

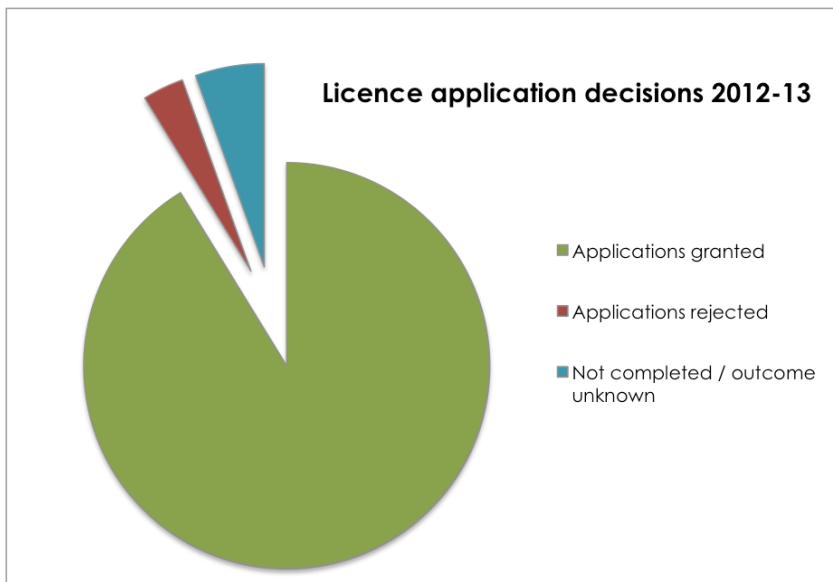


# ALCOHOL LICENSING AND THE PUBLIC GOOD

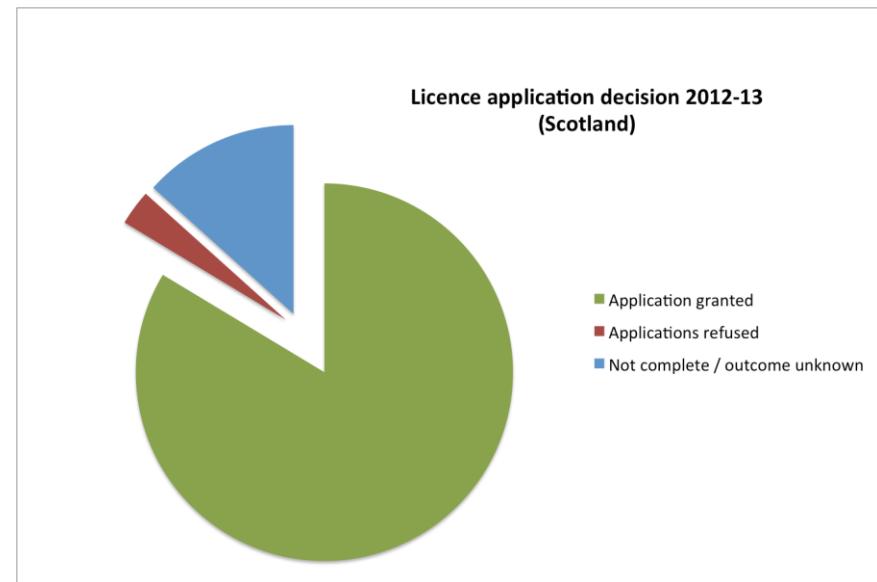
## HISTORICAL PERSPECTIVES

Dr James Nicholls, Alcohol Research UK





Source: Home Office, *Alcohol and late night refreshment licensing, England and Wales* (2014)



Source: Scottish Government, *Scottish liquor licensing statistics 2012-13* (2014)

Is licensing primarily concerned with regulating the circumstances of sale, or with controlling the scale of the market as a whole?

Does licensing have a strategic role to play  
in the reduction of chronic alcohol harms  
through controlling availability?

## *Implications of a strategic control approach*

Licensing function not permissive ('yes, as long as...'), but strategic ('does it fit our vision?')

Licensing *should* and *is able* to address non-proximate harms

The instruments for reducing availability have predictable effects

The public good is measured by reduction in harms not facilitation of pleasures

A. D. 1552. Anno quinto & sexto EDWARDI VI. C. 25, 26.

C A P. XXV.

For Keepers of Alehouses and Tiplinghouses to be bound by Recognisance.

