such as the Good Templars, enhancing the respectability of the cinema trade was an important goal that a more powerful censor could help to achieve. In the midst of a Home Office campaign to establish a state censor in 1916, the trade paper *The Bioscope* interviewed him about the prospect:

I'm afraid a central censorship board is essential. ... it is inevitable in a business of this kind that a few exhibitors should be tempted ... by the big profits often so unfortunately associated with the screening of a questionable subject ...

(*Bioscope* 1916a: 1061).

The Home Office proposal soon turned out to be a 'bad bargain' for exhibitors (*Bioscope* 1916b: 334). Although the then Home Secretary Herbert Samuel was keen to unite censorship practices by appointing a state censor, war conditions meant that he could not pass new legislation through Parliament without difficulty. Yet, parliamentary approval was necessary to take away full control from local licensing authorities. Proposing to establish a censor through administrative action instead, which relied on the voluntary concession of powers by local authorities, his quasi-official scheme offered no real benefit to the cinema trade. *The Bioscope* called Samuel's proposal a

somewhat pompous and irrelevant rite of pretending to confer official powers upon a body which will in fact have none ... The stamp of rather foolish mock-official status held out as a promised benefit will render the censorship no more effective and rather less dignified than it is at present. (*Bioscope* 1916b: 334)

A reshuffle of the government at the end of 1916 brought the appointment of a new Home Secretary, Sir George Cave, and with it began the most significant phase in the formation

of the British censorship system. Cave was not interested in cinema censorship and shelved the question of establishing a state censor. Instead he sanctioned existing local arrangements. He specifically advised 'local licensing authorities to make more effective use of their powers of censorship under the Cinematograph Act' (Kuhn 1988: 24).

Following the appointment of T.P. O'Connor, an MP and former head of the CEA, as new president of the BBFC in 1916, Cave began to openly endorse the Board and lobbied local licensing authorities to accept its recommendations on the suitability of films.

The improved status of the BBFC was tested immediately after the war, when the emergence of a new type of film put the relationship between the Censor, the Home Office and local authorities under immense pressure. The films in question represented a particular difficulty because they dealt with sexual morality and health, both undermined by war conditions, and were promoted by social organisations such as the National Council for Public Morals and the National Council for Combating Venereal Disease. As Kuhn explains on three case studies, the BBFC defined cinema's role as one of family entertainment and decided to withhold certificates for films it regarded as health propaganda and, thus, unsuitable for exhibition in commercial cinemas (ibid.: 28-95). The other agencies involved in negotiating the exhibition of these health propaganda films supported a broader definition of cinema's social role which included information and education. What followed was a confused situation in which the BBFC's verdict was largely ignored. Many health propaganda screenings took place in alternative venues, where exhibition conditions were agreed directly between exhibitors, local licensing authorities, reform agencies and government departments responsible for public health.

At the beginning of the 1920s, the CEA started concerted efforts to persuade local licensing authorities to preclude the display of films without a BBFC certificate, whether they were to be shown in temporary or permanent venues. Scottish branches of the Association were quick

in effecting such change. For instance, Glasgow and Edinburgh magistrates were approached by the Association during the winter months of 1920 and complied with its terms shortly after, in March and April 1920 (Griffiths 2012: 64-66). In England, a parallel CEA campaign was met with support by prominent councils such as Middlesex County Council in August 1920 and London City Council the next year (Kuhn 1988: 25). Exhibitors applying for a cinematograph licence in these locations were henceforth obliged to only show films with a BBFC certificate. This marked the beginning of a period when censorship practices became increasingly consistent, relationships between regulatory agencies stabilised, and the BBFC found acceptance across the UK on the basis of which a more reliable censorship system could be built. Over the following few years, the official acknowledgement of the Board as the UK's central censor was further strengthened as local authorities and cinema exhibitors were expected to enforce the viewing conditions recommended for 'A' certified films. The pace for this was originally set in London, where the City Council successfully demanded that children under sixteen and unaccompanied by a parent or guardian were excluded from films that had received the BBFC's 'A' certificate. The Council's actions had been encouraged by the Home Secretary and were used by him to formulate model conditions for cinematograph licences that were to be universally applied. Circulated around the country in July 1923, the model conditions finally found the support of the English Bar in the test case *Mills v. London City Council* in 1925, encouraging other local authorities in England and Wales to follow London's example (ibid.: 26-7). Meanwhile an independent Ireland passed its own Censorship of Films Act in 1923 (Rockett 2004). In Scotland, however, the new 'A' certificate regulations were successfully resisted by exhibitors and authorities alike. To understand this divergence, it is important to remember that social conditions of cinema-going were subject to police acts passed by local authorities and not the 1909 Cinematograph Act. The model conditions circulated by the Home Secretary in relation to licences taken out

