

A state of licence – the social licence to operate as an opportunity for the forestry sector

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Abstract

This paper discusses the paradox of social licence faced by the forestry sector today. It explores how the idea of the social licence of operate (SLO) relates to the tradition of social contract theory. This philosophical detour shows that social licence is less novel and more entrenched in our politics than its critics seem to realise. The paper then turns to how social licence is realised through action and procedure, and why it is resurgent in the national conversation. Finally, I argue that social licence need not be seen as an imposition or inconvenience, but rather an opportunity to create substantive community support for efforts to align the forestry sector toward maximising public value.

Introduction

Think of social licence as a fence. Where does the forestry sector stand in relation to it? In this paper I argue that it has one foot on either side – never a comfortable position to be in. The sector's social licence is both stronger and weaker as a consequence of global trends and domestic events.

On the one hand, society is increasingly attentive to environmental problems which forestry can sincerely offer itself as part of the solution to. I have argued this myself, especially through the *Our Forest Future* discussion paper for Pure Advantage (Hall, 2016). The foremost challenge is climate change. Forestry is a unique industry insofar as its core business, growing trees for harvested wood products, also involves removing large quantities of CO₂ from the atmosphere. Some forest products, such as biofuels and structural timber, may also substitute high-emissions alternatives, such as fossil fuels, steel and concrete. Also important but underemphasised in New Zealand's current climate strategy is forestry's potential contribution to climate adaptation by enhancing the resilience of landscapes to extreme weather events, particularly by reducing the risk of erosion, sedimentation and flooding in vulnerable catchments.

Planted forests also contribute to a range of broader environmental and social benefits, such as creating habitats for native biodiversity, filtering contaminants and excess nutrients from air and water, creating cultural and recreational value, and more (e.g. Yao et al., 2017). These public benefits are also enjoying greater recognition from the New Zealand Government, backed both strategically and substantively by Te Uru Rākau and the One Billion Trees Programme.



Yet for all this, over the last year, the forestry sector has also found its social licence increasingly in question. In part, it is a victim of its own success. Recently, the 50 Shades of Green lobby group formed to resist the conversion of sheep and beef land into plantation forests, warning of reduced regional jobs and the loss of aesthetic and cultural value (Chalmers, 2019). But the forestry sector has also self-inflicted some 'own goals'. A cluster of high-profile failures of debris management in the Nelson-Tasman region in February 2018, then again a few months later in the Uawa Catchment above Tolaga Bay, revealed to the public not only the present-day risks of commercial forestry, but also future vulnerabilities in a warming world where extreme weather events are more frequent.

The Minister of Forestry, Shane Jones, warned that forestry companies' inadequate response to the latter catastrophe 'hammers the social licence for plantation forestry on the East Coast' (Jones, 2018). In the background, other discontents are simmering, such as forestry-related sedimentation in places like Marlborough Sounds and Coromandel, the impacts of logging trucks on public roads, and the use of toxic chemicals in forest management and timber treatment.

This paper explores the paradox of social licence that the forestry sector faces today. I begin by discussing how social licence is conceived by researchers and critics. Next, I explore a related idea, the social contract, to show that social licence is less novel and more entrenched in our politics than its critics seem to realise. Then, I discuss how social licence is realised through action and procedure, and why it is

resurgent in the national conversation. Finally, I argue that social licence need not be seen as an imposition or inconvenience, but rather an opportunity to create substantive community support for efforts to align the sector to maximising public value.

What's the social in social licence?

So what is social licence? Is this just another fashionable phrase – like ‘resilience’ or ‘value add’ – that trips off the tongue too easily, without landing on anything decisive? Or is there something of significance here, something which can and should have an influence on land use choices?

The idea of a licence is simple enough. It is a formal permission to do something, which is granted by some authority, such as local or central government. A driver's licence, resource consent, and permit for oil and gas exploration are all kinds of licence that various authorities have the power to issue – and, under certain circumstances, to revoke.