¶ Ora much as intolerable Hurts and Troubles to the Commonwealth of this Realm doth daily grow and increase through such Abuses and Disorders as are had and used in common Alehouses and other Hous es called Tiplinghouses. It is therefore enacted by the King our Sovereign Lord, with the Assent of the Lords and Commons in this present Parliament assembled, and by the Authority of the same, That the Justices of Peace, within every Shire, City, Borough, Town Corporate, Franchise or Liberty within this Realm, or two of them at the least, (whereof one of them to be of the Quorum) shall have full Power and Authority by Virtue of this Act, within every Shire, City, Borough, Town Corporate, Franchise and Liberty, where they be Justices of Peace, to remove, discharge and put away common selling of Ale and Beer in the said common Alehouses and Tiplinghouses, in such Town or Towns and Places, where they shall think meet and convenient. And that none after the first Day of May next coming shall be admitted or suffered to keep any common Alehouse or Tiplinghouse, but such as shall be thereunto admitted and allowed in the open Sessions of the Peace, or else by two Justices of the Peace, whereof the one to be of the Quorum; And that the said Justices of the Peace, or two of them, (whereof the one to be of the Quorum) shall take Bond and Surety from Time to Time by Recognisance of such as shall be admitted and allowed hereafter to keep any common Alehouse or Tiplinghouse, as well for and against the using of unlawful Games, as also for the using and Maintenance of good Order and Rule to be had and used within the same, as by their Discretion shall be thought necessary and convenient; for making of every which Recognisance, the Party or Parties that shall be so bound shall pay but twelve Pence.

II. And the said Justices shall certify the same Recognisance at the next Quarter-Sessions of the Peace to be holden within the same Shire, City, Borough, Town Corporate, Franchise or Liberty, where such Alehouse or Tiplinghouse shall be; the same Recognizance there to remain of Record before the Justices of Peace of that Shire, City, Borough, Town Corporate, Franchise or Liberty; upon Pain of Forciture to pay for ever such Recognisance taken and not certified, iii. li. viij. s. viij. d.

1604: An Act to restrain the inordinate haunting and tippling in inns, alehouses and other victualing houses

1606: An Act to repress the loathsome sin of drunkenness

1609: An Act for the reformation of alehouse-keepers

1623: An Act for better repressing drunkenness

1625: An Act for the further restraint of tippling

# Licensing in Scotland – a devolved power

1756 licensing by magistrates introduced

1853 ‘Forbes Mackenzie Act’: off-sales only certificates; restricted operating hours (8am-11pm) and Sunday closing; bans sales to under-14s and to intoxicated customers

1903 Licensing Act: no formal provision for reducing density (unlike 1904 Act in England)

1913 Temperance (Scotland) Act introduces local prohibition

1915 Central Control Board introduces ‘permitted hours’ (11.30am-3pm and 5.30-10pm)

1962 Licensing Act: ‘afternoon gap’ for off-sales removed

1976 Licensing Act: Operating hours extended

## Commissions and inquiries

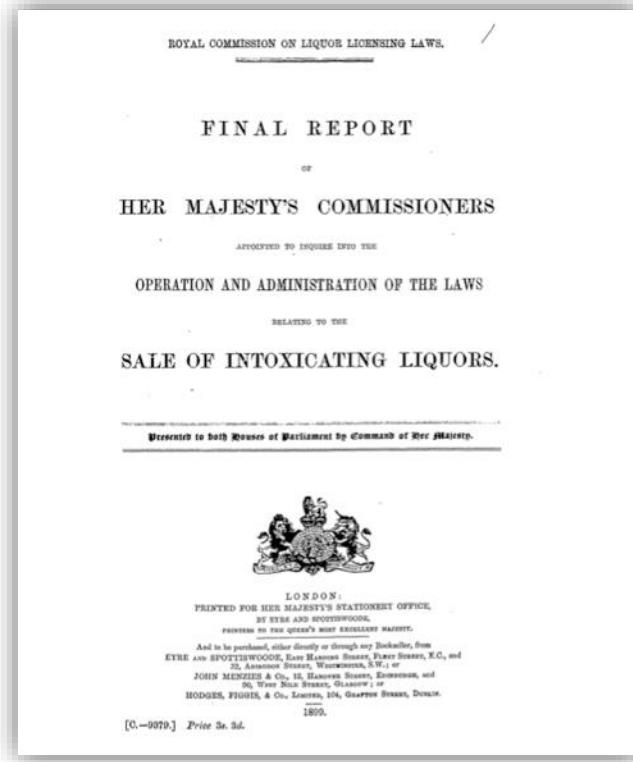
1899 'Peel Commission' (*Report of Her Majesty's Commissioners Appointed to Inquire into the Operations of the Laws Relating to the Sale of Intoxicating Liquors*)

