

# Countering corporate power through social control: what does a social licence offer?

Fiona Haines\*, Sara Bice, Colette Einfeld and Helen Sullivan

\*Fiona Haines, Orcid ID 0000-0001-6845-3522, School of Social and Political Sciences,  
University of Melbourne, Parkville, Victoria 3010, Australia [f.haines@unimelb.edu.au](mailto:f.haines@unimelb.edu.au)  
tel: +61383446563(corresponding author), Sara Bice, Colette Einfeld and Helen  
Sullivan, Crawford School of Public Policy, Australian National University, 132 Lennox  
Crossing, Acton ACT 2601 Australia.

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## Abstract

This paper interrogates the capacity for social control to act as a complement and alternative to law in controlling corporate harm. Social control can manifest as demands that businesses obtain a social, not just a legal, licence to operate which can provide an avenue for communities to reject or shape company operations. Drawing on parallels with the ambiguities that hinder criminalisation of business conduct, this paper shows how the social licence can also be used to silence critical voices or justify harmful practices. This ambiguity hinges on struggles around what is or is not socially desirable, which can engender significant conflict. Whilst this conflict might be inevitable, even productive in reducing corporate harm, it can leave a debilitating social legacy.

Key Words:

Corporate Harm, Regulation, Fields of Struggle, Social Control, Social Licence

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## Introduction

This paper critically examines how social control in the form of community pressure might be used to control corporate harm and shape business conduct in a more socially responsible direction. It does so through an analysis of a phenomenon – the social licence – used variously to civilise, control or repel corporate activity. While definitions vary, the social licence is most commonly understood

as the level of acceptance of a business or business activity within a particular community (Moffat and Zhang 2014). As explained below, the need for business to gain a social – and not just a legal – licence is prominent in literature and commentary examining the relationship between communities and resources companies, those in the mining, oil and gas industries. The need for business to gain a social licence has been called for in disparate settings from racing to finance (McGreevy and McManus 2017; O’Brien et al. 2015; Winter and Frew 2018). Analysis of the social licence (also termed the social licence to operate) provides an alternative lens to understand how business is shaped by, and shapes, social pressure that forms a constitutive component of the ‘rules of the game’ governing business conduct.

Analysis of the social licence can usefully draw on and extend criminological insights into the challenges involved in drawing on legal strategies to reduce corporate harm. Criminologists are well aware of significant complexity in the relationship between law, law enforcement and the status quo where law and law enforcement can be used to sustain, as well as challenge corporate harm (see e.g. Bittle and Frauley 2018; Haines and Macdonald 2021; Michalowski and Kramer 1987; Rothe and Kauzlarich 2016; Snider 2007, 2009; Tombs 2012; Tombs and Whyte 2015; Whyte 2014). Many business harms are quite legal (Passas 2005) and even when illegal, lax laws together with even laxer enforcement appear common (Snider 2007, 2009; Tombs 2012).

In part because of these shortcomings, legal concepts have been wrested from the criminal justice and legal systems to push for significant change in how business is conducted. Criminalisation, foundational analytical territory for criminology, forms part of a ‘bottom up’ strategy where it becomes, in Lasslett et al’s (2015) words, ‘social property’, untethered from law and formal criminal justice (see also Higgins et al. 2013). Criminalisation as social property comprises a central element of what Kauzlerich and Kramer (1998) name as ‘social-control influence’ over corporate harm. This is justice in the vernacular with media, social movements and citizen watchdogs exerting pressure, demanding change and bringing business to account.

Yet, the complexities involved in using law and criminalisation to reduce corporate crime may also resonate with appeals to social control or social property as the solution. Social control may be a significant element in curbing corporate power, but this is not a foregone conclusion. It may instead result in a systemic and networked extension of top-down influence. Stan Cohen’s (1985) seminal argument in Visions of Social Control demonstrated the way that an increase in control within the community that appeared softer and more inclusive could further entrench the status quo since repressive exclusionary practices could not only continue but expand. Whilst his work was premised on state power in the street crime context, this same insight is relevant to challenging corporate power. Recent scholarship in the regulatory field suggests that the transfer of responsibility to citizens to control corporate harm can end up reproducing power relations (Gray and Rooij 2020). The lesson for white collar crime is that social control can strengthen, not weaken, the status quo that permits the continuation of corporate harm.

Social control employed to curb corporate harm, like criminalisation, then may generate ambiguous outcomes. An analysis that can help identify and interrogate these ambiguities as they relate to the social licence, similar to studies focussed on the ambiguities that comprise attempts at control

through criminalisation (Aubert 1952; Carson 1974, 1980), promises important insights. To this end, the paper employs this criminological lens to analyse a body of literature dedicated to the social licence to tease out ambiguities associated with ‘the social’ in the social licence, what is meant by a ‘licence’ and relatedly ‘the community’ from whom permission should be gained.

