

Is social licence “going rogue”?

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In this commentary we trace an important change in the use of social licence for resource-intensive development projects. Social licence is shifting from an approach used by companies to improve relations with affected communities to a concept now used by environmental justice groups, non-governmental organisations and local communities to contest unpopular resource-intensive development projects. The term “going rogue” is a productive metaphor to explore this important change in the role of social licence. We focus on the different logics behind how social licence is being used by progressive groups to protest resource-intensive development, weak state policies and broader economic processes. We end by exploring what the shifting terrain for social licence means for the politics of resource extraction.

KEYWORDS

environmental justice, extractive industries, social licence

1 | INTRODUCTION

Social licence is a term and practice developed by the mining industry in the late 1990s to improve the relations between resource-extractive industries and affected communities. As a concept and practice, social licence has spread very rapidly across the global mining industry (Ghemana et al., 2017). Even though the concept is widely recognised as ambiguous and difficult to define (Duncan et al., 2018; Syn, 2014), social licence has nonetheless been taken up by other resource-extractive industries, including aquaculture (Baines & Edwards, 2018; Cullen-Knox et al., 2017; Kelly et al., 2017; Vince & Haward, 2017), energy generation (Ghemana et al., 2017; Hall et al., 2015), and forestry (Lester, 2016; Moffat et al., 2015), particularly in countries with resource-dependent economies like Canada, Australia, and New Zealand. Social licence, or the “social licence to operate” (SLO), has quickly established itself alongside other corporate social responsibility frameworks, which aim to demonstrate a company's commitment to sustainable economic development (Prno, 2013; Prno & Slocombe, 2012). Not surprisingly, social licence has also generated significant interest among policy makers and academics, including geographers (Duncan et al., 2018; Norris, 2016; Overduin & Moore, 2017), writing and researching the relationship between resource extraction, communities, and sustainable development.

The use of social licence by resource-intensive industries has received considerable critical assessment (Owen, 2016; Owen & Kemp, 2012). A key concern for a number of scholars is that social licence represents a crude attempt to secure access to resources in the face of real or potential community resistance (Owen & Kemp, 2018). Owen and Kemp (2012, p. 103) have, for example, written that social licence is far removed from the core drivers of the mining industry and that “if there is any meaning to attribute to the term ‘social licence to operate’ – it is to be found in the fear of losing access to resources.” Others have argued that social licence is about reducing opposition to resource extraction rather than building meaningful relations with communities (Zahara et al., 2016). Most recently, Overduin and Moore (2017, p. 72) have suggested that social licence may be simply “jargon used by powerful self-regulating industry actors to set their own terms of conduct” (see also Duncan et al., 2018).

These claims about social licence rest on the assumption that industry has control over the process of the SLO. In other words, the argument that social licence is a crude tool to limit opposition and to secure access to resources assumes a strong role for industry, and a correspondingly weak role for communities in shaping the process. Social licence in this view is secured by companies – as active agents – rather being than granted by communities, which seem to play little or no active role. Yet there is strong evidence to suggest that environmental justice groups and local communities affected by resource development have wrested control of social licence from industry (Curran, 2017; Gunster & Neubauer, 2018, 2019; Lester, 2016; Murphy-Gregory, 2017; Syn, 2014). One dimension of this loss of control involves environmental justice groups using social licence to build networks of opposition across widely dispersed spaces (e.g., Gunster & Neubauer, 2018; Lester, 2016; Murphy-Gregory, 2017). At the same time, there are notable cases where communities that are directly affected by resource extraction have used social licence to contest resource development (e.g., Council of Canadians, 2014; Curran, 2017; EAC, 2015). In other words, social licence is being mobilised by wider social justice networks and by local communities contesting resource extraction.

