

CHAPTER 1

THE SOCIAL LICENCE TO OPERATE: ACTIVIST WEAPON, INDUSTRY SHIELD, EMPTY BUZZWORD, OR VITAL ETHICAL TOOL?

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ABSTRACT

The concept of the 'social licence to operate' (SLO) is contested on almost every imaginable dimension. Stakeholders may decry it as an industry-created ploy to ethics wash their operations and strategically manipulate community relations, while some industry figures despair over what they perceive as the arbitrary and even unilateral power that the weaponized concept of the social licence gifts to activists who seek to malign and disrupt law-abiding commercial operators. Others have lauded the social licence as a heaven-sent ethical tool, an effective lever for action that motivates leaders at profit-seeking enterprises to seriously consider ethical issues and prioritize community engagement. Still others will worry that a concept that can mean everything to everyone must ultimately mean nothing at all, and that the social licence is an empty and unhelpful buzzword. As the contributions to this Special Issue show, in different contexts – and sometimes even in the same context but for different stakeholders – all these views can be correct. From an ethical perspective, dangers, promises and irrelevance all attend the social licence.

Keywords: Social licence to operate; ethics; legitimacy; essentially contested concepts; activism; ethics washing

Is the ‘SLO’ a vital ethical tool, a dissimulating strategic ploy, a weaponized rhetorical trick, or a meaningless buzzword? I will argue that it is all of these. Even in a single context, there can be industry actors who use the term freely in ethics washing their operations, even as activists unilaterally demand that operations cease on the basis of the very same concept. Meanwhile, government actors and the wider community might despair over understanding who is meant to be in charge of issuing the social licence, how to tell when it is lost, and what exactly should follow from losing it. And at the same time, conscientious ethical agents across every domain – industry, activist, NGO, researcher and government – might be using the concept as a platform to gather together and constructively negotiate appropriate ways forward.

WHAT IS THE SLO?

There is no authoritative or universally accepted definition of the SLO. Perhaps the most widely employed understanding is that it refers to the ongoing acceptance of an organization’s operations by stakeholders – especially local community members and those capable of disrupting operations or limiting their profitability (Boutilier & Thomson, 2011; Moffat & Zhang, 2014). Other understandings also abound in the literature. While they are often oriented around stakeholder acceptance, these definitions sometimes add processes like negotiation and engagement to inform their interpretation of the concept (Billing, 2018). Others include more objective and substantive requirements (such as sustainable development) as an additional condition (see Melé & Armengou, 2016), or consider the degree of fit between industry operations and community standards and expectations (Brueckner & Eabrasu, 2018).

HISTORY AND DEVELOPMENT

While there are some earlier usages (e.g. Moore, 1996), the term ‘social licence to operate’ in its contemporary usage is largely traced back to James Cooney’s use of the term in a World Bank conference in March 1997 (Cooney, 2017). Working to manage risk for extraction companies operating in developing countries, Cooney observed a rising phenomenon where local communities – sometimes amplified by international NGOs and civil society actors – could disrupt or impose serious costs on nearby mining operations. Cooney recognized that in addition to legal compliance and central government support, industry needed something new: acceptance from its local community, which he termed a ‘social licence to operate’.

While the term was created by industry, its invocation was in response to a pre-existing phenomenon: the capability of local and international actors who, having decided that an operation was unacceptable, could impose serious costs on that operation or even disrupt it completely. Cooney’s initial use of the term was pragmatic and risk-focused in that he was describing a new reality that an extractive company working in developing countries must accommodate if it wished to manage risk pragmatically. But in the decades since this first usage, the

social licence has taken on a normative inflection (Cooney, 2017). It is now seen as something like a *moral* requirement that industry *should have* a social licence if it expects to operate in a given area.

While the social licence initially emerged in extraction industries in developing countries, the concept is now employed far more widely and is applied (both in developing and developed countries) to aquaculture, tourism, paper milling, banking, and many other industries.