under the 1909 Act were, thus, seen as irrelevant in the Scottish context. The article will now turn to the intricacies of the Scottish framework for film exhibition and discuss how regulations relating to the BBFC's 'A' certificate were defied in Scotland.

The Scottish legal and administrative framework for film exhibition

While the continued applicability of municipal legislation was important in sustaining resistance to legislation passed by the British Parliament, the authority of the Scottish legal framework for film exhibitions was not a given but had to be actively maintained by Scotland's courts and the Scottish Secretary. The Secretary's role was to represent Scottish interests at Westminster and facilitate the implementation of legal and administrative policy decided by the UK parliament and had, therefore, an important mediating function. The Secretary was part of the Scottish Office, an institution reinstated (after abolition in 1745 following the Jacobite Rebellion) under Lord Salisbury's minority government in 1885 to reconcile trends towards centralisation with local and regional political sentiments. With the passing of the 1894 Local Government Act, the Scottish Secretary was granted a seat in the Cabinet, enabling him to support Scottish bills more adequately in Parliament and manifesting his role as 'effective head of domestic administration' (Levitt 1998: 11). As Levitt points out, many Liberals campaigning for Irish Home Rule also favoured a devolved Scotland and criticised the British government for treating the Scottish Secretary like a junior minister (*ibid.*).⁴ Hence, in tandem with pledges to support Irish Home Rule, some Liberal MPs campaigned for more administrative autonomy for Scotland. One such Liberal was John Sinclair, MP for Dunbartonshire and Forfarshire between 1892 and 1909. Crucially for the history of the Cinematograph Act in Scotland, Sinclair was appointed Scottish Secretary from 1905 to 1912.

According to his private secretary, H.M. Conacher, Sinclair was ‘a great believer in administrative devolution’:

He wanted Scotland to be governed according to Scottish ideas, and was never enthusiastic about the method of dealing with Scotland by applying a single legislative measure to Great Britain. (Pentland 1928: 106)

The Secretary’s aim to secure administrative autonomy for Scotland was reflected in the way he interpreted the 1909 Cinematograph Act. In March 1910, when Sinclair laid out the rules for the application of the Act in Scotland, he determined that the licensing law was not to replace Scottish legislation dealing with places of public entertainment; instead it was to be treated as a supplement to only regulate fire safety.⁵ The Secretary’s narrow reading of the Cinematograph Act as a measure only applicable to physical safety meant that social issues were to be dealt with under pre-existing local legislation. This interpretation was instantly strengthened at Edinburgh’s Burgh Court, where the continuing applicability of the nineteenth-century police acts was confirmed in the above mentioned case against local exhibitor John Stewart in March 1910.

The interpretation of the Cinematograph Act as legislation supplementing rather than replacing Scottish laws had implications on how Scottish licensing authorities were to approach the question of film censorship. Pre-existing police acts only allowed for the social regulation of the cinema space – control over opening times, supervision of children, their admission to evening performances and so forth. Regulation of film content was not covered by them. That this created an obstacle for the execution of localised censorship practices became apparent only one month after the Edinburgh Burgh Court decision when Glasgow magistrates discussed the release of a film produced by the Motion Picture Patents Company. Portraying the black heavyweight boxer Jack Johnson beating the white James Jeffries in a