To understand the impact of these ambiguities and their relationship to tensions related to corporate harm, the paper then draws from a study of unconventional gas exploration by a large resources company in New South Wales, Australia. The specific focus was to understand how social pressure in the form of the social licence shaped company behaviour. To enable this, the study drew from a field of struggle approach that directs attention to the actors involved and to analyse their views of the necessity, efficacy and importance of the social licence as a vehicle to exert control. The approach is premised on the importance looking internally within given place (i.e. the field) to understand a given phenomenon before exploring external factors (Levi Martin 2003). So, the ambiguities surrounding the social licence and their consequences in terms of the control of corporate harm were explored by reference to where it is being used (i.e. place) by whom (the actor) and for what purpose. This form of analysis resonates well with the criminological literature on criminalization and ambiguity which argues that how ambiguity plays out – in terms of supporting or changing the status quo – depends on where a particular struggle over corporate harm is taking place (Aubert 1952; Carson 1974).

The analysis below provides some optimism for advocating the need for a business to gain a social licence as a means of exerting social pressure on a business, independently from the law, to reduce the damage they inflict. Social pressure, particularly when aimed at countervailing corporate power, required claiming social authority over business, authority that was challenged at a range of levels generating ambiguity. Ambiguity centred on the meaning and purpose of the social licence, as well as who belonged to the community that had the authority in awarding such a licence. Interrogating these ambiguities revealed the intense emotional efforts involved in claiming ownership of a social licence, even as ownership promised influence over businesses conduct. Social bonds were both forged and broken within the field of struggle, a process that exacted significant social cost.

## Criminological Analysis and the Social Licence

An examination of the social licence as a vehicle of social control is particularly useful because of the way it shares similarities with criminological insights into criminalisation as a strategy to reduce corporate harm. Both comprise elements of both social and legal property – but also have important differences. As the term suggests, the social licence is predominantly centred on social permission for business activity as opposed to the (legal) licence afforded through legal and regulatory processes. This social permission and the currency of the term provide a potentially important enabler for communities to control the activities of business in their midst and reduce associated harms. At the same time, the absence of a clear institutional authority underpinning the social licence means that its legitimacy as a business requirement can be challenged. The centrally social character of the social licence also means that tensions around what is and what is not socially desirable business conduct often emerge simultaneously and can settle on the same activity. Legal and regulatory regimes are ordered around specific harms. A relatively straightforward orientation

to hold a business to account for a specific harm under law (safety, environmental damage, fraud) from a social licence orientation becomes a multi-faceted struggle over what is desirable, what is undesirable and who has the right to decide whether business activity should or should not proceed. Arguably, then, the social licence is steeped in even greater levels of ambiguity than law in the context of white-collar crime (cf. Aubert 1952; Carson 1974, 1980; Nelken 1997; Parker 2012).

The ambiguities centring on the social licence are threefold. Firstly, there is tension around the source of authority in granting the licence, secondly there is ambiguity in terms of its substance and finally there is uncertainty over its value. These ambiguities are evident in public debate – with strong assertions that it is both essential (Horrigan 2018; Maak 2019) and, according to some (but not all) corporate executives, ‘politically correct nonsense’ (reported in Durkin 2018)). Resistance to the term resulted in a successful argument by these executives to have it removed from proposed corporate governance guidelines of the Australian Stock Exchange (Maak 2019).

### Criminological lessons from the social licence literature

A substantial academic literature is dedicated to analysing the social licence. This literature deals with the three ambiguities concerning authority, meaning and value in different ways, attempting to clarify some aspects whilst leaving others opaque. A dominant strand argues the need to provide a clear definition of precisely what a social licence is (or more accurately, clearly defining the processes which can bring about agreement between company and community) and asserting its value as essential to industry operations. Within this strand, though, ambiguity remains over whose authority lies behind the granting of the licence (and by extension, who the community is) as well as its precise meaning. The focus is in assisting businesses obtain the permission of communities they work in and interact with through improving company relations and behaviour towards communities (Boutilier 2009; Boutilier and Thomson 2011). A social licence is a visible manifestation of a commitment to corporate social responsibility. The literature centres on promoting the importance of a fair process in business dealings with communities with reciprocity, listening and promise-keeping central to ensuring that companies not only are tolerated by communities but, when problems arise, can be defended by those communities against outside criticism (Boutilier 2009). The emphasis is on elucidating how companies (particularly mining companies) can develop trust and acceptance both by local communities and more broadly within society (Boutilier and Thomson 2011; Moffat and Zhang 2014; Prno 2013).

The high value placed on a social licence can also be seen in research that analyses how it allows communities to express their distrust and rejection of company overtures. An unwanted mine or gas field can be resisted by asserting through protest and activist campaigns that a company has ‘no social licence’ (Curran 2017). Here, authority is clear, a social licence is understood to be under the control of the community. In a similar manner to criminalisation, then, the social licence can be claimed as ‘social property.’ In this iteration, there is an explicit refusal to negotiate or cooperate with business. Yet, beyond the right to grant or withhold such a licence, who precisely the community is and what the substantive concerns are that comprise a social licence also remain unclear.