THE SLO AS EMPTY BUZZWORD

We have already noted that there is no definitive definition of the SLO. Yet even if some version of the definition that is centred on social acceptance is adopted (as seems reasonable), this only serves to raise a gamut of further questions. These include: What group or community's acceptance is required? Are these communities of 'place' (e.g. locals concerned about impact on their waterways and infrastructure) or communities of 'interest' (e.g. international NGOs concerned about environmental impact or animal welfare) (Mather & Fanning, 2019)? How widespread must the acceptance (or rejection) be – in particular, how can judgements be made in the inevitable cases where there is conflicting support across a community, such as between economically stressed families desperate for employment opportunities and recreational groups wanting to protect the fragile local ecology? Finally, what follows from a collapse in social acceptance and what should government and regulators do when the social licence is clearly withdrawn (Ghori, 2019; Murphy-Gregory, 2018)?

These challenges in knowing how and when to apply it can make the SLO a vexing concept to invoke, and raise challenges in terms of how to respond constructively to others' invocations of it. To be sure, all moral concepts – consider fairness, equity, integrity, corporate social responsibility, and even sustainable development – are to a considerable degree ambiguous and contested. Disagreements can even arise on matters of human rights and other moral principles that have been given authoritative delineations (U.N. General-Assembly, 1948). Yet the SLO seems particularly challenging in this respect as there is so much ambiguity across so many dimensions of its invocation and application. It is therefore understandable that some stakeholders (from both industry and community) will feel that the SLO is at best an essentially contested concept (Gallie, 1956) and at worst a meaningless buzzword.

Still, perhaps these conceptual and definitional challenges should not be overdrawn. There is a curiosity here, as noted by Sarah Bice and Kieran Moffat (2014, p. 258) who observe that despite the lack of a technical definition, the concept of the SLO 'is generally easily and widely understood by community stakeholders'.

THE SLO AS INDUSTRY SHIELD

Scholars have increasingly turned a critical eye to the SLO, especially when it is invoked by, or used as support for, industry operations (Santiago et al., 2021).

There are two distinct ethical concerns here:

1. The SLO is invoked as part of a slick industry public relations campaign. Precisely because the SLO is so ambiguous and contested, it is easy for an industry to proudly trumpet how seriously they take their social licence responsibilities. They can then mention one or two facts – perhaps a certification standard that they use, or a ‘town hall’ meeting they recently held – and confidently declare that they possess a social licence. The concern here is one of ‘ethics washing’ – namely, that the SLO is being used strategically to mislead government and the community into believing that the industry has stronger support than it does, and that it takes its social responsibilities more seriously than it does. This strategy might be employed to avoid undertaking real reforms, or to efface the need for more specific and binding regulation and legally empowered community decision-making (such as through free, prior and informed consent regimes).

Of course, all morally loaded concepts are capable of featuring in ethics washing. After all, that is, precisely what ethics washing *is*: an organization misleadingly or untruthfully using ethical language to provide a veneer of ethical respectability to their operations without making any genuine efforts to improve conduct or outcomes. Still, the flexibility and ambiguity of social licence (noted above) seem to make it a particularly apt mechanism for slick public relations campaigns and scandal management.

2. The social licence issues are taken seriously, but that the concept at work is a narrow instrumental one (with parallels to Cooney’s original formulation) that enquires only into the level of misconduct and breaching of community standards that is possible before an industry at last exhausts the community’s toleration and is subject to disruptive stakeholder activism or invasive governmental regulation. On this footing, there is no need to *hold* a social licence. All that is required is to avoid demonstrably *losing* it – and even then, only in cases where that loss will have serious material consequences for the company. While this understanding of the social licence might have the benefit that it at least prompts executives to run the ‘front page test’ on decisions they are making, it nevertheless appears ethically concerning. After all, avoiding catastrophic ethical scandals is a very low standard, and one that may impact differentially on certain companies and industries, such as those that have little dealings directly with the public. As a low standard, it may also encourage community engagement only as a one-way flow of information to ignorant citizens, rather than genuine relationship building (Mather & Fanning, 2019). Secondly, this risk-based understanding of the social licence prompts ethical action for the wrong reason. Rather than genuinely engaging with communities to make sure the operations are supported because this is simply the right thing to do, it only upholds community standards in order to avoid operational risk.