What makes ‘social licence’ both more interesting and more ambiguous is the ‘social’. It implies that society at large, or some community in particular, is a rightful authority to provide, or suspend, permission for an activity. To offer a recent definition, social licence is ‘the ongoing acceptance or approval of an operation by those local community stakeholders who are affected by it ... and those stakeholders who can affect its profitability’ (Moffat et al., 2016). In a similar vein: ‘the Social Licence to Operate (SLO) has been broadly characterized as the informal approval or acceptance that civil society, including communities, non-governmental organizations or the public, grant to an individual company or to an industry engaged in the development of natural resources’ (Edwards et al., 2016).

As the latter definition notes, an implication of social licence is that permission is not formalised through any established process. This informality is a source of complaint among critics. For example, New Zealand Initiative's Luke Malpass (2013) states, ‘You cannot apply for [social licence], there are no fees to pay, no compliance conditions and no objective criteria on which you can base your claim.’ Likewise, when we lose it, there is no card or certificate to forfeit. Consequently, Malpass treats the idea of social licence as a misplaced metaphor, a mirage that misconstrues where authority actually lies. To say that a company has lost its social licence, he argues, amounts to ‘calling for a withdrawal of something that does not exist by those who were powerless to give it.’ The actual power lies – and, he implies, ought to lie – with Parliament and its authority to make law.

This comes perilously close to a pre-modern view of government, to a view where full and absolute sovereignty is associated with heads of state (e.g. Bodin, 1606/1992). But this understanding of political power was succeeded by the modern idea of the social contract – which, as analysts have already noted, is



closely related to the idea of social licence (e.g. Lacey et al., 2014). Revisiting this tradition helps us to see why Malpass's cynicism is unwarranted.

A philosophical detour – the social contract

As some readers will know, I am a political theorist with an interest in forestry, not a forester with an interest in political theory. So it is only appropriate that, at this point, I go back to philosophical basics.

The idea of the social contract – and the foundations of a distinctively modern theory of the state – crystallised with the English philosopher Thomas Hobbes (1588-1679). In his masterwork, *Leviathan* (1651/1996), he argues that the state is founded upon the presumption of a social contract, a tacit agreement among the members of society to grant authority to a sovereign power to create law and enforce it. What made his theory so innovative and influential is that he conceived of the social contract as a convergence of rational interests among individuals, united in a common interest to avoid violence, famine and insecurity. As he vividly put it, humans wish to escape a state of violent anarchy where ‘every man is Enemy to every man ... And the life of man, solitary, poore, nasty, brutish, and short.’ Living under the rule of the state – in Hobbes's vision, a rather authoritarian state – is the price that people pay for safety and security.

The social contract need not be explicit, enshrined in a written constitution. It can also be implicit, a shared understanding among like-minded people, or hypothetical, a matter of convenient fiction. But its basis in human rationality, in particular the general human aversion to ‘continuall feare, and danger of violent death’ (Ibid), provides the sovereign ruler with a worldly kind of legitimacy, which is founded on people's common interests.

As this distinctively modern idea took hold, it became increasingly difficult for rulers to claim legitimacy by appealing to God's will or a privileged blood line. Instead, would-be rulers had to grapple with the novel idea that, as Thomas Jefferson (1816) put it, the

foundations of a genuine republic ‘hangs directly on the will of the people.’ Representative democracy emerged as a way to operationalise this, whereby voters empower elected officials to make laws that they should live by. As the United States Declaration of Independence (for which Jefferson was a lead author) asserts: ‘Governments are instituted among Men, deriving their just powers from the consent of the governed.’

In his critique of social licence, Malpass focuses on the contract between government and citizens, which establishes the latter’s duties to abide by rules set by the former. But social contract theory emphasises that this is a two-way relationship:

The theory of a contract of government really postulates, as a prior condition, the theory of a contract of society. There must already be something in the nature of an organized community – in other words, a potential body of subjects, already cohering in virtue of a common social will, as well as a potential ruler, ready to assume the burden of government in agreement with that will – before there can any contract between ruler and subject’ (Barker, 1947).

In other words, the legitimacy of a government to set rules (and to issue licences!) emerges, in the first instance, from the social licence that citizens accord to government. As John Locke puts it, we can only begin to talk of a governed society when it transitions from ‘a state of liberty’ where everyone is equal and no person rules over another, to ‘a state of licence’ where some people are afforded the right to rule over others (Locke, 1689/1988). While ‘social licence to operate’ might be a relatively new term (Edwards & Trafford, 2016), it connects logically to this older notion of licence. Indeed, a recent use of the SLO framework to interpret public opposition to government policy (De Jong & Humphries, 2016) is arguably only coming full circle, back to its political origins.