Between these two literatures that both place a high value on the social licence is literature that more explicitly delves into the ambiguity of the term, its opaque meaning and its problematic character. Where it is valued (either in a positive or negative sense of accepting or rejecting company advances) it is often understood in quasi-contractual terms of an agreement between the company and a community. But what comprises or constitutes a social licence in practice in terms of social or environmental wellbeing remains elusive (Demuijnck and Festerling 2016). Critics of corporate use of the term argue that it represents a shallow form of reassurance where companies merely pay lip service to community concerns (Owen and Kemp 2013). It is used to legitimate company operations without serious attempts reduce and manage the problems those operations engender. Similarly, it may be used by politicians with a business-oriented agenda to demonstrate that social issues have been considered, despite decisions being made against community desires (Bice et al. 2017). Other work shows how the processes ostensibly oriented around obtaining a social licence and mutually beneficially agreement can be strategies for maintaining control (Curran 2017) used by companies to 'discipline' communities by marginalising critical voices (Mayes et al. 2014) in association with professions from corporate engagement personnel to anthropologists (Coumans 2011). A central element of these company management strategies is influencing decisions regarding who represents the community. Those chosen to represent communities are those considered 'mature' enough for the role, while critical voices are deemed 'unsuitable'. Interaction between companies and different community members, centred on the ambiguities that accompany the social licence, have the potential to drive division and conflict.

These three ambiguities – of authority, content and value – reveal potential differences between the social licence as a tool to reduce business harm and criminalisation as a legal form of control which draws on the institutions of the state for this purpose. The lack of clear authority means the status of the social licence is always uncertain. The quasi-legality created by the term 'licence' (Bice and Moffat 2014) generates some form of legitimacy and authority for those seeking or granting a licence. But this legitimacy is open to challenge. A community can challenge a company's assertion of their social licence, but the company and its supporters can declare those opposed to the company as 'not representative' and so not authoritative in their rejection of a company's right to a social licence. A central feature of the latter element leaves open contestation around precisely who belongs to what community.

Legitimacy of a company's claim to a social licence is further compounded by the opaque content regarding the substance of a social licence and how this frames the business' activity itself. Criminalisation invites condemnation, denunciation and repulsion of a business harm. In criminalisation, when understood as a legal prohibition, the content of the offence is proscribed by law and culpability adjudicated by the courts. In contrast, the content of a social licence, untethered from authority, may be open to enduring contestation. This includes substantive differences between what a benefit from a particular industry or project is, what is harmful and where priorities should lie. Lack of authority combined with ambiguity in content are elements that can work to sustain the status quo (Parsons and Moffat 2014a). Debates around a social licence may be presented to communities as stark choices such as 'jobs and pollution' or 'environmental protection and unemployment'. As Parsons and Moffat state (2014b p. 278) these choices can appear as a zero-

sum game “... of personal priorities and trade-offs: how much social and environmental damage, or risk, is someone willing to tolerate for the economic gains?”

## Field and place

The lens of a field of struggle was used to analyse the response to coal seam gas exploration in New South Wales and how ambiguities to the social licence of authority, content and value shaped the social rules governing business conduct. Consistent with a fields approach, the research centred on how the social licence was drawn into a field of struggle in a specific area, namely around exploration and production of unconventional, predominantly coal seam gas (CSG) in northern New South Wales, an Australian state on the east coast of the country. This provided the basis for understanding how the social licence was used by the actors in this field who were affected by CSG operations and who differed markedly over their orientation towards those activities. The conceptual framing of a field of struggle drew inspiration from separate but connecting strands of the fields literature encompassing Fligstein and McAdam’s (2011) concept of strategic action fields; Bourdieusian (Crossley 2003; Emirbayer and Johnson 2008; Husu 2013) and Gramscian (Levy et al. 2016) elements. Each of these literatures brought into view different potential sources of tension that might lie behind the ambiguity embedded within the social licence as well as the different sources of power that may affect the capacity to wield influence.

Fligstein and McAdam’s (2011) work was particularly useful in highlighting the importance of attending to interaction between contestation over the rules governing business and the boundaries of the field. In their work there is a pivotal relationship between the rules of the game and the boundaries of the field, that is which actors reside with the field (see also Swartz 2008). From this vantage point, the tensions within the social licence regarding authority, (that is who had the right to speak) and content (what they could and could not say about the social licence) could be seen as related to attempts to dispel unwanted views by discrediting particular actors as belonging to the community – that is an attempt to place them outside of the field.

Contestation around what is acceptable according to these rules then may be important. Fligstein and McAdam (2011) do highlight the struggle around rules, yet argue that rules are often agreed to by those who are less influential within a field (in their terms the challengers) because of the stability those rules bring to the field. Contestation around rules is more visible through a Bourdieusian lens since, whilst acceptance of the rules by weaker actors may also be present in the form of ‘making a virtue out of necessity’, there can also be contestation over the rules themselves and which rules apply in any one situation (Goldstone and Useem 2012; Swartz 2014). This potential to determine which rules apply (for example between the legal and social licence) might then also be significant in understanding the strengths and weaknesses of the social licence as a form of control.