state of semi-nudity, the picture caused much controversy. Enquiring about the options available to prevent exhibitions of the film in Glasgow, the magistrates found that under the 1892 Further Powers Act, once a licence had been issued, the authority had no right to intervene over the content of the show (Griffiths 2012: 60). So, neither the 1909 Cinematograph Act nor the 1892 Police Act was used to prevent the public display of the boxing film. Crucially, this revealed for the first time the reluctance of Scottish magistrates to act as censors. The situation was confirmed a year later, when a similar controversy arose in connection with the film *From the Manger to the Cross* (Kalem 1912) in Edinburgh. The magistrates were criticised by the Free Church Presbytery for allowing the unconstrained display of a film that depicted Jesus' suffering for entertainment and material gain while magistrates in Liverpool and Dublin managed to curb its exhibition (Rockett 2004: 34-37). In how far Glasgow and Edinburgh's noninterventionist example was followed by local authorities across Scotland requires further research. There are indicators that the Free Church Presbytery weighed in more heavily against cinema entertainment in general in the Western Highlands and Islands. During the early cinema period, the region featured only two permanent cinemas, located in Oban on the mainland and Stornoway on the Isle of Lewis.⁶ Moreover, Hawick, a small town in the Borders, frequently debated the place of cinema as part of its civic culture in local newspapers, with the United Free Church often accentuating social concerns associated with cinema-going, such as juvenile delinquency and ignorance of the Sabbath through Sunday opening (Caughie 2017; National Council 1917: 354). Little is known, however, whether and how the Church's antagonism manifested itself in censorship decisions taken by local magistrates in these regions.

The Scottish Secretary did not intend to leave Scottish magistrates with no control over the content of cinematograph shows. In a note in the Scottish Office Precedent Book from February 1911, Sinclair suggested that 'a licensing authority ... regulate the character of

pictures to be exhibited' in line with 'an English legal decision'.⁷ The inconsistency indicates that Sinclair was not in full command of the Scottish legal framework. This is confirmed by David Torrance, who points out that Thomas Shaw, Lord Advocate at the time of Sinclair's secretaryship, frequently complained that the Secretary did not consult him enough about Scottish legal practice, preferring to take matters into his own hands (Torrance 2006: 63-4). Resulting from this was a confused scenario in which magistrates acted according to precedents tried in Scottish courts while the Scottish Office cited a decision made by English judges. This inconsistency was rectified five years later under the leadership of the new Scottish Secretary, Harold John Tennant, who worked more closely than Sinclair with the Lord Advocate. A comment added to the one cited above deferred to the Advocate's opinion:

Censorship of films – L.A. [of] opinion that the [Cinematograph] Act only referred to "safety" & did not authorise censorship of immoral films.⁸

This order reflected more adequately Scottish legal practice and, more importantly, commanded that the 1909 Cinematograph Act was not to be used as a censorship instrument. The timing of this order was no coincidence. Given in November 1916, it occurred in the midst of the major push by Home Secretary Herbert Samuel to implement a British state censor by administrative action, avoiding the passage of a new bill through Parliament. After receiving the Lord Advocate's advice that the use of the existing law (the Cinematograph Act) to censor films was illicit in Scotland, Samuel excluded the country from its plans:

It looks as if Scotland must remain outside of the scheme, unless there is legislation (Home Office quoted in Hunnings 1967: 81).

As a result, the noninterventionist approach taken by Glasgow and Edinburgh's magistrates was further legitimised and upheld, despite opposition from local institutions

and pressure groups. It was not until 1952, that an amendment of the 1909 Act brought Scotland officially in line with censorship practices South of the border (ibid.: 120).

The BBFC's 'A' certificate in Scotland

The cinema trade benefited from the hands-off approach displayed by magistrates in Scotland's two principal cities. Local CEA representatives even praised Edinburgh's magistrates for refraining from using the Act to 'influence film content' (Griffiths 2012: 62). A number of distributors and exhibitors were prominent public figures, whose involvement in local and national politics extended their influence beyond the realm of the cinema trade. J.J. Bennell has been mentioned above as a voice for respectability and temperance; his stance and activities earned him, his company and the trade in general the esteem of Scotland's authorities. As Vélez-Serna pointed out, 'Glasgow Corporation hired his show as a turn in the Saturday evening concerts at the City Halls – and ... other civic institutions ... depended on his services for fundraising events' (Vélez-Serna 2012: 157). Others held positions within trade organisations as well as municipal government. Exhibitor James Welsh, for example, was not only the secretary of the CEA's Glasgow branch, but also active trade unionist and local Labour councillor (Vélez-Serna 2012: 271). Another case in point is Thomas Ormiston, president of the CEA from 1924 to 1928 and unacknowledged father of the 1927 British Quota Act, who also acted as Unionist MP for Motherwell during the 1930s (McBain 2015). As the following pages will show, the closeness of local cinema trade and municipal authorities was at times strong enough to form an alliance against a formidable fraction of cinema critics campaigning for tougher censorship rules.

