



28th Australian Association for Professional & Applied
Ethics (AAPAE) Annual Conference

SOCIAL LICENCE & ETHICAL PRACTICE

PRESENTATION ABSTRACTS

Griffith University, Brisbane

Wednesday 11 August—Friday 13 August 2021

Hosted by the Law Futures Centre, Griffith University,
Brisbane, Queensland



Law Futures Centre

<https://www.griffith.edu.au/law-futures-centre>

Keynote Presentations

Karen Alexander

Resource access and sharing: Considering a social license to operate for government

The concept of a 'social license to operate' (SLO) has been used in the natural resources sector for nearly three decades and reflects the evolving nature of relationships between industries/ companies, their stakeholders, and the communities they operate within. SLO has, over recent years, become increasingly integrated into natural resource policies, academic research and activist discourse and action globally. It has become an established part of the natural resource development lexicon. As such, we must consider the establishment and maintenance of an SLO, not just by the industries using natural resources, but also by the other actors who are using this term, particularly those making decisions regarding access to, and sharing of, such resources. Reflecting on my recent research around marine and coastal conflict, I will explore the notion that government might also hold (or lose) an SLO regarding natural resource decision-making. I will question who the 'community' might be that grants the government an SLO. Finally, I will consider what an ethical practice to achieve and maintain an SLO for government may look like in this instance, and whether this is something entirely separate from the democratic process.

Martin Drum

Does Government fulfil the social license?

This paper discusses the relevance of the concept of the social license by examining it in the context of modern political life, and the role of government. How does the social license relate to fundamental public ideals such as responsible government and representative democracy? The paper looks at this issue by considering three measures: accountability, transparency and trust. If our elected representatives and governments are seen as lacking in these areas, what potential solutions are there?

Michelle Voyer

Social Licence to Operate at Sea: The role of SLO in the future of our ocean

In 2012 debates over whether a 'supertrawler' should be permitted to enter Australian waters erupted around the country and drew attention to the notion of a Social Licence to Operate (SLO) for marine industries. Since then SLO has gained considerable prominence in ocean governance, where it has been invoked in debates over a variety of maritime developments including fisheries, aquaculture, offshore windfarms and Marine Protected Areas. At an international scale SLO has become one of the primary mechanisms for drawing attention to the voices of civil society in the emerging 'Blue Economy'. Using a number of case studies, I will explore how SLO is currently intersecting with some big ocean governance questions such as: should we be mining the oceans; who are stakeholders in the high seas; and what is appropriate private use of public ocean resources? In doing so I will discuss the utility and limitations of SLO as a boundary crossing concept in ocean governance. I will also reflect on a number of ethical dilemmas that my work with SLO has thrown up from a personal and professional perspective.

Panel: Framing Ethical Research Questions

How to frame ethical research questions. (Ethics outside philosophy group)

Jacqui Boaks, Adam Andreotta & Michael Baldwin

Ethics has value in postgraduate research beyond just the ethics application. For many postgraduate researchers, there are substantial ethical questions they wish to explore in their research.

What kinds of ethical questions does good research ask and what is the best way to frame these?

In this panel session, Adam Andreotta, Michael Baldwin, and Jacqueline Boaks from the AAPAE's 'Ethics Outside Philosophy' group will introduce and explain some key distinctions to help you make sure you are framing and including genuinely ethical questions, identifying ethical issues clearly, and share some of the most fruitful ethical perspectives and theories.

They will also share some tips about how best to lay out and pursue ethical questions in your research.

The second half of the session will be given to time for participants to ask specific questions to assist them with the ethical issues and questions they wish to pursue in their own research.

Social Licence to Operate Presentations

Vivienne Brand

The contours of social licence to operate as a regulatory concept

Growth of 'social licence to operate' (SLO) reflects a turning point in the evolution of the stakeholder/shareholder debate, and a potential expansion of the power of employees, investors and society generally, described by the smart regulatory model as third party or 'surrogate' regulators of corporate activity. Despite the broad implications of SLO for society, little is known about the perceptions of company directors towards SLO. This paper reports the findings of an empirical investigation into the SLO perspectives of Australian directors, undertaken in the wake of a highly controversial proposal to formalise regulatory use of SLO, and revealing the complexity of director thinking. Directors' responses provide support for theoretical models of the regulatory value of third party surrogates, identifying SLO and concepts of trust, relationships and reputation as important, as intrinsic to "business as usual" and as part of the future. However responses also reveal a range of potential limitations in SLO's contours that impact its use as a regulatory concept. This demonstrates the need for regulatory systems to account appropriately for the complex phenomenon of SLO, so that its potential benefits are harnessed effectively and its limitations addressed, enabling coordinated responses from the state, the corporation and third parties.