The fields literature also provides insights into the interplay between conflict or cooperation. Both are understood to be an important aspect of influence. Bourdieusian approaches emphasise the importance of conflict and antagonism with cooperation risking misrecognition (for a discussion of Bourdieu on this point see Goldberg 2013 p.372), Gramscian approaches also highlight contestation whilst also pointing to the way strategic accommodation to hegemonic demands can, under certain circumstances result in revolutionary change (Levy et al. 2016). Fligstein and McAdam’s (2011) work

has as a central concern how cooperation is secured within a field to work towards a common goal. This aspect of conflict or cooperation, and their relationship, within a field is critically important in exploring the capacity of a social licence to ameliorate business harm. Indeed, the tension between conflict and cooperation is reflected in the literature on a social licence. When a social licence is understood as the development of trust, reciprocity and problem-solving between the community and the company the aim of the social licence is one of cooperation moving towards a shared goal (Boutilier and Thomson 2011). Yet, the critical literature discussed above on the social licence shows how cooperation can come at the expense of legitimating poor company behaviour on the one hand (Curran 2017; Mayes et al. 2014; Owen and Kemp 2013) or dividing the community into ‘responsible’ (cooperative) and ‘irresponsible’ (uncooperative) actors on the other. The view of the social licence as social property emphasizes its antagonistic qualities. The social licence is premised on conflicting goals enabled through the use of the term – together with its associated meaning.

The diversity of actors in the field of struggle as understood in this paper is an important element to understanding struggle in the context of the social licence. Within much of fields literature, a field is often comprised of similar actors aimed at securing their influence within that field (e.g. lawyers in a legal field (Bourdieu 1987) or activist NGOs within activist field (Barman 2016)). This is not the case here. The field of struggle around coal seam gas operations within a region comprised diverse actors (employees, community activists, landholders, business groups, regulators, local businesspeople). For this reason the Gramscian approach that understands struggle within fields comprised of different actors with potentially conflicting aims, for example workers, communities and businesses across a supply chain, (see e.g. Levy et al. 2016) was closest to the field as understood within this research.

A field comprising a diversity of actors also highlights the way different sources of power and influence may be available to different actors. For both Bourdieu and Fligstein and McAdam the skills of different actors are a critical element explaining outcomes, however Bourdieu adds to this the way skills are related to symbolic capital that gives them purchase with lawyers, for example, preferring a legal terrain as determinative of outcomes as this allows their skills to be those most highly valued (Bourdieu 1987). From Bourdieu, too, there is the importance of history and the way that history shapes the formation of economic, cultural and symbolic forms of capital that can be persuasive in determining outcomes in a particular struggle (Bourdieu 1987).

## The social licence, social control and coal seam gas

### The case study and the field

Data collection centred on the activities of one particular company prominent in CSG operations in New South Wales. The company’s foray into CSG formed a significant part of its transition away from coal as a major energy source for its operations and business model. The material for analysis included text and online material, social media of the campaigns against the company operations, (predominantly fortnightly twitter feed searches) from March 2014 to April 2015, analysis of traditional media and annual reports as well as interviews. Textual sources of data provided insight into how the social licence was framed to appeal to different audiences (e.g. to investors in annual reports, local residents in local newspapers, broader constituencies in national broadsheets) as well

as understanding the differences in the meaning and value attached to a social licence and whose voice should be authoritative in awarding it. Interviews were undertaken between 2017 and 2018 with key actors that constituted the field of struggle around company operations. Interviewees included regulators, chairs of community consultative committees, local government employees, landholders, community activists, nationally based activists and campaigners and company employees, from those who negotiated contracts with landholders to public relations executives and community engagement officers. In all, there were 34 interviews with 41 participants. It should be noted that interviewees did not necessarily only fit one role. Local landholders could be company employees for example and some local community activists were also landholders, with varying affiliations to broader activist organisations.

The aim of the case study analysis was twofold: firstly, to draw out from the data the implications regarding the potential for and challenges to invoking the need for companies to earn a social licence as critical in ensuring a reduction in business harm. Secondly, and from this analysis, to understand how social control, mediated through the social licence, shaped and was shaped by the rules of the game governing unconventional gas exploration in the region.

### Social, environmental and economic terrain of Coal Seam Gas

Coal seam gas (CSG) is one form of unconventional gas (others include shale and tight gas) which together form a rapidly increasing source of fuel for both industry and households. Unlike conventional gas which exists in underground reservoirs, unconventional gas is bound into the rock itself. Hence, unconventional gas often requires physical stress to be exerted into the rock or manipulation of underground pressure for the gas to be released (McGlade et al. 2013). Although unconventional gas is not a new resource (Australia has utilised CSG since the 1940s (Miyazaki 2005)) new technologies have seen a rapid increase in its exploitation with the balance of conventional gas and CSG resources shifting from 11% to 25% between 2009/10 and 2018/19 (Department of Industry, Science, Energy and Resources 2020 (DISER) Table R). Within Australia as a whole, CSG provides significant economic benefits. Australian natural gas exports were valued at \$50 billion in 2018/19 (DISER 2019), and the majority of CSG is exported (Towler et al. 2019). The environmental impact of unconventional gas is contested. For some, gas is an essential transition fuel necessary to reduce dependence on coal (International Energy Agency 2019) and gas is argued to have 35% less emissions than coal when used in electricity generation (Hardisty et al. 2012). For others, its environmental credentials are overstated. Fugitive emissions, emissions that seep from the ground as a result of unconventional gas operations, have been found to be much higher than estimated, nullifying much of the anticipated emissions reduction (Lafleur et al. 2016). Critically, in rural areas significant concerns have been expressed over the long-term impact on water supplies, particularly in light of fracking, the use of specific chemicals injected into the coal seam under high pressure to release the gas (Rijke et al. 2016). The environmental challenges along with its high profitability are combined with a fraught social impact.