Curran's (2017) analysis of natural gas conflicts in Australia seems to capture effectively what is happening with social licence more broadly. She argues that “the social licence agenda is no longer theirs (i.e., industry) to fashion alone” and that social licence itself has taken a new “trajectory not intended by its creators.” In the Canadian context, Gunster and Neubauer (2019, p. 708) have pointed to the “radical, counter-hegemonic potential” of social licence in resource extraction conflicts. Social licence seems to be shifting from an industry-controlled approach to managing risk, to a concept that is now allowing communities – both local and distant – to rally around and contest weak regulatory regimes and environmentally damaging resource extraction projects (Syn, 2014).

Perhaps not surprisingly, industry has not welcomed this “new trajectory” of social licence. Indeed, there has been vociferous criticism of social licence by industry and conservative industry commentators in several different countries (Breakenridge, 2018; Jenkins, 2018; Malpass, 2013; Poynter, 2012). These responses are remarkably consistent in their messaging across different geographies, and they suggest that industry is rethinking the role of social licence in mediating company–community relations. Some of the criticism of social licence has been especially stark in Canadian pipeline politics (Corcoran, 2014; Gunster & Neubauer, 2018; Murphy, 2017), but it is also evident in other sectors of the Canadian economy (Crowley, 2014; Jarvis, 2015; Tertzakian, 2012), and in other countries with resource-extractive industries where social licence has taken root (Jenkins, 2018; Malpass, 2013; Poynter, 2012).

The purpose of this commentary is to trace this important shift in the role of social licence and to explore its implications for community–company relations in resource-intensive development projects. We ask the question, is social licence “going rogue?” The idea that social licence may be going rogue provides an interesting metaphor for thinking about the new ways in which SLO is being used by communities and environmental activists. The term “rogue” is relational. It means that an individual or group is no longer following an expected script; they are acting against expectations. And in this sense, it captures industry's perspective on what has happened to social licence in Canada and elsewhere. Of course, from the perspective of communities and environmental justice groups, social licence is now playing a potentially more positive role. Indeed, there is a strong logic that underpins this shift in the way that progressive groups in resource development conflicts are using social licence.

We draw from recent published work, media articles, and other writing focused mainly on Canada, New Zealand, and Australia. We begin by tracing the origins of social licence and its use primarily in mining, but also in other sectors of the economy, before outlining how different groups are using social licence to oppose resource development projects, weak regulatory regimes, and the broader trajectory of the economy. We end by exploring what the shifting terrain for social licence might mean for the politics of resource extraction.

2 | SOCIAL LICENCE: ORIGINS AND TRANSFORMATION

The term social licence, or social licence to operate (SLO), is attributed to Jim Cooney, a senior manager of the global mining company Placer Dome. Cooney (2017) has very recently, and helpfully, written up his own version of the events leading up to the introduction of social licence to the mining sector. Cooney first proposed the concept at a small World Bank workshop held in 1997 focused on discussing the next 25 years in the global mining sector. In an invited presentation, Cooney argued that in the immediate future, the global mining sector would need a two-track approach to risk. The first track was already well recognised and involved working and engaging with national governments responsible for issuing formal permits. This first track also included paying close attention to government regulations around health and safety, environmental impacts, and fiscal commitments. The second track, he argued, was relatively new to the global mining industry and was associated with the importance of maintaining what he called “an ongoing positive relationship with local

communities and their allies by demonstrating that (the industry was) acting in a manner consistent with local expectations and demands” (Cooney, 2017, p. 199). Demonstrating a positive relationship was important because with new and efficient communication technologies, poor relationships with local communities could quickly escalate and damage the reputation of a mining company. As he wrote, “No longer would the relationship of a mining project to local communities in remote parts of the developing world be out of sight to the rest of the world” (Cooney, 2017, p. 198).

There is a distinct advantage of having Cooney's own personal reflection on social licence. The central aim of his intervention was to suggest that the two tracks to risk – formal/regulatory and social – were equally important. Using the term *licence* for both formal state issued licences and SLO was his way of suggesting that the two tracks to risk should have equal status: “It was simply an analogy or metaphor that highlighted the equivalence of the political risk management challenges at the community level with those at the governmental level” (Cooney, 2017, p. 199).