The key takeaway from the social contract tradition is that the state’s authority is derivative, not original. Political leaders depend on the permission of the people – a kind of social licence – to hold power legitimately. If people withdraw that permission, then leaders cling only to mere power, to *might* without *right*. This is tyranny and, although it is a workable form of government, it not uncommonly ends in revolt and revolution, because it entails interference without consent. When people’s liberties are at stake, they tend to fight back – and that’s a lesson not only for leaders in politics, but industry too.

Realising social licence

So what does the realisation of social licence look like? Kevin Jenkins (2018) argues that ‘the real-world things that “social licence” seems to refer to – community support, public pressure and so on – are inherently fuzzy edged.’ He is more amenable to the idea than Malpass, but still treats social licence as ‘essentially

metaphorical’, as a pale imitation of actual government licence. In his words: ‘The problem is that the metaphor suggests something clear edged and well defined ... the metaphor obscures rather than clarifies’ (Ibid).

It is worth emphasising from the outset (and I don’t think Jenkins denies this) that just because public pressure is ‘fuzzy edged’, it is not ephemeral or insubstantial. On the contrary, community activism, both offline and online, can significantly impact an organisation. For example, an analysis of 50 mining projects found that conflicts with local communities had substantial financial implications; one major mining project involving capital expenditure of between US\$3-5 billion faced US\$20 million per week of delayed production in net present value terms (Franks et al., 2014). Consider also the 2015 Volkswagen emissions scandal, where the car manufacturer was discovered to have installed software to cheat emissions tests. The company took a huge hit in its share prices, as much as 34% within days (Cavico & Mujtaba, 2016). The loss of trust among consumers and shareholders took a form that the most hard-nosed accountant could recognise.

Yet it follows from the last section’s argument that social licence is not always as ‘fuzzy edged’ as Jenkins supposes. Voting, for example, is a formal procedure by which people give their permission to government to govern. Electoral mechanisms take the unruly energies of social (dis)approval and turn out a definitive result, awarding social licence to winning parties, supported by a paper trail that mitigates against error and corruption.

Of course, elections are not used to mediate relationships between communities and companies. However, elections are not the only kind of democratic procedure. Public consultation is another procedure that creates opportunities for communities to directly influence activities that may impact them. Admittedly, consultation processes can be fairly fuzzy, but this partly depends on design and the intentions behind the consultation exercise, whether tokenistic or earnest (Wesselink et al., 2011). However, partly due to the insufficiencies of actual consultation, there is a proliferation of interest in deliberative and participatory democracy to enrich public influence, such as citizens’ assemblies, deliberative polls, and community representation on boards of directors (e.g. Dryzek et al., 2019; see also <https://participedia.net>). This resonates with forestry’s long-standing traditions of collaborative or joint forest management with local communities (Moffat, et al., 2016). Also, governments can be a negotiating party (along with communities and companies) in forestry agreements (e.g. Lacey et al., 2016) and multi-stakeholder governance arrangements, as part of an integrated landscape approach to land use (e.g. Sayer et al., 2013).

Another way that social licence is conveyed is through economic choice. If political sovereignty involves citizens granting authority to government, then consumer sovereignty involves citizens instead

using their 'power to demand (or refrain from demanding)' in the market, which is a power that they otherwise might have 'delegated to political institutions for authoritarian use' (Hutt, 1936). Markets for sustainable timber, for instance, are an expression of consumer sovereignty, a way of voting with one's wallet to extend influence without regulatory force. This is, moreover, buttressed by formal processes, such as the Forest Stewardship Council and Sustainable Forestry Initiative's certification schemes, which enable consumers to make informed choices about which land-use practices they support, by purchasing (or not purchasing) the products derived from them.

What these exercises in social licence have in common is that they extend horizontally, rather than hierarchically. In Hobbes's vision, the people look upward to kings and queens, issuing them with a social licence to rule in their interests. But in regards to the company's SLO, the people look sideways to their surroundings, to the impacts of commercial activities on their own interests, and exercise their sovereign power either with or without government involvement.