1931 'Mackay Commission' (*Report of the Royal Commission on Licensing in Scotland*)

1960 'Guest Committee' (*The Scottish Licensing Law: First Report by the Committee Appointed by the Secretary of State for Scotland*) [2<sup>nd</sup> report in 1963]

1973 'Clayson Committee' (*Report of the Departmental Committee on Scottish Licensing Law*)

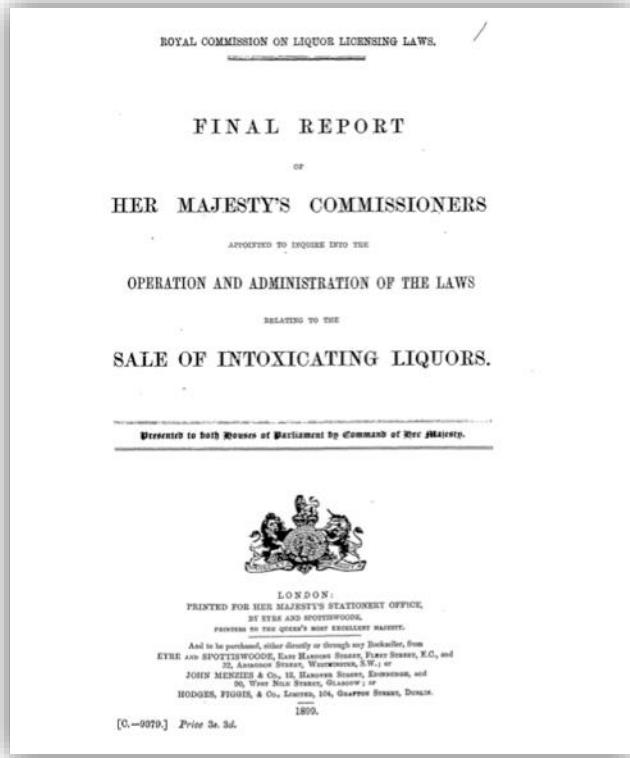
2003 'Nicholson Committee' (*Nicholson Committee Review of Liquor Licensing Law in Scotland*)



# Outlet density

'It is generally admitted that the number of licenses in a great many parts of England and Wales is in excess of requirements. Parliament itself is in a great measure answerable for this'

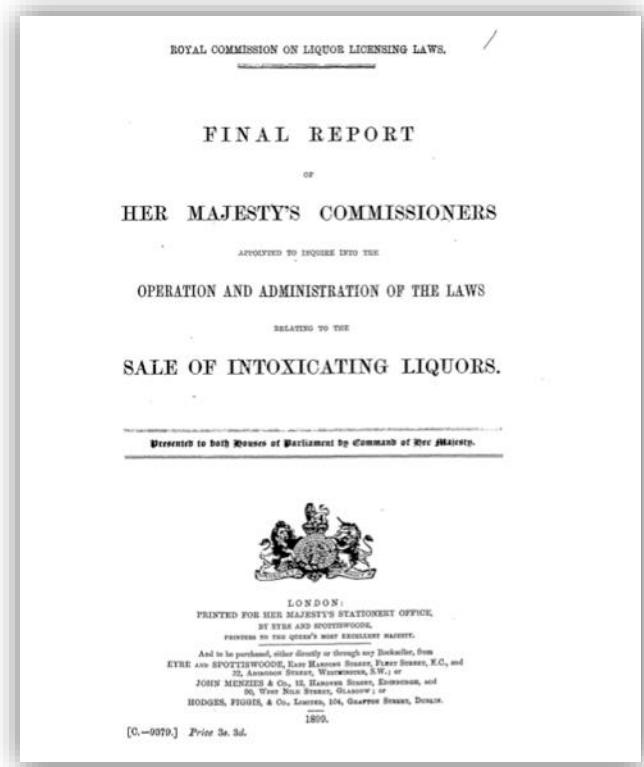
The 'Peel Commission' Report  
(1899)



## The “Grocers’ licence”

‘The question of the separation of the trade of the liquor dealer from that of any other trade is one upon which various views have been paced before the Commission.’