Larelle Bossi

How thinking about place may aid in shifting the SLO discourse for industry within a neoliberal framework.

The Social License to Operate (SLO) has become embedded in sustainability reports, in CEO speeches, it has inspired core University units and research areas, and it has been embraced by civil society. The central idea is the SLO challenges the dogma of shareholder value maximization by emphasizing stakeholder concerns in addition to shareholder returns. It has been perceived as a way in which civil society holds corporations to account for their actions, in hope of disrupting corporate sovereignty within the neoliberal political paradigm. Its focus on communities presupposes that the SLO concept is intimately connected to place, however so little of the dialogue has involved any real thinking about how a sense of place may actually impact the ethical practice (responsibility) of the corporate sovereign. In this paper/presentation I would like to explore how thinking about place may contribute to the SLO discourse for industry within a neoliberal framework. I will do so by reflecting on the limitations of the SLO as exposed in Richard Flanagan's "Toxic". I hope to also contribute to thinking about how a sense of place in the SLO discourse may also aid in supporting the dynamism climate and social change pose upon industry and its regulators, which has all too often been reasons for its resistance.

Hugh Breakey

with Graham Wood and Charles Sampford

Defining the Social Licence to Operate

The Social Licence to Operate (SLO) does not have an authoritative definition, contributing to confusions and ambiguities plaguing the concept and its invocation. This paper argues that the SLO should be understood as: *(1) a community's ongoing acceptance of operations, where (2) that community is a continuing moral authority over those operations.* We suggest this definition adequately meets five desiderata any such definition should meet: i) extensional accuracy, ii) intelligibility, iii) utility, iv) novelty, and, v) simplicity. We show this definition is superior to other plausible alternatives. The definition makes clear the empirical and normative claims underlying any assertion of SLO, and helps clarify the cases where it should and should not be used. The definition does not aim to settle ambiguities inherent in the concept (such as what communities, or proportions of communities, can provide an SLO) or controversies about whether the SLO is ultimately an ethically attractive concept. However, by clearly setting out the SLO's meaning, the definition allows such questions to be more carefully explored.

Simon Burgess

Two cheers for social licenses

Talk of needing a 'social license to operate' has, in recent decades, substantially enriched our public discourse. Many a local community group seeking to highlight the adverse effects of a particular mining development, for example, have found it helpful to insist that the relevant company secure such a license. A range of worthy causes have been advanced in this way, and a number of significant victories have been earned. Nonetheless, it is worth noticing that such talk is merely metaphorical, and that the strategy involved is purely rhetorical. The kind of license involved has little in common with a mining license or driver's license, for example. It is not a written statement of permission that can be secured through compliance with a standard set of processes and regulations. Nor is it something that is either issued or revoked by a particular regulatory office, i.e., one that is formally authorised to do so by a democratically constituted legislative institution. Furthermore, groups that insist upon the need for a social license to operate often represent interests that are contrary to those of certain other relevant stakeholders. This being so, they are often unable to credibly claim any mandate for speaking on behalf of all the relevant stakeholders. Most importantly, however, if they lack the necessary moral and intellectual humility, their claims are often at risk of being divisive and counter-productive, and their victories mere triumphs of ochlocracy. This paper celebrates the rhetorical force provided by talk of a social license, along with some of the victories that such talk has helped to achieve. But it also seeks to highlight the unscrupulous and unprincipled ways in which such talk can be abused.

Tim Dare

On the Idea of Social Licence

It has become increasingly common to refer to 'social licence'; roughly, to the idea that the legitimacy of some activity – mining, oil exploration, the use of advanced analytics by Government agencies – depends upon its ongoing approval or acceptance by affected communities. On the face of it, social licence sounds like something we should care about, and justifications that appeal to social licence have a superficial plausibility. However, there are reasons to be wary of the idea. There is no consensus about exactly what social licence is, or how we are to determine whether an activity has it. There appears to have been social licence for deeply problematic practices – medical paternalism for instance. And it is surely no accident that the term 'licence' evokes familiar and formal approval processes which are in fact absent from social licence. I will argue that social licence illegitimately helps itself to the moral and political weight of more formal approval processes. It is an idea we should abandon, or at least treat with great suspicion.