### Analysis

The analysis below tracks the three ambiguities associated with the social licence – of content, value and authority – as they emerged in the field of struggle studied, with a particular focus on how

contestation of, or cooperation with, the rules governing corporate conduct were intertwined with social conflicts over the meaning and substance of the term. On the one hand, the substance of the social licence comprised a core of expectations of reciprocity and human decency that should govern the relationship between company and community. But pinning down the rules that comprise reciprocity and decency proved elusive, and this fed into social tensions surrounding its value. On the other hand, the amorphous nature of the social licence was seen as valuable when it could be shaped, defined and claimed by those who could then use it as a key point of leverage in rejecting or supporting the company's advances. However, this more strategic use could be viewed as being in tension with its meaning based in reciprocity and respect, and this could throw further suspicion over the term itself.

Intimately related to the use of the term, whether as a normative statement or as a strategy, were questions of community, who held authority and who belonged within the field of struggle over company activities. This was particularly fraught. The analysis demonstrates that the authority that lay behind the licence was closely related to the boundaries of 'the community', which called into question belonging, identity, loyalty, legality and appropriateness. Along the lines of cleavage between these elements multiple social and environmental concerns accompanied local battles. What constituted relevant or irrelevant information or concerns, and which people were considered legitimately or illegitimately engaged in the struggle, involved constant monitoring by those involved.

### Social licence as part of the rules of the game governing business conduct

The need for a social licence was seen by many as an essential component of the rules governing CSG operations. Here, the substance of the social licence rested on reciprocity and humanity, of proper relationships, being welcomed into and becoming part of the community. It was invested with considerable value and assertions that the company must have a social licence could be expressed with considerable emotion.

The need for a social licence was an enhancement of or replacement for law. One landholder commented on the weakness of law stating, "if the laws were good, we wouldn't need a social licence" (#33). The social licence represented more than what was legally permitted. Those negotiating access for the company also understood that legality did not negate social expectations around company access to land. Company representatives felt that an a priori assertion of their legal right to access land would be met by anger and defiance. Relying on their legal rights would be seen as arrogant and likely to lead to lengthy court disputes, one argued "we never tested it (their legal rights)" #11. Unlike coal mines where land to be mined is acquired by coal companies, gas companies did not need to acquire land (as subsurface resources in NSW are owned by the state), but they did need access to land in order to access those resources.

Those representing the company or industry could share the sense that the social licence embodied reciprocity and civility. In tangible terms, what the gas company offered landholders was annual payments for exploration wells sited on their land providing much-needed secure income to farmers particular during periods of drought or low prices for their produce. The location of sealed roads built to enable company vehicle access could be negotiated so that they also assisted farmers.

Negotiation could also proceed by way of comparison – namely that gas was less destructive than coal. Since exploration zones for coal often overlapped those for CSG, allowing a gas exploration company access meant that it could be protected against encroachment by coal mines.

These tangible benefits, though, were accompanied by an expectation of the character and quality of the relationship as supportive and responsive. One community relations officer commented “it emerges as a language to describe what the company is doing – but then feeds back into how they act” #2. The emphasis was on a fair process that would lead to a trusted relationship. Yet, the level of commitment required of the company to demonstrate their dedication to obtaining and maintaining social licence ranged from a discrete transactional relationship bound in scope and time to an enduring relationship that encompassed a broad range of social and environmental concerns. The requirements to enable an enduring relationship were onerous. Community relations officers within companies could struggle to convince their superiors of the importance and depth of obligation that this level of commitment involved. One lamented that within the company the process for gaining a social licence “was not well understood” #16 and argued their employer wanted the superficial version of a social licence without the requirement for such ongoing reciprocity and responsibilities. The time necessary to build such relationships could be challenging for the company, one interviewee commented, “patience is something that doesn’t necessarily sit comfortably within a corporate culture, particularly with people who have built their careers on more assertiveness – some might say aggression” #3.