The discrepancy of the Scottish approach to film censorship and the close relationship between cinema trade and civic fathers became particularly noticeable during the 1920s

when new regulations connected to the BBFC's 'A' certificate were successfully enforced in London and, consequently, applicable elsewhere in England and Wales. The conditions, which demanded that children had to be accompanied by a parent or guardian to 'A' certified films, were difficult to enforce in practice, however. As Sarah Smith gathered from a large number of oral history interviews, English and Welsh children developed numerous practices to dodge the 'A' rules, for example, by asking a stranger to escort them or by finding other ways to get into the cinema (Smith 2005: 61-73). Scottish exhibitors maintained that it was impossible to identify the age of the children and whether the accompanying adult was indeed a parent or guardian. Instead they were inclined to assume that children attending the cinema did so in agreement with their parents or guardians. Edinburgh magistrates echoed this view and added that the new rules might, in fact, encourage children to gain admission to 'A' films (Griffiths 2012: 80-2). The difficulty of enforcing them, the relative closeness of the trade and local authorities as well as the different legal set up in Scotland meant that the 'A' rules could be ignored. In resisting the adoption of 'A' film regulations, Scottish exhibitors and authorities perpetuated a framework with only limited scope for censorship, a framework that began to divert visibly from practices South of the border.

One agency that was particularly invested in improving this situation was Glasgow Education Authority. Headed by Charles Cleland and, during the early 1920s, composed of an equal number of clergymen and ordinary members, the Authority proposed the appointment of a local statutory censor, sending deputations to the town magistrates and meeting several times with the cinema trade.⁹ Such proposals were met with considerable opposition. In 1922, the Scottish CEA stated that 'every section of the trade was opposed to local [statutory] censorship' because it was 'utterly impracticable' (*Glasgow Herald* 1922). Instead he and his colleagues favoured the Home Office's acknowledgement of the BBFC as official censor.

Glasgow magistrates mirrored this view, doubting that a local statutory censorship system would be any 'more satisfactory or efficient' than the present system (*Glasgow Herald* 1923). In light of numerous such rebuttals, Glasgow Education Authority stepped up its campaign in 1926, when it petitioned the Scottish and the British governments to instate an official censor 'to deal with all the films exhibited in the picture houses of the Kingdom'.¹⁰ The petition had the additional support of the National Council of Women of Great Britain, the United Free Presbytery as well as nine other organisations.¹¹ This was followed by a deputation 'to wait upon the Secretary of State for Scotland ... to press the aforementioned resolution on the Government', in March 1927.¹² Significantly, this deputation was supported by no less than seven additional organisations, such as the Boy Scouts Association and the National Vigilance Association for Scotland.¹³ This shows that the Glasgow censorship campaign had reached a wider supporting constituency, specifically uniting organisations that had traditionally been in charge of educating juveniles in social and religious values. Nonetheless, the efforts of the Authority and its allies were finally crushed when the Scottish Secretary and Home Office declined the proposals in April 1927 (*Glasgow Herald* 1927). The persistence of Glasgow Education Authority's campaign for censorship can be explained in the context of the development of the larger regulatory framework in the UK. To members of the Education Authority and other juvenile organisations aware of censorship practices developing South of the border, such as the display of the respective BBFC certificate outside of cinemas and before screenings as well as rules to limit the access of children to 'A' certified films, the absence of such control mechanisms in Scotland must have seemed incongruous and irritating. Despite the Authority's defeat, its efforts to control film content continued. Applying a more constructive strategy during the late 1920s and early 1930s, Charles Cleland and other Glasgow teaching staff established societies to promote non-commercial forms of cinema, such as the Scottish Educational Film Society and later the

Scottish Film Council. Glasgow educationists also pioneered an experiment to test the utility of educational films as a teaching aid in schools, publishing the results in a report titled *The Film in the Classroom* in 1933 (Bohmann 2015: 129-39; Corporation of Glasgow 1933). Delineating the school as a safe as well as elevating exhibition context and claiming non-fictional genres (increasingly marginalised in commercial cinemas) for the purposes of education, Cleland and his colleagues set the scene for the educational cinema movement of the 1930s to which Scotland made important contributions as evident in some early volumes of *Sight and Sound*.¹⁴