THE SLO AS ACTIVIST WEAPON

For civil society actors, NGOs, community stakeholders and activists, the concept of the social licence *prima facie* offers great promise because it implicitly vests these groups with powerful authority over the operations. As stakeholders, these groups can have the power to determine whether the social licence is held or lost. I noted earlier the normative logic of the social licence – the assumption (perhaps motivated by a type of ‘social contract’ line of thought) that industry operations *should have* social acceptance. This logic implies that the stakeholders, in granting or withdrawing acceptance, directly determine whether the industry operations are legitimate.

As we will see in the following section, this provides the social licence’s great ethical promise: to be used as an ethical tool to drive greater and more meaningful ethical conduct and community engagement by industry. But every tool can be used as a weapon. Vesting power in a community provides no guarantee that the power will be used wisely or judiciously: indeed, ‘mob rule’ is precisely the figure used to describe a paradigm of injustice. In analyzing the curious empirical-but-normative nature of the SLO, Tim Dare (this issue) provides a searching ethical critique of the concept, and the way it powerfully but implicitly puts legitimacy in the hands of what may be fleeting social sentiment.

There are multiple ethical concerns on this count. Communities can be fickle and uninformed (Melé & Armengou, 2016). They can be morally suspect and frankly self-interested – most obviously demonstrated in the ‘not in my backyard’ (NIMBY) phenomenon. They can be improperly influenced by noisy minorities and privileged elites who have connections to media and political power. Even when they are playing their role in an informed and conscientious way, major rule of law concerns arise. Investors and producers alike need a stable legal structure within which to form expectations, make decisions, employ personnel, and deliver outcomes (Fuller, 1969). Taking legitimacy out of the realm of law and putting it into the hands of citizen sentiment can constitute a serious injustice to people’s legitimate expectations (Brown, 2017), as well as threatening sovereign risk (Ghori, 2019). It also bears mentioning that civil society actors, NGOs, and activists may have their own agendas in that they sometimes feel the need to pursue branding, political impact, and their own institutional requirements (including ensuring funding, visibility, relevance, financial security, and success in the sometimes cutthroat competition with other like-minded groups).

The SLO can also be applied in an uneven and selective manner. Small, locally owned outfits might be judged differently to large international operations, with different standards applying to each. Equally though, larger operations will typically have more resources and expertise to deal with social licence concerns (as effective social engagement strategies can be prohibitively difficult and expensive), making market entry harder for small and medium enterprises in areas where social licence plays an important role. Perhaps above all, it is *new* industries that will bear the most concerns with social licence. To some extent this is no doubt justified. Communities may have developed historically alongside existing industries and long ago come to a healthy and amicable relationship with them.

But at the same time, established industries enjoy *cognitive legitimacy* (Long & Driscoll, 2008) – the sense that an organization is acceptable simply because the community is used to it, understands it and recognizes it. This uneven application of the SLO can give rise to unfairness and selectivity in the way it applies to some industries rather than others.

Finally, even though the SLO is often equated with inclusive and bilateral themes like negotiation and social contract (Billing, 2018), there is no necessity from the point of view of community stakeholders that these have to occur. To be sure, since industries normally have the capability to act, concerns with their social licence may well prompt them to engage with community and take their views seriously. But conceptually and sometimes practically, there is nothing *inherently bilateral* about the SLO. It implies that the community (stakeholders) issues the licence, and if the community are – or come to be – implacably opposed to a development, there is nothing that forces them to come to the table or listen to opposing views or new sources of evidence. In such cases, the SLO impedes constructive dialogue, rather than driving it.