The ‘Peel Commission’ Report  
(1899)

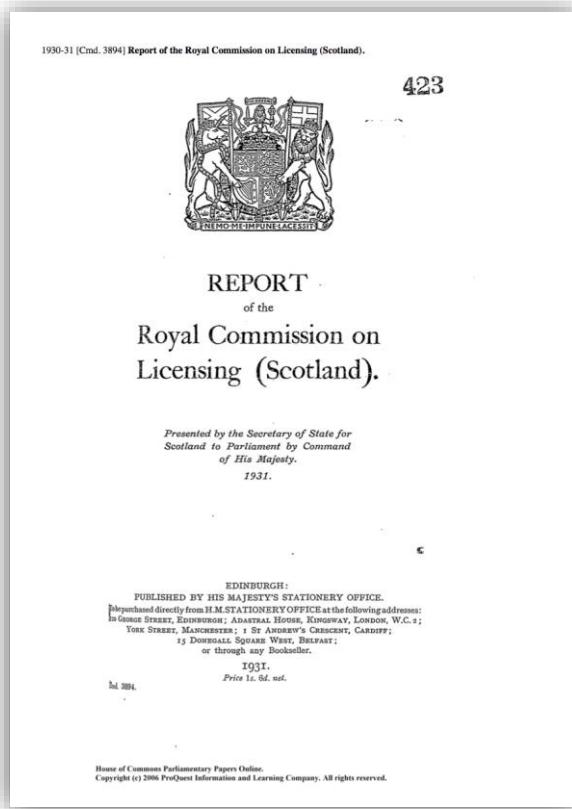


# The State and the Trade

'It has come to be a struggle for mastery between the State and the Trade, and the time has fully come for a decision – Who is to be master?'

Arthur Wellesley Peel

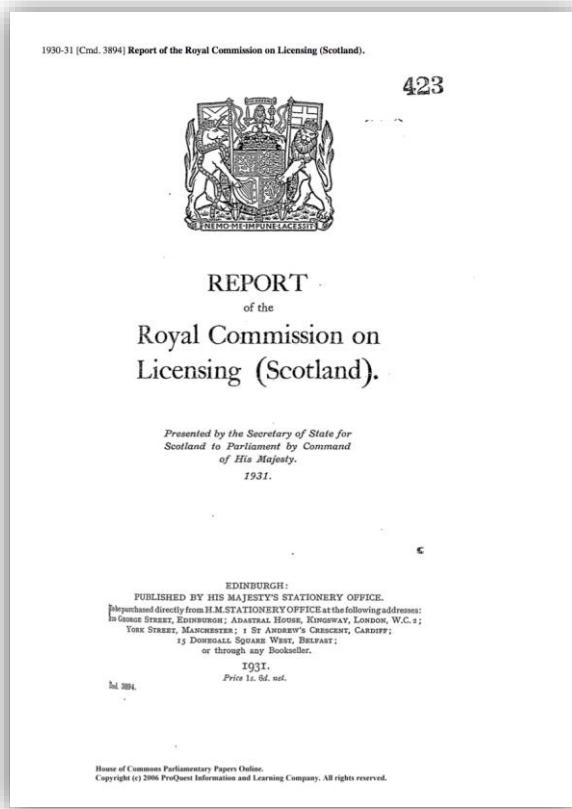
The 'Peel Commission' Report  
(1899)



## A social transformation?

'It gives us unfeigned pleasure to be able to report ... that, in general, sobriety has increased ... and that a younger generation is growing up to which, as a whole, any resort to alcoholic excess as a necessary or usual practice is almost totally unknown'

The 'Mackay Commission' report (1931)



The 'Mackay Commission' report (1931)

## Possible causes

A 'better understanding of the laws of health and a general desire to conform to those laws'

More counter-attractions – sports, outdoor pursuits, motoring

Better education

Better licensing laws and implementation

Improved housing

Increased taxation

573



ROYAL COMMISSION ON

LICENSING  
(ENGLAND AND WALES)

1929-31

REPORT

*Presented by the Secretary of State for the Home Department  
to Parliament by Command of His Majesty,  
December, 1931*

London:  
PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE.  
To be purchased directly from H.M. STATIONERY OFFICE at the following addresses:  
Admiral House, Kingsway, London, W.C.1; 100, George Street, Edinburgh;  
York Street, Belfast; 10, St. Swithin's Lane, Westminster, Cardiff;  
or Donegall Square West, Belfast;  
or through any Bookseller.