The inconsistency of the Scottish approach to censorship was officially challenged in a parliamentary debate in March 1930. In an attempt to unite censorship practices, Home Secretary John Robert Clynes had inserted the 'A' rules firmly in a redraft of the 1923 model conditions and urged local licensing authorities across Britain to adopt these under the 1909 Cinematograph Act. The respective circular was sent out in 1929 and advised local authorities to instruct cinema exhibitors to display the respective BBFC certificate before a film was shown and demanded that unaccompanied children under sixteen years of age were not admitted to films that had received an 'A' certificate (Griffiths 2012: 80). On 25 March 1930, Conservative MP for Kelvingrove Glasgow, Walter Elliot, addressed the representative of the Scottish Office, Thomas Johnston (under-secretary to Scottish Secretary William Anderson and at the time often acting on his behalf), in the House of Commons, asking:

Whether his attention has been called to the fact that the Home Office issued a circular letter on 16th December, 1929, to licensing authorities with reference to the local censorship of films for children and young people; and whether it is his intention to issue a similar letter to licensing authorities in Scotland?

(*Parliamentary Debates* 1930: cc269-70)

Like John Sinclair before him, Johnston was a supporter of administrative devolution and resolutely defended the Scottish legal framework, rebuffing Elliot's question with the words:

Notwithstanding decisions of the Courts in England that local authorities may attach to licences under the Cinematograph Act, 1909, conditions other than "safety" conditions, I am advised that the Courts in Scotland would be unlikely to take the same view. In the circumstances I do not propose in the meantime to issue any circular to Scottish licensing authorities. (ibid.)

Even when alerted to the 'resolutions passed by several education authorities in Scotland with regard to the necessity of doing something in this matter', Johnston remained aloof and did not alter his stance (ibid.). The stern line Johnston took on this occasion signifies once more that cinema censorship in Scotland had become tangled up in political tensions between advocates of centralisation and supporters of Scottish autonomy. While Unionist parliamentarians like Elliot pressed for a uniform implementation of Home Office proposals, those favouring administrative devolution perceived this a threat to the autonomy of Scotland's legal system and held against such pressure. But due to increasing dissatisfaction among pro-censorship lobbies within Scotland such resistance attracted increasing criticism and eventually became indefensible. One of the consequences of the well supported censorship campaigns of the 1920s was the 1933 *Edinburgh Cinema Enquiry*, an investigation into the impact of cinema-going on children and young people in Scotland's capital that has been discussed in detail by Smith (2005: 91-93). The outcomes of the investigation were significant enough to lead to a reconsideration of the issue by the Scottish Secretary of the time, Sir Godfrey Collins. Taking office in 1932, he altered the approach set out by his predecessors and took the same stance as the Home Office by

actively promoting the adoption of the model conditions mentioned above. Collins managed to keep the Scottish legal framework intact, however, by pressing Scottish cinema exhibitors directly instead of addressing local licensing authorities. As Griffiths contends ‘progress was uneven’ and the lack of statutory authority to control the content of cinema shows remained a problem until the passing of the 1952 Cinematograph Act brought Scotland’s censorship practices in line with those exercised in other parts of the UK (Griffiths 2012: 82).

Conclusion

The early cinema period witnessed uncertainty ‘over the means by which cinema was to be understood, defined and regulated’ in the UK (Kuhn 1988: 1). This situation was particularly uncertain and complex in Scotland, the only nation in the UK with a separate legal tradition and a head of domestic administration – the Scottish Secretary. This unique set up fostered the development of an approach to film censorship that diverged from the framework emerging South of the Scottish border. This article has looked into the reasons for this divergence and defined more clearly than previously done the distinctive features of the legal and administrative framework for film exhibition in Scotland. Principally, this framework differed in its interpretation of the 1909 Cinematograph Act as an accompaniment rather than a replacement of municipal police acts. The legitimacy of this approach was tested in court and supported by the Scottish Office on a number of occasions. Its resistance towards Home Office attempts to create a unified system of control for the whole of Britain originated in political tensions over Scotland’s autonomy in legal matters and efforts to preserve administrative devolution. This produced a situation in which magistrates were reluctant to intervene in film shows once a license had been obtained under local legislation. The

