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Maintaining legitimacy of a contested practice: How the minerals industry understands its 'social licence to operate'

Richard Parsons [*,1], Justine Lacey, Kieren Moffat

Commonwealth Scientific and Industrial Research Organisation (CSIRO), Division of Earth Science and Resource Engineering, PO Box 883, Kenmore, QLD 4069, Australia

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ABSTRACT

Recent decades have witnessed growing concern among communities, governments and other stakeholders regarding the adverse social and environmental impacts of corporate activity. This concern has generated various interdiscursive notions, such as corporate social responsibility (CSR), corporate citizenship, the stakeholder concept, and sustainable development (SD), that purport to enable managers to manage business in a 'responsible' or 'sustainable' manner. This discursive landscape now commonly includes 'social licence' or 'social licence to operate', a term that has gained greatest currency in the minerals industry. Literature on social licence is sparse, but encapsulates a diversity of notions such as demands and expectations, legitimacy, credibility, and trust, and free, prior and informed consent. Perhaps most fundamentally, the concept of social licence suggests that stakeholders may threaten a company's legitimacy and ability to operate through boycotts, picketing, or legal challenges. Yet this interpretation of legitimacy does not mean that stakeholders have the same capacity as regulators to grant or withhold an operation's right to exist. How, then, do managers within companies under these pressures themselves understand social licence? We present findings of interviews with 16 managers in the minerals industry in Australia. We explore how these managers conceptualise social licence in relation to notions such as legitimacy, approval, and consent, how they interpret processes of social licence in practice, and how they differentiate it from concepts such as CSR. Managers' conceptualisations can be categorised into four broad themes: legitimacy; localisation; process and continuum; and manageability. These findings suggest that, while social licence potentially represents a shift in power relations, this shift is constrained by discursive pressures to legitimise mining operations, to restrict social licence issues to the local level, to minimise regulatory impositions, to marginalise dissent, and to manage reputation. Opportunities for strengthening and adapting current understandings of social licence are considered.

Introduction

Social licence to operate (SLO), often abbreviated to 'social licence', is the most recent term to emerge from the discourse of corporate responsibility. Hence it describes a way of conceptualising the corporation's relationship with society and local communities. SLO has been applied and adopted most extensively within the minerals industry. The term emerged in response to a perceived threat to the industry's legitimacy as a result of environmental disasters in the late 1990s (Thomson and Boutilier, 2011). It is now appearing in other industry contexts (e.g., farming, fisheries, renewable energy), but a focus on the minerals industry promises potentially the deepest insights into the way it is understood and applied. This paper presents findings of an interpretive exploration of social licence with 16 managers in the mining and minerals industry in Australia, and discusses these findings in the context of organisational practice and potential reinterpretation of the social licence concept.

Concepts related to SLO, such as corporate social responsibility (CSR), corporate citizenship, and stakeholder theory, have drawn extensively on the notion of organisational legitimacy as explaining why organisations might choose to participate in this discourse. The implicit assumption, and on occasion the explicit assertion, is that acting 'responsibly' endows the organisation with a perceived legitimacy among external observers who may otherwise constrain or frustrate organisational activities. This idea has become particularly relevant for the mining industry, which must navigate multiple expectations of its economic, social and environmental impacts.

* Corresponding author. Tel.: +61 402 475951.
E-mail address: rp.socialresearch@gmail.com (R. Parsons).
[1] Permanent address: Richard Parsons Pty Ltd, Nimbin, NSW 2480, Australia.

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Recent years have witnessed a proliferation of rules, standards, and guidelines for social and environmental dimensions of mining, yet substantial challenges remain in implementing these at the site and community level (Buxton, 2012). It is this relatively unregulated arena of company–community interaction that the discourse of SLO has occupied, perhaps because local communities are the most sensitive 'governance actors' affected by mining operations (Prno and Scott Slocombe, 2012). The nebulous idea that corporations need a licence not only from regulators, but also from society and/or local communities, poses further challenges for defining corporate legitimacy. It resonates with Suchman's (1995, p. 574) notion of legitimacy as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate". However, the extent of stakeholder influence in assessing such legitimacy is contestable. Further, related concepts such as CSR and sustainable development (SD) have been criticised as being rhetorical tools that consolidate corporate and managerial legitimacy. That is, they appear ostensibly to suggest that corporations can act ethically, responsibly, and sustainably, while actually entrenching power relations between corporations and society, and curtailing stakeholder interests (e.g., Banerjee, 2008; Coronado and Fallon, 2010). The social licence discourse of company reports similarly emphasises processes of maintaining existing power relations (Parsons and Moffat, in press).

Theoretical concepts

Social licence

Typically, an operation's social licence is theorised as comprising ongoing acceptance or approval from the local community (Joyce and Thomson, 2000; Nelsen and Scoble, 2006; Parker et al., 2008; Thomson and Joyce, 2008) and other stakeholders who can affect profitability (Graafland, 2002).

