Social licence and norm violation

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It has become increasingly common to refer to "social licence" or "the social licence to operate"; roughly, to the idea that the legitimacy of some activity depends upon its ongoing approval or acceptance by affected communities (Thomson & Boutilier, 2011). The increase in references is striking: "social licence" and "social license" appeared in less than a dozen news media articles a year between 1995 and 2000; by 2014 they were appearing 2000 times a year, and, by 2017, 3000 times a year.[1] Although we will see that social licence has earlier roots, this recent surge in use is widely thought to have begun in the mining sector in the 1990s, when the term was used describe the need to address local opposition which could otherwise impose massive costs on legally licensed projects, (Cooney, 2017) and to have been rapidly taken up in other industries and areas—from agriculture, to forestry, to tourism, and social policy and government (Moffat et al., 2016). As this list of applications suggests, social licence is significant, not simply because of the number of references, but also because of the work to which the idea has been put. Social licence is used to test or establish the legitimacy of a range of activities that have, or have the potential to have, profound effects on the lives of large populations—mining, oil exploration, the use of advanced analytics, intensification of agriculture, fisheries, and tourism, medical research, and so on. It is not, then, merely that social licence has "become … mainstream" (Clark-Hall, 2018, p. 6) or that "the concept of social licence has … become ubiquitous in recent years" (Jenkins, 2018, p. 27); social licence is an idea that has profoundly important practical consequences. While there was, in the early stages of this surge, relatively little academic attention to social licence, there is now increasing theoretical and empirical research being directed towards understanding the nature and use of social licence (See Moffat et al., 2016, and references gathered there).

This brief commentary is prompted by a recent article in this journal which contributes to both practical and academic interest in social licence. In "Qualitative research: Surveys, social licence and the integrated data infrastructure", Pauline Gulliver and her co-authors explore the social licence to include data in New Zealand's Integrated Data Infrastructure.[2] In the course of doing so, they advance (and rely upon) a specific definition of social licence. Social licence, they say, is:

> Societal acceptance that a practice that lies outside general norms may be performed by a certain agent, on certain terms [which] means that the practice can be performed by that agent without incurring social sanction. (Gulliver et al., 2018, p. 4)

They are quite specific about this definition and their commitment to it. "Our definition", they write, "makes explicit that the practice under consideration lies outside general norms" (Gulliver et al., 2018, p. 4). I will argue that this cannot be an adequate definition of social licence. It faces conceptual difficulties and would exclude many apparently uncontroversial appeals to the notion. Although I will make these points with reference to Gulliver et al., they are also relevant to an influential account of social licence and one which pre-dates the recent revival in interest in the idea.

Writing in 1815, Reverend John Cunningham, Vicar of Harrow on the Hill,

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remarked upon women who cut short the sabbath to gather in city parks on Sunday evenings: "At the hour of dinner, by a social license, not indeed strictly protestant, the Sunday seems to finish and they assemble in large conventions to discuss and supply the wants of the body" (Cunningham, 1832, pp. 62–63). The Reverend disapproves: "[B]y forcing horses and servants upon unnecessary employments", the women "… defraud two beasts of their lawful rest, and shut two souls from heaven" (Cunningham, 1832, pp. 62–63). Here "license" refers to excessive freedom or "licentiousness"; an insufficient regard for social conventions.[3] There is a non-pejorative version of this sense of licence too. Anthropologist Pierre van den Berghe suggests, for instance, that what he calls "institutionalized licence"—"well-defined, cyclical periods of institutionalized (and often ritualized) departure from the normative system of a given society"—helps to preserve the background normative systems from which they are departures, releasing tension and allowing expression of other norms, otherwise held in check: "The very contrast between the two phases of the cycle [a long 'normal' phase and a short 'licentious' phase] maintains the cohesion of the normative system" (Van den Berghe, 1963, p. 415). We find this non-pejorative sense of social licence as permission in modern discussions. Penny Clark-Hall uses the idea of "poetic licence"—a permission to depart from normal rules of language use—to frame her discussion of social licence for agriculture (Clark-Hall, 2018, p. 8). Gulliver et al.'s (2018) use is a more explicit example, which makes the requirement that the practice under consideration lies outside general norms part of the very definition of social licence. I have said that Gulliver et al.'s (2018) definition cannot be adequate, that it faces conceptual difficulties and would exclude many apparently uncontroversial appeals to the notion.

First the conceptual point. It is important to see at the outset that the general norms to which the definition refers—the norms outside of which the practice under consideration must lie—cannot themselves be the norms of licensing. The general norm with which a practice in question conflicts, that is to say, cannot be the norm according to which all conduct for which one needs a licence is wrong if one does not have a licence. Such an understanding of social licence would be problematically circular, since it would require us already to possess and understand a practice of social licensing, including a norm requiring the licensing of some activity, which would allow us to determine whether that activity lay outside the licensing norm. The norms with which a practice conflicts, then, must be norms which bear upon the contemplated practice itself. It must be the case that some contemplated activity—mining, or intensified agriculture, or the use of data by governments, or some aspect of medical research, or including data in a data set—is *itself* contrary to accepted or general norms, not merely that there is a licensing requirement in place which makes it wrong to carry out that activity without first obtaining a licence. This understanding is more plausible than the problematically circular alternative but, it too, is problematic, for it raises the second concern: it would exclude many—perhaps most—actual appeals to the idea of social licence.