consequences of this *laissez-faire* approach became most visible in regard to the ‘A’ rules set out by the BBFC and related model conditions circulated by the Home Office in 1923 and 1929. The reluctance of the Scottish Office to circulate the model conditions among local authorities North of the English border was symptomatic of its effort to maintain the integrity of Scotland’s legal system. Scottish cinema exhibitors were equally unwilling to implement the ‘A’ rules, though not for political but pragmatic and economic reasons. Resistance to the rules was particularly ubiquitous in Glasgow and Edinburgh where civic fathers and the cinema trade formed a formidable alliance against pro-censorship lobbies. Further research is required to establish how widespread this resistance was among local authorities elsewhere in Scotland. Although refusal to accept the ‘A’ rules was effective, it was not built on local consensus. Led by Glasgow’s Education Authority, campaigns attacking the city’s noninterventionist approach emerged during the 1920s but failed to achieve any significant changes to the overall regulatory structure at the time. It, however, gathered the support of numerous social reform and religious organisations and managed to raise awareness of the issue, indirectly contributing to legislative change in Scotland under the 1952 Cinematograph Act. Shedding light on Scotland’s unique approach to film censorship during the early cinema period, this article has expanded a scholarly debate that questions the authority of the BBFC, instead highlighting the significance of local agencies and devolved administrations in determining censorship practices in their respective jurisdictions. As geographical coverage is still patchy, more research is called for if a more complete picture of local film censorship in Scotland and the whole of the UK is to emerge.

Notes

¹ Griffiths shows that exhibitors in Greenock and Dundee were still reluctant to accept the BBFC in 1920 (2012: 65).

² Enid Winstreich’s *I don't mind the sex, it's the violence* (1978) evidences an equally liberal attitude adopted by Greater London’s Films Committee.

³ In her doctoral thesis, Dr Maria Vélez-Serna has detailed early Scottish film distribution networks.

⁴ Only in 1926 was the Scottish Secretary granted the status of Secretary of State.

⁵ *Statutory rules and orders* (1910), No. 289, S. 9, cinematograph Scotland, regulations, dated March 10, made by the Secretary for Scotland under the Cinematograph Act, 1909 (9 Edw. 7, c. 30) NLS, GB2120 5/7/122, Moving Image Archive.

⁶ See map of cinema venues on the website earlycinema.gla.ac.uk.

⁷ *Scottish office precedent books, 1888-1958* (Volume 10): *Public health, industrial, social, commercial*, GB234/HH49, National Records of Scotland, p. 267.

⁸ *Ibid.*

⁹ The authority consisted of 20 clergy men and 20 ordinary members between 1922 and 1924: Glasgow Education Authority minutes 1922-1923 (1922), 30 March, GB243/ DED 1/1/4, Glasgow City Archives. Later it had a slightly different composition with 18 reverends and 24 other members: Glasgow Education Authority minutes 1925-1926 (1926b), 26 March, 1926, DED 1/1/7, Glasgow City Archives.

¹⁰ Glasgow Education Authority minutes 1925-26 (1926a), 25 February, GB 243/ DED 1/1/7, 721, Glasgow City Archive.

¹¹ (1) Glasgow Y.M.C.A.; (2) Scottish Sunday School Union for Christian Education (Glasgow Western Branch); (3) The Glasgow Guildry (Glasgow Centre); (4) The Girl Guides (Glasgow); (5) The Glasgow Council of Juvenile Organisations; (6) The Glasgow Society for Equal Citizenship and Glasgow Women Citizens' Association; (7) The Independent Order of Rechabites (Glasgow District No. 40); (8) The Girls' Life Brigade (Glasgow Battalion); (9) Cowlairs Ward Committee: Glasgow Education Authority minutes 1926-27 (1926c), 23 December, GB 243/ DED 1/1/8, Glasgow City Archive.

¹² Glasgow Education Authority minutes 1926-27 (1927), 17 March, GB 243/ DED 1/1/8, Glasgow City Archive.

¹³ *Ibid.*

¹⁴ See especially the prominence of Scottish film societies in the 1936 issues of *Sight and Sound*, discussed further in Selfe M. (2003), 'Encouraging a national film culture: The changing role of *Sight and Sound*', Unpublished Dissertation: University of Nottingham, 32-33.

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