The quality of the relationship involved in obtaining a social licence was also combined with disagreements, between company and community as well as within these groups, over what the key social and environmental issues were and where priorities lay. The focus of concern to enable a social licence could shift from one issue to the next, from the company needing to be community-minded and providing jobs, to a concern with people’s homes, to the impact of company activity on house prices, to issues with noise, excessive light from working at night, to the impact on water and finally (but less prominently) to the long-term impact of company activity on carbon emissions and climate change. A senior official commented that the social licence was, “a knotty problem – it starts off as a social licence but then moves into planning, communication, data questions, interactions with the media...” #21. The fluidity of the social licence meant it could encapsulate elements of law and regulation but then move to questions of integrity of data, and how communication from the company was received and understood either as genuine or manipulative. The substantive elements of social licence remained elusive, it was “a fluid concept” #1. For some, this elusive quality meant that the term lost value, it was better to forget it and to focus on and respond to the individual concerns.

However, a different orientation towards the social licence was evident as people’s attitude towards gas operations changed. The initial orientation of the communities studied towards the company was cautious openness to the idea of gas exploration in the area. Conflict and protest emerged over time, and with it the strategy developed of asserting the company had ‘no social licence’. For those whose views changed, their denial of a social licence to the company captured their disquiet over

company behaviour and intentions and made it explicit. It was an embodiment of that disquiet, one commented “in that process [of challenging the company] we discovered the word” #6.

### Social licence as strategy

The discovery of the phrase in this way provided some in the community a useful vehicle for protesting. It was a way of getting across to the company that “... you have no trust” #5. Protest placards with ‘(Company) you have no social licence!’ were a strategy to gain public and political attention. Community assertions framed in this way were a key part of the campaign to reject company advances. Here the valence attached to the social licence shifted. It became a means to an end, that of rejecting the company and its operations.

Strategic use of the social licence was not confined to communities. Assertions by industry that they took the need for a social licence seriously were used to signal to investors the integrity of the company. The language of the social licence was a requirement, a reassurance to investors, and as such part of the rules of the game governing business activity. But the assertion that such a licence was present was also understood as strategic claim to ensure investment moneys kept flowing. One company representative argued: “The focus (on the social licence) was on shareholder value – not on the needs of the community ... it was really a case of our way or the highway” #7.

Government could also deploy the term strategically to protect their own legitimacy by calling on companies to ensure they obtained a social licence before commencing operations. The need for the company to gain community acceptance through a social licence was understood by both company and community as a hedging strategy employed by the state government. Legal permission for the company to explore the gas had already been secured at this stage. However, those interviewed felt the government did not want to be held accountable for that permission or any conflict it generated. It was willing to provide a legal mandate for business but could ‘hide’ behind the social licence as essentially a relationship between the business and the community. Government authorities could ask of the company “– have you got a social licence?” #31. In this way, community protest could be quarantined as only pertaining to business not government. Government support for a social licence was seen as a fig leaf to protect their political legitimacy.

When understood primarily as a strategy, the social licence was seen by a number of interviewees as problematic. One argued that the term social licence was “a weapon you can wave around – a political weapon” #6. In the fraught context of CSG exploration some viewed the social licence as only having a strategic purpose, “it’s only bandied about by people who don’t think you actually have one” #2. It was deemed as lying outside of proper rules of engagement as “part of guerrilla warfare” #3 or “orchestrated anarchy” #11, terms that suggested a process taking place outside of agreed rules.

The suspect character associated with the social licence rested in part on its use as a tool for a particular end and in part on who was seen to be using it as a strategy. For some in the community, the social licence was a tool of coercion since they were not given the right to refuse company access and had no legal right to withhold consent, one saw it as a velvet glove in an iron fist, an offer with “a gun pointed at people’s heads” #4 and forced to make an unenviable choice between gas

exploration or a coalmine. It represented “Orwellian speak” #30 a choice that was really no choice at all. Further, the process the company employed in attempting to gain community support was experienced as destructive of that community. One community member drew on a colourful terminology to describe this process as the ‘Fuck ‘em Strategy’. This term had first been coined on an Australian television program dedicated to analysing the power of advertising to manufacture a consensus around a branded product. She argued that companies in the region employed a similar tactic to gain community consent for CSG activity, which was designed to bring as many community members on side as possible and then marginalise those who remain opposed. She explained the sequence which generated the acronym as:

“**F**org(ing) community relationships, **u**nderstand(ing) the issues, **c**laim(ing) the middle ground, **c**reat(ing) community leaders, **e**mploy(ing) activists, **m**arginalis(ing) the rest” #5

This fracturing of community and the importance of consent is particularly important in the settler colonial context of Australia. Dispossession and conflict over land is pivotal to the experience of Indigenous people within Australia. The land the company sought to access in this research was not subject to rights claims under the Commonwealth Native Title Act 1993 and so direct negotiation with local Indigenous people over consent and access to land was less prominent. Nonetheless, the potential disturbance of Indigenous artifacts was an issue that was occasionally drawn into the conflict. Layer upon layer of conflict led some to see fracking as a term not describing a process of fracturing rock, but as fracturing communities.