Social licence spread rapidly across the mining sector in the years following Cooney's intervention. Global surveys of mining companies in the 2000s revealed that a high percentage of mining executives had heard of the concept and approved of its use in building industry–community relations (Ghemana et al., 2017). More than half of those surveyed declared that they had used social licence in their operations. By the early 2010s, Owen and Kemp (2012, p. 2) concluded that social licence had “become deeply entrenched in corporate sustainability policies, standards and guidance notes, in addition to all manner of corporate literature.” Social licence as a concept and practice has also spread beyond mining into other resource-intensive industries, including forestry, agriculture, energy, and aquaculture (Hall et al., 2015; Kelly et al., 2017; Moffat et al., 2015). And there is increasing evidence of its role in shaping public policy and formal regulatory structures, including environmental and social impact assessments (e.g., Bice & Moffat, 2014).

The 2000s may have been a honeymoon period for social licence in the mining sector and in public policy, because from the early 2010s the romance with the concept appears to have waned significantly. In Canada, this shift is most evident around the fractious politics of oil pipeline developments associated with tar sands oil produced in Alberta. But this backlash was neither restricted to pipeline development, nor to the Canadian context. It is, instead, symptomatic of a more widespread shift on social licence across industries and geographies (cf., Kemp & Owen, 2018; Lester, 2016). The Canadian context of pipeline politics provides key insights into the dynamics of how and why social licence has shifted, and is arguably broadly representative of other contexts.

In the late 2000s the giant energy company Enbridge proposed to build a pipeline from the Alberta tar sands to a port in British Columbia, on Canada's west coast. The proposal for the 1,000 km long pipeline was submitted to federal regulators in 2010 and the project was formally approved in 2013 (Gunster & Neubauer, 2018). The approval process was, however, marred by intense political conflict over a number of key issues. There was widespread opposition to the proposal from environmental groups who pointed to the potential impact of a leakage or spill along the pipeline and on the British Columbia coast. There were also concerns by the province of British Columbia that they would enjoy fewer economic benefits of the pipeline, yet would shoulder almost all of the environmental risks. Finally, there was intense opposition from some First Nations groups who opposed the pipeline on both environmental grounds and on constitutional grounds that their longstanding land claims were being ignored in the proposed development (Gunster & Neubauer, 2018).

In spite of these protests, the pipeline was formally approved in 2013. The Government of Alberta released a statement immediately afterwards applauding the decision arguing that it allowed the province to “further advance its social licence to operate” (cited in Gunster & Neubauer, 2019, p. 721). Environmental activists and Indigenous groups were outraged by the decision, and seized on this opportunity to counter the claim that the province of Alberta and the company had secured the social licence to build the pipeline. As Gunster and Neubauer (2019) have argued, environmental NGOs, Indigenous groups and other affected communities declared that the company and the province did *not* have the social licence for the pipeline. Through ongoing demonstrations against the pipeline they also signalled that they would continue to withhold their social licence for this pipeline. In effect, these social justice groups turned the social licence agenda in their favour by using it to contest the claims of industry and the province (cf., Curran, 2017; Syn, 2014), and used it to sustain their protests against the pipeline.

The Alberta pipeline case led to a significant backlash from conservative industry commentators, right-leaning policy makers, and from industry. Some of the concerns raised in published documents and news articles are familiar themes in the SLO literature. They included the problem of demonstrating that a company has a social licence in the absence of any formal written process, the difficulty of securing a social licence in the context of diverse community interests, and general concerns about its intangibility as a way of securing community consent. Yet the debate on social licence around Canadian pipeline politics, which is mirrored in other parts of the world, goes beyond these specific and longstanding concerns. Instead social licence is viewed as a broader societal problem associated with oppositional groups challenging regulatory processes that are considered to be fair and reasonable. Indeed, critics have charged that social licence is being used to

challenge due process, the rule of law (Malpass, 2013), reason (McKittrick, 2016), natural justice (Breakenridge, 2018), and (even!) democracy (Crowley, 2014; Newman, 2014). One conservative commentator went so far as to suggest that the use of social licence in resource development protests goes against the idea of “community and society” (Banks, 2015).