1932

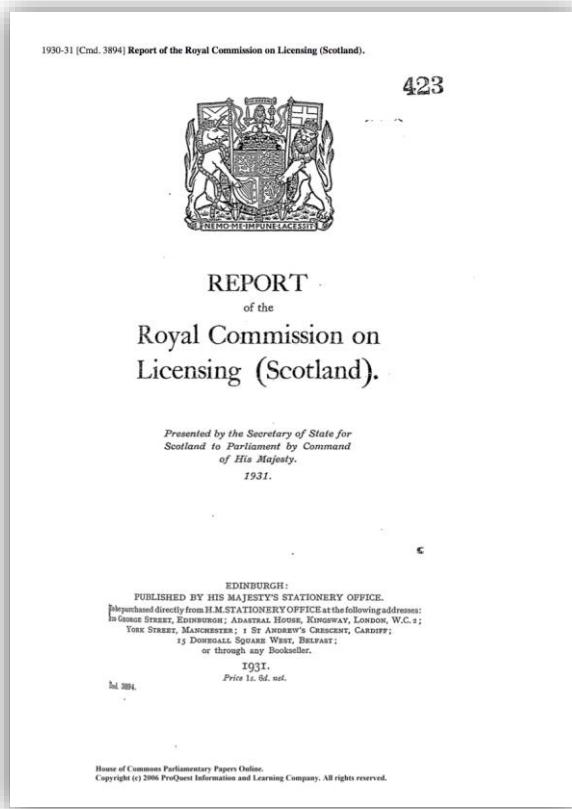
Price 4s. 6d. net.

Cmd. 3988

## First principles...

‘It is the clear duty of the State to take all reasonable action which will assist to reduce excessive drinking to the lowest dimensions possible’

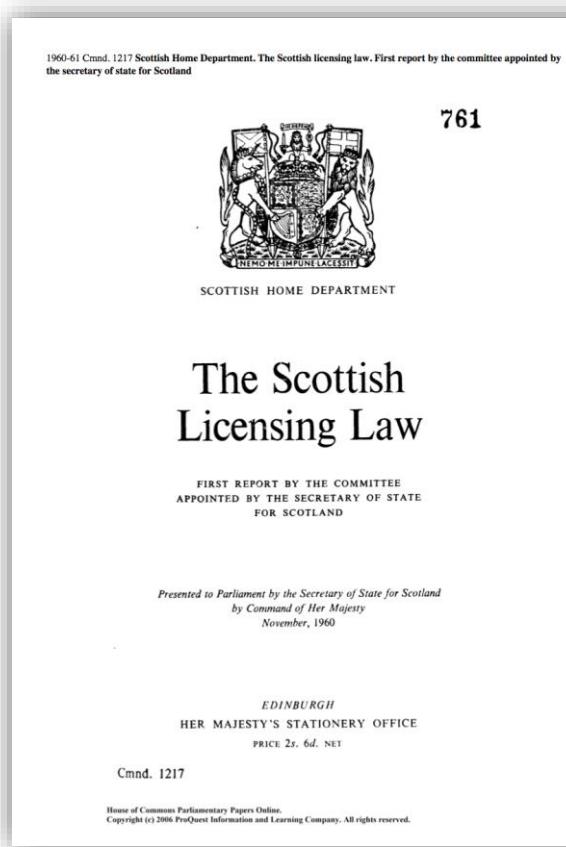
Royal Commission on Licensing  
(1932)



## Limits of licensing law?

'It is not clear that the sort of control which forms our subject matter could, or would with public advantage, penetrate to the home.'