THE SLO AS ETHICAL TOOL

We have seen that the SLO – and at least in some cases for good reason – can be dismissed as empty rhetoric, derided as an industry shield, or feared as weaponized activist rhetoric. If that were all that could be said about the SLO, then there is no question that we would be ethically better off without it.

Yet the SLO also has ethical promise. In the ideal case, an industry concerned about social licence (perhaps prompted by community and activist concerns) meets with stakeholders, listens carefully to their concerns (as the community reciprocally listens to the industry's perspective) with both groups drawing on the best scientific evidence available, and modifies its operations in a way that creates a win–win for all. In doing so, it might establish long-term and mutually beneficial relationships with the community and its key civil society organizations (Williams et al., 2007). Better still, the SLO might provide a language that allows corporate executives and boards to have a space and a language to discuss ethical concerns that may otherwise receive insufficient attention and priority. This renewed focus on ethical issues may prompt an organization to think hard about its values, and the way it can justify itself to its community through the good that it does and the benefits that it delivers. It can thereby move towards *institutional integrity* by understanding its values, defending them publicly and delivering on them consistently (Breakey et al., 2015). Even having a profit-seeking organization being clear-eyed about the many and unpredictable ways that poor ethical performance can lead to operational problems might prove beneficial. Genuinely attending to the SLO isn't just about limiting front page scandals, but also about being an 'employer of choice', ensuring employees buy-in and gain morale from the organization's values and purpose, avoiding brand damage and consumer boycotts, guaranteeing continued unrestricted access to finance, markets, distributors and resources, making government and its agencies decide that this is a

generally well-regulated environment where working constructively with industry is possible, avoiding having the CEOs and Board's time wasted navigating intrusive inquiries and commissions, and so on and on (Boutilier & Thomson, 2011; Sinner et al., 2020). In all these ways, the SLO can help to drive improved ethical attention and practices.

In other, less-ideal situations, the SLO can prove more important again. In cases where the industry refuses to engage with the community or modify its harmful practices, the social licence provides an avenue to appeal for government intervention (Murphy-Gregory, 2018). In democracies, governments are supposed to respond to the will of the people, and political leaders with an eye on the next election have pragmatic reasons to do just this. If concerns about an industry reach a pitch where it is plausible to say it has lost its SLO, then representative governments are morally obliged to respond – at least insofar as taking a more careful and concerned look into the industry's existing standards, regulatory posture and actual performance. In such cases, the SLO can be not merely important, but ethically vital. It arises precisely because other more established methods of raising ethical concerns have failed.

Such failure can hardly be unexpected. It is a grim but timeless truth that regulatory bodies and their political masters are both subject to capture and corruption. More worrying still, access to law itself plays into the hands of well-resourced companies more than a decentralized citizenry. While the industry plea for communities to respect the existing legislation and the rule of law does have ethical currency (as we saw in the above section), individual stakeholders might rightly feel that the law and its enforcement in a particular area is *not* a neutral mechanism of justice, but rather a watchdog that large corporations brought to heel long ago. Sometimes, as Joe Naimo (this Issue) argues, *resistance* is necessary, and the SLO provides a framework that empowers activism and where peaceful resistance can drive much needed government attention, such as through Commissions of Inquiry and reform demands.

SUMMATION

So which is it? Is the SLO an empty buzzword, an industry shield, an activist weapon or an ethical tool? The most plausible answer, I submit, is that the SLO can be all of these at once, or have different aspects dominating in different cases. Sometimes it will do important ethical work, sometimes it will do serious moral damage, and other times it will be almost irrelevant. Often, it will be unclear which version of the social licence is operative – precisely because when it is used as a rhetorical weapon for industry bashing or for industry ethics washing, the intention is to *deceive* by making it appear as if it is being invoked in a genuine and good faith manner.