Social licence – here to stay

Social licence isn't a fad. As I have argued, it is inherent to modern political systems, to the extent that it is easily overlooked. Moreover, its role in public life is likely to intensify, rather than fade away, for at least two reasons.

First, technology provides the public with new knowledge and new powers. We live in an increasingly networked age and – through social media especially – the public has greater capability than ever before to communicate with companies, to air grievances in public forums, and to coordinate revolts, whether real-world protests or online Twitter mobs.

This has negative and positive aspects. On the one hand, the internet is proving a fertile breeding ground for irrationality and radicalism, due to the flourishing of misinformation and extremist content.

On the other hand, the internet can be empowering and enabling for groups once excluded from mainstream media and knowledge flows, which includes regional communities. It is easier than ever to learn about international trends, innovations and policies. It also easier to create media content. Smartphones have proliferated, which means that when catastrophe strikes, like the Tolaga Bay event, local communities can immediately upload video and photo evidence to open-access platforms like Facebook and Twitter, to be shared through social networks and uplifted into the mainstream media as an easy story for journalists. Access to aerial drones and satellite imagery through Google Maps further enables citizens to undertake surveillance of land use in their area, even to monitor compliance in their catchments. These powers are unlikely to be withdrawn, and who knows what innovations and refinements are around the corner.

But secondly, and more speculatively, I wonder if talk of social licence is growing because citizens are increasingly disenchanted with governments. The social contract stipulates that governments ought to use their powers to serve the interests of citizens, particularly to protect them from harm. And yet in various areas – the Global Financial Crisis appears to be a touchstone event (Tooze, 2018) – trust in government is eroding. Internationally, people are withdrawing their social licence from the establishment parties that dominated the political centre. In some cases, authority is being re-invested into populists and strong-man leaders. But in other cases, people are looking to take matters into their own hands, through the democratic experiments mentioned earlier, or more ambitious proposals such as a return to the commons, whereby natural assets (such as forests) are managed as commons rather than private property (Lopez & Moran, 2016).

Democracy's current mid-life crisis is perhaps not so pronounced in New Zealand – I suspect our proportional voting system tempers the political volatility that the UK and US are experiencing – but this does not mean that New Zealand is free from mistrust (Edwards et al., 2019) or frustrations over socio-economic outcomes. In the lead-up to the 2017 general election, UMR polling found that the top five issues of public concern were housing, poverty, inequality, immigration and environment (Mills, 2018, 371), the first time that environment had ever featured, and a notable shift from concerns of economic competency that dominated previous elections.

These environmental concerns are likely to increase. A recent Deloitte global survey (2019) found that climate change was the top concern (29%) for both millennials (born between January 1983 and December 1994) and Gen-Z (born between January 1995 and December 2002). Among New Zealand millennials, concern about climate change was even more pronounced (36%), well ahead of income inequality (26%), crime and personal safety (20%), diversity, inequality and discrimination (18%) and health (18%). This is reinforced by recent events, such as the school strikes for climate, Extinction Rebellion protests, and declarations of climate emergency, which at the time of writing includes Nelson, Christchurch, Kapiti Coast and Auckland.

Indeed, following Hobbes's logic, we might expect to see a new social contract emerge, oriented not by fear of war and violence, but by fear of climate breakdown and biodiversity collapse (IPCC, 2018; IPBES, 2019). After all, unchecked environmental degradation would result – to paraphrase Hobbes – in lives poor, nasty, brutish and short. Although democratic politics are riven with disagreement over the nature of the good life, there is a great deal more unity over the horrors we should avoid. The question is: to what end will this popular sovereignty be spent? Will the people call for an authoritarian state, a Green Leviathan, which uses regulation and coercion to prevent environmental degradation? Or will people abandon hierarchy and use their sovereignty

horizontally, engaging directly with companies and landowners to change polluting practices? Or will there be a bit of both: a proliferation of democratic energies which ignore the usual dichotomies between state and market, public and private, and instead deploy 'people power' wherever it can to affect positive change? These are questions for another forum, so I will finish instead by saying why social licence is not only inevitable, but also potentially welcome.