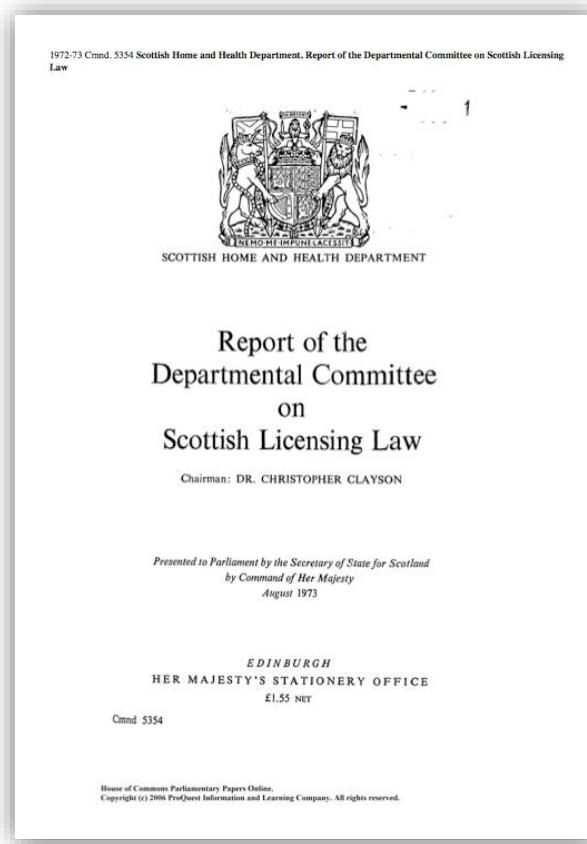
The 'Mackay Commission' report  
(1931)



# An ordinary commodity?

'There has in recent years been a significant increase ... in the number of off-sale establishments which deal almost entirely in liquor ... in our view these establishments are basically shops [and] should be free to sell liquor during normal shopping hours'

The 'Guest Committee' report  
(1960)

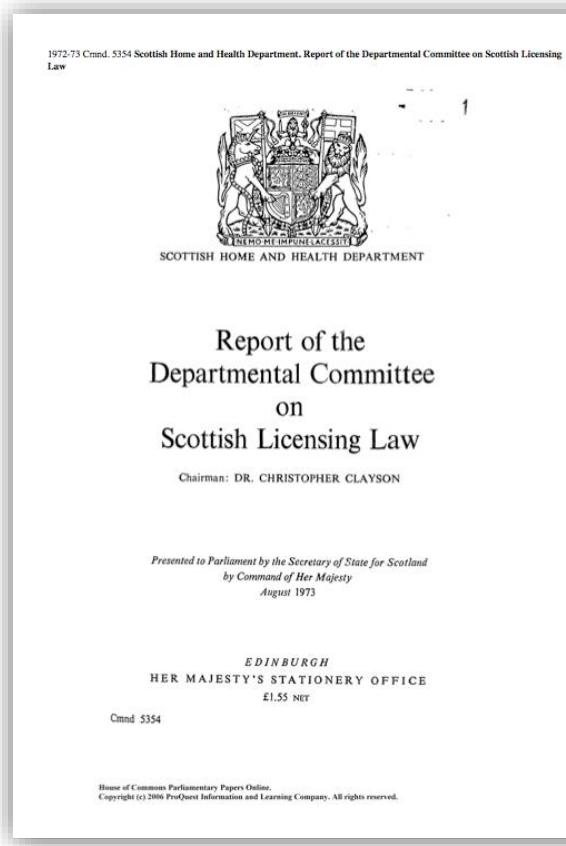


The 'Clayson Committee'  
report (1973)

## A limited influence

'Licensing, a negative and restrictive process, can play only a strictly limited part in the control of alcohol misuse. The part should be that of strengthening social control by helping in the formation of public attitudes to alcohol and modification of its practices of consumption.'

'We are strongly of the view that in deciding rates of alcohol taxation weight must be given to the substantial part it plays in alcohol control.'



## The 'Clayson Committee' report (1973)

# Limited functions

Licensing applies 'only to the circumstances of sale and to consumption of alcohol when in licensed pubs and clubs'

'The very considerable increase in off-sales purchases ... must have significantly decreased whatever effectiveness the law may be judged to have had for the prevention of misuse.'



939

Report of the  
Departmental Committee on  
Liquor Licensing

*Chairman:* The Rt. Hon. Lord Erroll of Hale

*Presented to Parliament by the Secretary of State for the Home Department  
by Command of Her Majesty  
December 1972*

LONDON  
HER MAJESTY'S STATIONERY OFFICE  
£1.90 net  
Cmnd. 5154

'Erroll Commission' Report  
(1972)

## Three 'erroneous principles'

- 1: Drinking is always socially damaging
- 2: Drinking cultures are homogenous
- 3: The law is decisive in changing culture