For ethical reformers, one lesson seems clear. The SLO cannot be viewed exclusively as an ethical panacea or as unhelpful rhetoric. In any given situation, it is an open question whether the SLO is being used in a way that helps or undercuts ethical standards. What this means is that it will be up to good faith

actors – whether they are industry executives, company employees, local stakeholders, international activists, governments and regulators, certifiers, researchers and scientists, or ordinary citizens and voters – to *make the social licence to operate work* in ethical rather than non-ethical ways. If the SLO is to be constructive in a particular case, this will only occur if a critical mass of stakeholders – alive to its risks and ambiguities – work strategically and conscientiously to ensure this outcome. The papers of this Special Issue provide some important resources in that direction.

THIS SPECIAL ISSUE: SOCIAL LICENCE AND ETHICAL PRACTICE

The Special Issue begins with a major challenge to the SLO. In *The Normativity of Social Licence*, moral and legal philosopher Tim Dare argues that the implicit assumption that the social licence is normative – that is, that industries and operations *should have* a social licence – is far more fraught than is normally supposed. While Dare agrees that community acceptance is one factor among others that should be taken into account, he concludes that it cannot itself settle whether a practice ought to be approved or accepted or licenced.

Larelle Bossi squarely confronts the ethical challenges posed by the SLO, moving in a transformative direction. In *How a Sense of Place May Return the Social Licence to Operate Concept Back to an Ethics of Responsibility Within a Neoliberal Framework — Tasmanian Salmon Story*, Bossi argues that an ethics of place – taking seriously how the land and water that makes up our unique local environment can shape our identity and ethical responsibilities – can engender a new understanding of the social and cultural licence to operate.

Next, in their paper *A Brave Idea: Using Social Licence to Regulate the Development of Lethal Autonomous Weapon Systems*, Umair Ghori and Tarisa K. Yasin apply the idea of the SLO to the development of future instruments of war. They recognize that gaps in existing laws currently allow the development of dangerous new weapons systems and that ultimately, law will be necessary to regulate this crucial area. On [Ghori's \(2019\)](#) model, this is a 'single-layered SLO regulation' where lawmakers interpret the social licence and legislate on its basis. The authors note that this is already occurring in some countries. For most countries, however, civil society actors must join together as part of 'dual layered SLO regulation' to demarcate clearly what forms of weapons development have – and do not have – social licence. This will contribute to 'soft law' as well as creating pressure and definition for hard law (national and international) to more rapidly move into a space where regulation is ethically crucial.

In the final contribution to this theme, *Social Licence to Operate: Structural Injustices and the Spectre of Mediocrity*, Joseph Naimo focuses on the potential for the SLO to function as a unifying vehicle for resistance by channelling unofficial public activism, vigilance and oversight that are all necessary to deliver meaningful and ongoing reform. Importantly, Naimo applies the social licence not only to industry, but expands it to the government agencies and professionals that

are involved in the healthcare system, especially in the Aged Care and Disability and Mental Health sectors. Furthermore, his target is not limited to ethical misconduct, but more fundamentally to the structural injustices raised by inadequate standards and mediocrity.

WHAT DOES THE FUTURE HOLD?

To end on a positive note, it may be that we are only at the beginning of SLO's journey. One clear challenge to operationalizing the SLO for ethical good is that industry knowledge about community engagement is only in a nascent stage. Even for proactive and highly ethical companies, being able to engage genuinely and constructively with communities (and especially indigenous communities) at an early enough juncture to ensure concerns can be appropriately incorporated into operational design poses a profound challenge, especially if resources, personnel, time and expertise is limited. Perhaps in the future, we will see strategies for community engagement, co-benefits, information-sharing and accountability become more standardized, allowing best practice to emerge in a way that gives security and predictability to industry even as it ensures that community demands are heard and respected.

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