An opportunity – not an imposition

To summarise: it is social licence that permits a government to rule. One group of people (citizens) permits another group of people (government) to set rules which affect them and their choices. The social contract is the agreement upon which social licence is issued or revoked. More generally, that social contract can be conceived to include companies, which serves as the basis from which licence can be bestowed or withdrawn. This can happen informally through social pressure and support, or more formally through participatory, deliberative and representative procedures. At this moment, when trust in the political establishment to protect the public interest is low, the motivation to exercise social licence directly is correspondingly high. Communications technologies create new opportunities for the public to exercise its sovereign power.

All this might be treated as an imposition or inconvenience which creates extra-regulatory constraints on what companies can do. But there is a significant upshot. The social contract that underlies social licence is not only a source of great responsibility, but also great power. That is, the social contract involves *quid pro quo*, where something is given for something. A government assumes responsibilities to protect the interests of the public, but in return it expects resources and capabilities to fulfil this obligation. Conventionally, this involves the power to create and enforce laws, incarcerate criminals and receive taxes. Even libertarian advocates of the night-watchman state accept this basic premise: that state coercion is necessary insofar (and only so far) as it empowers the state to preserve national security and private property laws.

The forestry sector should think of social licence similarly, as an opportunity to secure public support for maximising the public value that forests can generate. If the sector makes a credible pitch for the public good, and is trusted in doing so, then not only can it expect social licence, it is also justified in expecting capabilities, resources and powers to deliver this public good. This is especially relevant for silvicultural systems that are marginal under current circumstances, yet produce greater public value if both market and non-market benefits are accounted for.

Consider the example of continuous cover forestry (CCF) (Barton, 2008; Wardle, 2019). CCF systems, such as targeted diameter harvesting, mitigate or avoid some of the negative environmental impacts associated with clearfelled systems, especially risks of erosion

and sedimentation during the post-harvest window of vulnerability (Satchell, 2018). Accordingly, the National Environmental Standards for Plantation Forestry permit CCF on red-zoned land, even as it makes clearfelled harvesting a regulated activity. Along with the aesthetic value of a continuous canopy, and the biodiversity value of a continuous forest habitat, CCF is likely to enjoy greater social licence than clearfell forestry.

But neither the government licence for CCF on red-zoned land, nor its presumed social licence, is sufficient for its implementation. CCF faces various barriers to upscaling, including lower profitability than clearfelling, a shortage of relevant silvicultural expertise, lack of access to specialised harvesting machinery, and market uncertainties for non-*Pinus* timbers which may be better suited to CCF business models. Still, these obstacles could be overcome by tweaking the systems within which forestry operates (for discussion, see Hall, 2018). On the demand side, firm commitments from domestic and international markets for high-quality, sustainably harvested timber could improve the financial viability of CCF through its unique selling proposition. On the supply side, investment into new harvesting technologies and methodologies, or direct public subsidies for selective harvesting, could make CCF more viable. Similarly, the different risk-return profile of CCF could become increasingly attractive to investors and creditors due to the growth of impact investment, where social and environmental impacts are sought alongside financial return (McMahon et al., 2016; Bass et al., 2019). Finally, internalising the environmental costs and benefits of forestry activities, through payments and/or penalties for ecosystem (dis)services, may give CCF an economic advantage.

If extending CCF onto appropriate sites, such as red-zoned land, is key to preserving social licence, then the forestry sector ought to carry some of the load. But it isn't unreasonable to expect public support, given the costs and risks involved in transitions (Hall, 2019), and





the public sector's own responsibilities for contributing to forestry's current state of affairs through past regulatory decisions, subsidies and research priorities. It is up to the forestry sector to make an authentic, honest pitch for the common good, and aligning its practices to what present and future communities care about.

Initiatives such as the New Zealand Institute of Forestry's policy working group and Te Uru Rākau's afforestation strategy are opportunities to recalibrate the sector for changing needs and expectations, not least a changing global climate. Foresters know better than anyone – as Edmund Burke (1790/1987) once argued – that the social contract doesn't only exist between present peoples, but also the dead and those still to be born. If the forestry sector is trusted in delivering this, it will enjoy social licence and the powers that accompany it.

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