In this way, the social licence is contrasted with a statutory licence: it is intangible and unwritten, and cannot be granted by formal civil, political, or legal authorities (Franks and Cohen, 2012). Perhaps unsurprisingly, therefore, it has attracted critique. Owen and Kemp (2013) argue that social licence has encouraged a risk orientation that entrenches defensiveness. Williams and Walton (2013) find that it tends to be viewed through a transactional lens by industry.

Nevertheless, the terms acceptance and approval suggest some form of consent. The term 'free, prior, informed consent' has appeared in industry discourses (e.g., IUCN-ICMM, 2005). Typically, however, companies have been reluctant to speak of consent, perhaps because it embodies a legal right to reject projects (Goodland, 2007; c.f. International Council for Mining and Metals (ICMM), 2013), or at least clearer obligations and a greater challenge to power relations (Slack, 2008), or genuine provision for communities to hold companies to account (Harvey, 2011).

Gunningham et al. (2004) suggest that a social licence is essentially a set of demands and expectations, held by local stakeholders and broader civil society, for how a business should operate. Salzmann et al. (2006), meanwhile, write that the likelihood of a company holding a social licence will depend on the degree of match between stakeholders' expectations and the company's actual behaviour. This focus on expectations resonates with Harvey's (2011) view of social licence as a process of "fitting in and adapting to the prevailing social norms".

The significance of a social licence may derive from the capacity of stakeholders to impose costs on companies or to influence the conditions of finance. This may occur through protests or blockades, by organising product boycotts, through media campaigns, by lobbying governments, or by legally challenging activities (e.g., Boulet, 2010; Gunningham et al., 2004; Prno and Scott Slocombe, 2012; Slack, 2008; Warhurst, 2001). Since a social licence may be a prerequisite for a legal licence (Harvey, 2011), any vocal community opposition can exert both direct and indirect influence, particularly through affecting corporate reputation (Gunningham et al., 2004; Joyce and Thomson, 2000). Social licence, then, can be seen as an intangible construct associated with acceptance, approval, consent, demands, expectations, and reputation. Moreover, these notions suggest an overarching concern with organisational legitimacy.

Organisational legitimacy and social licence

A legitimate organisation has been described as one that enjoys "largely unquestioned freedom to pursue its activities" (Deephouse and Suchman, 2008, p. 51), a state that resonates intuitively with a social licence. In broad terms, legitimacy concerns a group's impression of an entity, and synonyms used in the literature – such as *approval* and *acceptance* – are prominent terms (alongside legitimacy itself) in conceptualisations of social licence (e.g., Boutilier and Thomson, 2011; Thomson and Boutilier, 2011).

Deephouse and Suchman (2008), in their review of organisational legitimacy theory, propose that legitimacy entered organisation studies via Weber's (1978) notion of legitimacy as conformity with social norms and formal laws. According to Suchman (1995), theorists historically have emphasised either evaluative definitions, which concern acceptance of an organisation's right to exist (e.g., Maurer, 1971; Knoke, 1985), or cognitive definitions, where legitimacy derives from alignment between an organisation's social values and wider social or cultural values. Suchman (1995, p. 574) sought to combine evaluative and cognitive perspectives into a definition of legitimacy as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions".

This definition has remained influential and strongly informs Thomson and Boutilier's (2011) theorisation of social licence. However, this definition may have two problems. First, this 'generalising' process conflates a diversity of opinion, implicitly privileging some 'middle ground' over minority views. This is especially problematic for the minerals industry that has a history of dispossessing Indigenous peoples (e.g., Banerjee, 2000). Second, it pays insufficient attention to discursive processes that influence whether organisational actions are considered 'desirable, proper, or appropriate', and to the power relations that underpin those processes.

In the context of social licence, Thomson and Boutilier (2011) situate legitimacy as a 'boundary criterion' between social licence rejection and the minimal level of community acceptance for an operation to proceed. In this conceptualisation, a company that achieves legitimacy is accepted by the community, though not necessarily approved of or trusted, since 'approval' and 'full trust' signify higher levels of social licence. In more recent work, Boutilier and Thomson (2011) distinguish between economic legitimacy and socio-political legitimacy. Economic legitimacy occurs when stakeholders perceive that the company delivers a benefit to them. Socio-political legitimacy is a broader concept, referring to a stakeholder perception that the company contributes to the region's wellbeing, respects local norms, meets expectations about its societal role, and demonstrates fairness. These notions of benefit, wellbeing, respect, and fairness also appear in other bodies of literature, notably CSR and the stakeholder construct. Hence the various dimensions of legitimacy are central to understanding SLO.

Related concepts

Mah (2004) describes CSR as a neoliberal response to legitimacy crises. Jenkins (2004), similarly, portrays reporting on social