### Strategy and conflict

Ultimately, what company behaviour looked like that symbolised the existence of a social licence foundered on the rocks of conflict over the desirability of gas exploration and production. What was seen as essential for a company to do to gain a social licence for those wanting the activity was precisely the same activity that was seen as untrustworthy by those opposing exploration and production. Those supportive of the company emphasised the importance of employment – and skilled employment – that could bring children back to the town. For them, this was the way schools could expand and flourish, supported by company sponsorship. Small actions by the company fed into the conflict itself. In one town, the company donated a microwave for the staff kitchen. Those in support of the company saw this as a welcome gesture – for those opposed this was a bribe. Sponsorship of local sports clubs was viewed in the same disparate way.

Employment of local people could also be divisive. This finding stands in stark contrast to the public discourse that employment is always welcome. Certainly, supporters would clearly identify the capacity for unconventional gas to bring much needed and relevant employment to the town. This work was considered long-term and skilled that could advantage local contractors as well as individual townspeople. There was a strong sense of identity associated with the type of work offered: “I drive trucks I don’t make cappuccinos” #40, one stated. This quote reflects the argument of opponents to the company that tourism and service industries (such as health and aged care) offered more employment opportunities than CSG. Those who were employed by the company could be criticised and ostracised by opponents to CSG with statements such as “you are a traitor to your town” #17. Employees and contractors were expected by the company not to bring it into

disrepute, which meant that they could feel unable to speak as members of the community when this conflicted with their obligations as company representatives. Indeed, both sides commented on the fraught experiences of some local employees. There was dismay at the overall impact on declining civility that resulted from the conflict.

### [Who is the affected community? Interrogating the boundaries of the field](#)

Rules and boundaries were intimately related to struggles around CSG in terms of who was seen to represent the community and hence who counted in authorising or denying the company their social licence. Rules were complex and constituted in multiple ways. They were not only legal, but also intimately connected to behaviour, history and loyalty. Those who crossed multiple rules risked being seen as not belonging and hence unable to speak as a member of the community, let alone represent it.

Practices around who needed to be consulted before exploration began was one example of rules determining narrow boundaries to the community. Who the company invited to consultation meetings represented a very narrow interpretation of whose views were needed to establish harmonious relations. These meetings were specifically concerned with the potentially negative impact of exploration and permitted attendance was determined by access to whose land was required by the company in order to drill for gas. Boundaries were “Literal boundaries in the farmer’s field” #34. The number invited to these meetings was small, for one “they only invited four farmers (for consultation)” #32. Neighbours could be excluded from these meetings since “if the well is not on your land no right to comment” #33. This was the case even when someone’s home was much closer to the well than the home of the owner of the land on which the drill was placed.

At the same time, those negotiating access argued that they were acting responsibly by not drilling on land where they were not welcome. The implication was there was no need to consult as there would be ‘no impact’ on these landholders. This led to a selection process whereby those most willing to allow the company access, or most likely to benefit from potential payments from the wells and the infrastructure (such as sealed roads) that would be provided, were those most closely engaged with.

These consultations were separate from broader public community meetings companies occasionally held as well as legally required community consultative committees instituted once operations had proceeded beyond initial exploration. However, the community consultative meetings were also problematic for some. Unlike in Victoria where meetings of this kind were public, they were open only to representatives selected by the chair to voice community concern. Certainly, opponents to CSG could be a part of these meetings, as well as those who welcomed the company, but their closed nature raised concerns for some of their secretive agenda and company bias. Interviewees also reported that public meetings could be problematic leading to heated and angry exchanges fuelling acrimony.

The concern was not only with who represented the community, but who could actually belong to that community and with this, who had the right to speak. Complaining could be seen as an indication of not belonging, of being “not part of the community” #24. Family members could be

exhorted to discipline each other, with one told to “keep your wife under control” #33. If you were on the ‘wrong side’ you could be labelled “a disgrace to your heritage” #11. Being a multi-generational family also played a role in establishing symbolic capital. Those with long histories in an area could be seen as more authentic representatives than those who had moved into the area and in spite of the fact that this did not include Indigenous belonging<sup>i</sup>. Community members could be caught on the wrong side of multiple boundaries of loyalty and belonging and in the process feel silenced as speaking out could risk being shunned.

Simple views that complaints merely represented a ‘not in my backyard’ attitude did not capture the complexity of belonging and place. There were individual losses from exploration, such as loss of land value for those close to company operations. But, these concerns of material loss were never held in isolation from the impact of operations on the town more broadly. Material concerns were not simply bounded by money but also by what they signalled in terms of relationships within, and the future of, the town. So, wells on farmland were characterised as sources of stable income for hard-working farmers ‘doing it tough’, yet gaining profit from selling property to the company, particularly if vocally opposed to the project, could be viewed with suspicion. Loyalty was a binary of taking sides, but one with multiple intersecting rules that symbolised that loyalty. It was striated by fracture lines that called into question identity, appropriate behaviour and values as well as what was legally required of the company itself.