Consider New Zealand's official statistics agency's 2018 measurement of their social licence, which they defined as "the permission it has to make decisions about management and use of the public's data without sanction" (Neilsen Co., 2018, p.3). Stats NZ commissioned a survey that discovered that most New Zealanders who knew about the agency trusted it and approved of the way it collected and managed information. Most New Zealanders who knew about Stats NZ, it turned out, thought it was a good thing there was an official Government statistics agency, and most approved of the job that agency does. Stats NZ took this survey to show that the agency *had* social licence for its activities. However, on the assumption that is part of the *definition* of social licence that the

licensed practice is contrary to general norms, that conclusion would have been a mistake of some sort. At best, according to the licentiousness view, they should have concluded that they did not *need* social licence (since they discovered that most people who knew about the agency did *not* think that that agency's conduct was contrary to general norms), or even that they could not have it, since they were not doing anything which conflicted with general norms. That surely cannot be right, and it certainly does not describe what Stats NZ—social licence enthusiasts—appear to have taken themselves to be doing: namely establishing whether and to what extent they had social licence for their activities, or "permission … to make decisions about management and use of the public's data" (Neilsen Co., 2018, p.3).[4]

I think that many organisations (tourist operators, agricultural industries, and so on) seeking social licence take themselves to be roughly in Stats NZ's position. They think they should satisfy themselves, and potential critics, that their practices have ongoing approval and acceptance by the communities within which they operate. They may have noticed that new norms are emerging around their practices—communities might have new and more stringent environmental expectations, for instance—and they seek to discover how their practices stand, or are perceived to stand, relative to those new norms. They may be preparing programmes to convince communities that their practices *should* have ongoing acceptance and approval, i.e., that those practices do not conflict with general norms. If they succeed, they may conclude that they have social licence. All these activities, and the attitudes to social licence they reveal, look problematic under a definition under which the practice under consideration must lie outside general norms. If such an agency discovers that their conduct is not thought to conflict with general norms, then, by the lights of the definition which makes the requirement that a practice under consideration lies outside general norms part of the very definition of social licence, they could not have social licence.

At the very least, widespread and accepted uses of social licence (might we say the sense of social licence which has social licence?) are such that a definition must leave open the question of whether the practice in question is contrary to general norms, and must make it conceptually possible to seek and acquire social licence for activities which are not contrary to such norms. The point here is not to defend these widespread views of social licence—I argue elsewhere that they suffer problems of their own (Dare, forthcoming)—but, unless we are engaged in a quite dramatic revisionist project (which, as an aside, would dramatically narrow the scope of social licence), a plausible definition must I think preserve at least the core of those views of social licence.

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Notes

1 Factiva, "social license" OR "social licence". Google Scholar references follow a similar trend: 160 articles used the terms between 1995 and 2000, 6500 between 2011 and 2015, and just under 11,000 between 2016 and 2020.

2 The Integrated Data Infrastructure (IDI) is a large research database containing data about specific people and households in New Zealand, data gathered from government agencies, official statistical surveys, and non-government organisations, almost always without consent.

3 'Licentious' is now most used mainly to describe a lack of regard for conservative sexual mores, but while the Reverend does portray the woman as "assembl[ing] in large conventions to discuss and supply the wants of the *body*' (his emphasis), (Cunningham, 1832, p. 63) thereby shutting themselves and their servants from heaven, it seems that they were intent on walking and socialising, supplying wants for exercise and sociability.

4 Interestingly, the 2020 survey commissioned from the same firm by Stats NZ defines social licence in precisely the problematic way favoured by Gulliver et al. (2018): The surveyors report that Stats NZ describes the social licence concept as an "unwritten acceptance by the public that a practice that lies outside general norms may be performed on certain terms" (Nielsen Co., 2020, p.5).

References

Clark-Hall, P. J. (2018). *How to earn a social licence to operate* (p. 43). https://ruralleaders.co.nz/wp-content/uploads/2018/08/Penny-Clark-Hall-How-to-earn-your-Social-Licence-to-Operate.pdf

Cooney, J. (2017). Reflections on the 20th anniversary of the term "social licence". *Journal of Energy & Natural Resources Law*, *35*(2), 197–200. https://doi.org/10.1080/02646811.2016.1269472

Cunningham, J. (1832). *A world without souls*. J. Loring.

Dare, T. (forthcoming). The normativity of social licence In H. Breakey (Ed.), *Research in ethical issues in organisations: Social licence*. Edward Elgar.

Gulliver, P., Jonas, M., McIntosh, T., Fanslow, J., & Waayer, D. (2018). Qualitative research: Surveys, social licence and the integrated data infrastructure. *Aotearoa New Zealand Social Work, 30*(3), 57–71. https://pdfs.semanticscholar.org/752b/9a86e32d18376b1aa2880ac3796b74e571b6.pdf

Jenkins, K. (2018). Can I see your social license please? *Policy Quarterly*, *14*(4). https://doi.org/10.26686/pq.v14i4.5146

Moffat, K., Lacey, J., Zhang, A., & Leipold, S. (2016). The social licence to operate: A critical review. *Forestry: An International Journal of Forest Research*, *89*(5), 477–488.

Neilsen Co. (2018). *A social licence approach to trust—A close-up on trust* (p. 28). https://www.stats.govt.nz/corporate/a-social-licence-approach-to-trust

Neilsen Co. (2020). *Stats NZ's social licence for data stewardship September 2020*. https://www.stats.govt.nz/corporate/stats-nzs-social-licence-for-data-stewardship-september-2020

Thomson, I., & Boutilier, R. G. (2011). Social license to operate. *SME mining engineering handbook*, 1, pp. 1779–1796.

Van den Berghe, P. L. (1963). Institutionalized licence and normative stability. *Cahiers d'études Africaines*, *3*(11), 413–423.