For many groups that support resource-extractive industries, and for many within industry, social licence seems to be “going rogue.” It has become the basis for protest action against formal regulatory systems and the “rule of law,” and it is the basis for action that challenges fairness, reason, and even notions of community. Yet for social activists and environmental justice groups, social licence is becoming an extraordinarily effective way of challenging weak regulatory systems and perceived environmentally damaging resource extraction projects. In the next section, we explore how environmental and social justice groups are using social licence to contest specific resource extraction activities, and also as a way of challenging broader economic policies.

3 | SOCIAL LICENCE'S PROGRESSIVE POTENTIAL

The first example of the use of social licence by progressive groups focuses on its potential for strengthening formal government policy. The literature on social licence in resource-extractive industries has reported on how government regulations are shifting in response to broad social and environmental concerns, which may be linked to the rise of social licence as a concept (Bice & Moffat, 2014; Moffat et al., 2015). There is evidence, for example, that environmental impact assessments are being rewritten to include a greater emphasis on social acceptability and consent in the approval process. For Van Putten et al. (2018), stronger regulatory systems, that enjoy greater support from the public, may even render concepts like social licence irrelevant in the longer term.

Murphy-Gregory (2017) provides a more direct way in which social licence is used to shape formal regulations for resource extraction industries. Her work draws on evidence from Tasmania and recent protest action coordinated by environmental NGOs (ENGOS) against two controversial marine-based developments. The first was a huge fishing trawler that was opposed on the basis of its enormous harvesting capacity, concerns around by-catch, and its potential impact on recreational fisheries. Murphy-Gregory also draws on a second campaign against a large salmon aquaculture development on the east coast of Tasmania. She uses these two cases to suggest that ENGOS have effectively used the concept of social licence to mobilise support against unpopular resource extraction projects. The goal is not to halt these developments, but is instead to use social licence explicitly as a way of exposing weak state regulations and as a way of pressing for stricter oversight over corporate activity. In her analysis, SLO is a “tactic,” “a campaign strategy,” and “a narrative tool” that can be used by ENGOS to improve state regulatory oversight over resource-extractive industries. Murphy-Gregory (2017) draws on governance theory to suggest that this use of SLO should be understood as “governance via persuasion.”

Social licence is reshaping government policy in some contexts, and may be used by NGOs as a way of governing by persuasion. Our second example is about how social licence is used as a form of protest, and as a way of building community solidarity, against unpopular resource extraction projects. In Curran's (2017) analysis of Australia's unconventional gas sector, social licence was mobilised by communities as a powerful idea to contest and reshape the terms of resource development. Her case points to how communities have been able to transform social licence from an industry strategy of “strategic risk management” to a “political concept by (re)interpreting it through a potent democracy ‘frame’ that resonates deeply with affected communities” (Curran, 2017, p. 427). The ability of social licence to “resonate within affected communities” means that it has the potential to bring together different groups to engage with industry on resource development. Curran's case provides a vivid example of how social licence can be used by communities to rally around unpopular resource extraction projects (cf., Council of Canadians, 2014; Cruickshank, 2018, EAC, 2015).

The key difference between these first two examples lies in the varying degrees of confidence in the role of the state as effective regulator of extractive resource development. In the first example, there is optimism that governance by persuasion can effectively strengthen state policies in a context where the role of the state in many places has been “hollowed out” and weakened. Of course, this optimism depends on a state that has the political will to strengthen regulatory oversight on resource-extractive industries. In the second example, social licence is used to build opposition across communities, by connecting it to deeply held democratic and social justice principles. This second approach may be more likely when local communities and environmental justice groups are fundamentally opposed to these forms of resource extraction, and hold little hope in improving state regulatory oversight.