#### *Outside/inside.*

Policing the boundaries of who belonged to the community was a process that involved not only determining who could express concern on behalf of, or as part of, that community but also what was a proper or illegitimate concern. This was comprised of a tangle of binary oppositions to determine who belonged – and who did not. Where concern was directed was key aspect of loyalty and hence belonging. A striking comment made by one interviewee, “why is it wrong to care about the Barrier Reef?” #29 was emblematic of this dynamic. The binary in the case of the Barrier Reef was one where care expressed beyond the community, to people and planet, indicated a lack of commitment to local families and local employment. Yet, how the outside was allowed to enter the community was again shaped by the conflict. Care for the reef was symbolic of a lack of local concern, even as significant effort was made by those opposing the company to develop alternative livelihoods. Mining in Queensland, a neighbouring state, was seen as the path to future prosperity for those wanting gas exploration and a cautionary tale by those opposed. Explosions from exploration were either normal or matter out of place (Douglas 1966), activists living outside of the community were either “people like us” #33 or outsiders, “terribly selfish” belonging to “big groups using these individual (local) groups” #15.

Efforts to police the boundaries of the struggle over CSG operations revealed the intensity of fault lines that frame community belonging. The importance of local relationships resonates with Cohen’s (1985) observation that the ‘community involvement vision’ (p.69) can paradoxically increase social coercion and exclusion, exporting and dispersing top-down control from the prison to the community. However, the struggle over which actors, values or experiences were inside the field and which denied legitimacy also worked to efface this top-down influence of economic and political

institutional power. This was partly a result of where the SLO allowed control to be directed (i.e. 'up' towards corporate activity). But it also had to do with how control was exercised – primarily through an emphasis on local debts and obligations. Concerns about the Barrier Reef, or about the 'normality' of gas extraction, were resisted as outside the scope of local concern. The result was still a struggle over CSG operations and its impact on social obligations, with winners and losers in the battle to accept or reject CSG, but where control could only extend to narrow issues and draw from a much narrower pool of actors – a concentration, not a dispersal, of control. Given the proximate setting of the struggle, policing its boundaries involved considerable emotional labour, labour directed and experienced locally. The toll of this, then, lay behind reasons to exit the field. Leaving could involve physical relocation (Queensland was a favoured destination for those supportive of the industry) or psychologically with time taken away as respite from leadership roles in community activism.

## Conclusions

Exploration of a social licence provides a useful comparator and an alternative lens to law and law enforcement in understanding the challenges to reducing corporate harm. Debates around both criminalisation and the social licence bridges the social and the legal dimensions of both control and permission. Legal and social obligations and expectations provide separate but interacting anchor points for determining 'the rules of the game' governing business conduct. Both reveal the problems with legality being the marker for businesses acting in the public interest. Both reveal complex linkages in asserting the capacity of social control to deliver progressive change.

Despite this complexity, the analysis here suggests that there is some opportunity for the social licence to build more meaningful 'rules of the game' governing business activity. The social licence can be part of a bottom-up effort to enhance the social control of business activity. To realise this potential requires investing meaning in terms such as the social licence to enable it to represent more expansive systems of accountability surrounding corporate conduct in the context of a democratic society. This is hopeful.

There are, however, challenges in ensuring a term like social licence can fulfil such a promise of inhabiting the space between repressive or inadequate law, problematic enforcement to engender more robust rules around business behaviour. Its appeal to some form of quasi-legality means that the legitimacy of the term itself was questioned. The social control enabled by the social licence could be negatively compared with the authority of law on the one hand, and on the other, seen as a Trojan horse for destructive business activities that already had gained a legal licence through government application procedures. This challenge to authority garnered through the use of the term social licence also arose because of tensions within the term. These tensions related to its meaning and purpose. Tensions emerged in the translation of common decency and reciprocity from heart felt values to what actually comprised decency and reciprocity in practice. The purpose behind the SLO alternated between a visible signifier of a commitment to that decency and as a strategic tool aimed at achieving disparate goals.

There are then serious hurdles in building a more pro-social set of rules governing business conduct that is richer, deeper and more responsive to local communities. This is because interrogation of the ‘social’ involved in the social licence as a relationship between the business and the community required close attention to what exactly the rules around reciprocity between the two should look like. What was meant by ‘pro-social’ was attached to relationships that alternatively sought to enable, constrain, discipline and control.

These attachments to local aspirations, debts and obligations framed the harms and benefits that accompanied CSG activity. What was harmful and what beneficial was contested. Sharp differences existed in what ‘good’ employment looked like and what good corporate citizenship encompassed. What was harmful was tied to what was seen as good, a gift for one was a bribe for another.

Ultimately, the social licence was closely associated with, and implicated in, this conflict and struggle. This struggle was as much about the struggle to define the legitimate boundaries of the field (that determined who ‘counted’ as a member of the community and thus had a legitimate view on what the key issues were related to coal seam gas). This not only created division and conflict but exacerbated pre-existing tensions. Perhaps these tensions are inevitable given the significant challenges we face – particularly related to the environmental crisis. Indeed, conflict may be productive and necessary to propel change. But for those bearing the brunt of change the consequences of this are also highlighted by this analysis – of enduring, debilitating social conflict.

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<sup>i</sup> It is important to note that the struggle against a local coalmine that occurred after the attempt to extract CSG from the area was more explicitly premised on the impact on Indigenous peoples, a number of whom were prominent in the broader campaign against the mine.

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