939

Report of the  
Departmental Committee on  
Liquor Licensing

*Chairman:* The Rt. Hon. Lord Erroll of Hale

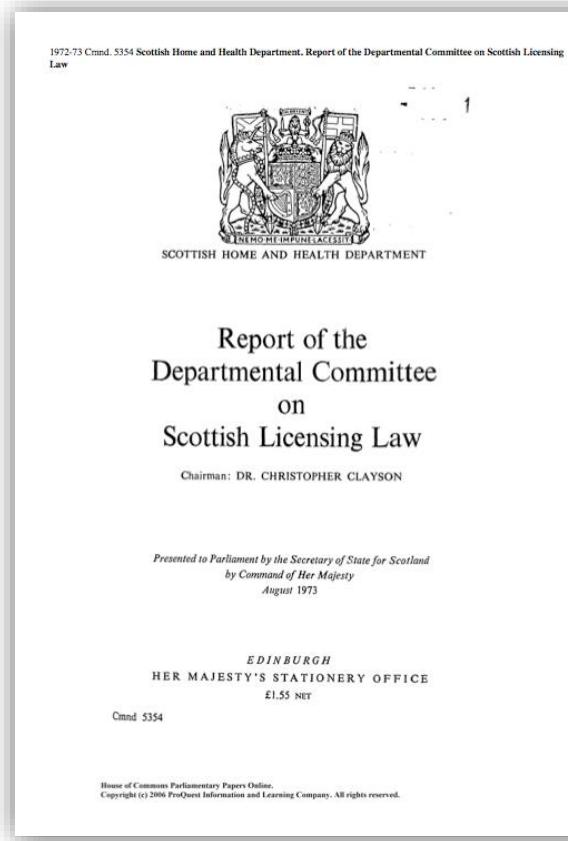
*Presented to Parliament by the Secretary of State for the Home Department  
by Command of Her Majesty  
December 1972*

LONDON  
HER MAJESTY'S STATIONERY OFFICE  
£1.90 net  
Cmnd. 5154

'Erroll Commission' Report  
(1972)

## Three 'correct principles'

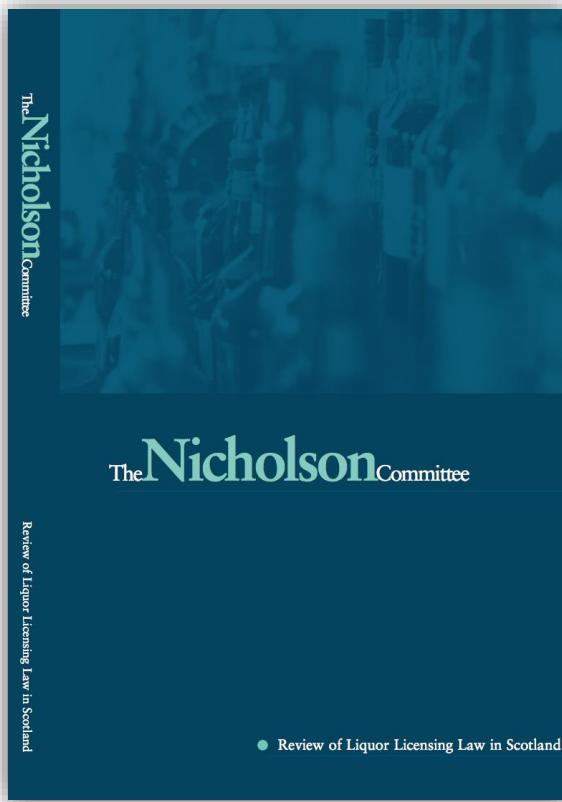
- 1: Most drinkers are moderate
- 2: Policy should not demonstrably increase drinking
- 3: Licensing law applies only to public order, amenity and public safety



The 'Clayson Committee'  
report (1973)

## Improvement through normalisation?

'Licensing could act in harmony with social attitudes and controls, for example in encouraging the use of alcohol as an ancillary to food or to social activities rather than as an end in itself. This would result in improved attitudes and standards in consumption.'



The Nicholson Committee  
(2003)

## Old and new...

Health concerns foregrounded

Binge and underage drinking specified as key issues

'Draconian measures to control the availability and consumption of alcohol' would be rational on one view, but 'would disadvantage the majority of the population ... be politically unacceptable [and] commercially disastrous'

Density measures and strategic functions strengthened

## Key questions

Is licensing primarily concerned with regulating the circumstances of sale, or with controlling the scale of the market as a whole?

Does licensing have a strategic role to play in the reduction of chronic alcohol harms through controlling availability?