The two previous examples focus on the role of social licence for specific resource extraction projects and the regulatory policies that govern these developments. The third example looks at the role of social licence beyond extractive industries and points to its relevance for broader economic policies and trajectories. This use of social licence has been developed by a group of researchers in Manchester, England. They use the term as a way of intervening in industrial and public policy

debates in Britain in a context of economic decline and growing inequality (Bowman et al., 2014). Their focus is on several key sectors in the economy, which they call the “foundational economy” (Bentham et al., 2013). These are sectors of the economy that provide most of the jobs in Britain and also necessary social services including transport, education, food, and electricity. Private sector companies in the foundational economy, they argue, have been “licensed to operate” by various levels of the state, and they benefit considerably from state incentives and concessions on taxation and competition. Bowman et al. (2014, p. 204, emphasis in the original) argue that these licensing arrangements should be formalised in a way that allows these companies to trade, “whilst placing them under reciprocal obligations to *offer social returns*.” These social returns can take many forms, including sustainable and ethical sourcing practices, paying a living wage, and investing in ways that support local economic development.

The use of social licence as a way of articulating the concept of the foundational economy differs in important ways from its use in efforts to contest specific resource extraction projects or in attempts to strengthen state regulations. There are nonetheless important continuities across these different scales and contexts. Social licence in all these cases poses important questions about reciprocity, obligation, and a shared sense of community in economic action.

4 | CONCLUSION

If social licence is “going rogue,” how will it reshape the politics of resource extraction and broader debates over economic policy? The answer depends, in part, on how social licence is used. If social licence is used to strengthen state policies for resource development – if it is used as a device for “governance by persuasion” (Murphy-Gregory, 2017) – then it has the potential to defuse conflicts around resource extraction projects. In this scenario, the state will have regained the confidence of environmental and social activists in its role to regulate and monitor resource development effectively. As Van Putten et al. (2018) have argued, stronger regulations that enjoy the support of environmental and social activists will “reduce the need for social licence.”

This is one scenario, but it is certainly not the only one. For Gunster and Neubauer (2018) social licence has the potential to play an important role in empowering communities to contest resource extraction in a “post-political” context where proper debate and contestation has been displaced by technocratic processes that seek compliance from affected communities. Social licence in the hands of community activists, they have argued, has the potential to challenge these technocratic processes by reaffirming the importance of democratic debate and protest action around resource extraction projects. Rather than defusing conflict over resource development, in this second scenario, protests fuelled by social licence concerns are regarded as a normal and socially acceptable part of democratic society.

This second scenario may be more likely in a context where resource extraction companies are increasingly dismantling the “social function” of their businesses. This is Kemp and Owen's (2018, p. 497) recent finding: they argue that the social function in resource development firms is being marginalised in favour of an industrial ethic characterised by “a singular, unenlightened, unmitigated approach to pursuing their own commercial self-interest.” Changes in the way social licence is being used in resource conflicts combined with companies reducing their “social function” may lead to increasingly fractious conflicts over resource development. In this context, companies and communities are likely to engage in what Kemp and Owen (2018) call a “trade of powers,” characterised by increasingly intense conflict and potential harm on all sides with an as yet undetermined role for governments in such situations.

The new ways that social licence is used are likely to be diverse and geographically specific. No doubt SLO will continue to be used by industry in a way that is consistent with Cooney's original formulation of the idea and its associated practices. In other words, some companies will still seek to secure the SLO and will claim that they have received a social licence from affected communities. At the same time, there is enough evidence to suggest that industry no longer has exclusive control over the terms of social licence, and for many within industry (and their conservative supporters), social licence has indeed “gone rogue” and should be retired or abandoned. From the perspective of environmental justice groups, and those articulating broader visions of a more just economy, social licence appears to be emerging as a powerful vehicle to strengthen state regulations, to contest unpopular resource-development projects, and to question broader economic trajectories.

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