Umair Ghori and Tarisa Yasin

A brave idea: Using social licence to regulate development of lethal autonomous weapon systems

International humanitarian law (IHL) is struggling to catch up with military technological development. The international community is increasingly alarmed at the prospect autonomous weapons are operating without human interface. The international community's concern with autonomy enabling technology in weapon systems is whether weapon systems with the ability to identify, select and attack military targets autonomously can comply with existing IHL rules as well as be morally and ethically acceptable. In this paper we explore an expanded concept of social licence to operate (SLO) to regulate the development process of the lethal autonomous weapon systems (LAWS). We believe it is more efficacious to hold the developers accountable to IHL during the developmental process instead of following an after-the-fact approach. This paper will also demonstrate that the process involved in issuing or revoking a social licence to operate has already begun to emerge in the area of IHL and autonomous weapon systems.

Joe Naimo

Systemic Breakdown and the Spectre of Mediocrity

According to the Ethics Centre (2018) "[T]he social license to operate (SLO) is made up of three components: legitimacy, credibility, and trust". Based on these three components, an argument is made to show that the SLO is not limited to the business realm, instead, extends across cultural, environmental and socio-political realms of engagement and intention causally connected to wellbeing. That the SLO is synonymous with the revolutionary idea of 'resistance' against greedy oppressive regimes, and organisations, acting dishonestly or carelessly in their pursuit of profit and power. Many domains of human services evidently suffer from systemic breakdown in the form of ineffective resistance, poor safeguards, and deficient regulation, primarily enabled by mediocre governance institutions. Accordingly, the ethical focus of this paper is on the health care system, the evident and unnecessary deficiencies, and the failings of the central governance institutions involved. Evidently, the SLO has been engaged to repel and challenge unethical conduct through multiple Health-Care related Royal Commissions across Australia (Aged Care, Mental Health and Disability sectors).

Susan Robinson

Does political participation require a ‘social license to vote’?

Events following the 2020 US Presidential election pose challenges both for the ‘ethics of belief’ and for the future of participative democracy. William K. Clifford’s *Ethics of Belief* (1877) was an ethics of belief formation, judging the justifiability of holding a belief rather than the ethical status of the believed content (Ho 2009). Society tolerates some cases of belief in the absence of evidence (e.g. William James’s leap of religious faith). For Ethics of Belief purists, tolerating faith-based belief may herald a slippery slope progressively embracing: belief confirmation (Clifford’s fictional shipowner using a defective method of inquiry to confirm his existing belief); human biases unwittingly programmed into the artificial intelligence that processes Big Data; and recent blatant acts of belief infirmation (e.g. leaders and political parties denying the results of a safe and fair election process).

Today, the USA and other modern democracies are witnessing increasing belief polarisation driven by social media platforms. One recent study tracing the Dunning-Kruger effect in American politics (Anson 2018) discovered that partisan cues undermine the ability of low competence voters to contradict stereotypical characterisations of candidates and policies from an opposing political party.

Simply delivering eligible voters to a polling station is not sufficient to secure meaningful political participation. Voting is both a right and a duty that requires educational support. This session considers how to deliver a ‘social license to vote’: civic education measures aimed at promoting meaningful non-partisan dialogue as well as wider political literacy.

Charles Sampford

Social license and legal license: a useful analogy?

The term ‘social license to operate’ (SLO) was popularized by the Extractive Industries Transparency Initiative in Africa (EITI). It started with cases where miners may have secured a legal licence. but local community, whose interests were affected were up in arms (often literally). Some recognized that relying on legal licence was wrong/risky – especially if the legitimacy of the legal license was questionable. They needed a social licence as well. Since then, term applied to a range of industries in developed countries: banking, logging, tourism and aquaculture.

There are various ways of understanding a concept. Our Institute is looking at a definition and, in this paper, an analogy to SLO. If Legal license to operate (LLO) is insufficient and an industry needs an SLO, how do LLO and SLO compare? What are their similarities, differences, and interactions? LLOs have a licensor, a licensee, a particular activity, for a fixed period with conditions, consequences for breach and a process for awarding, revoking and renewal. To what extent does an SLO have similar elements?

Michael Vincent

A Convergence-based Model of Justification and Social License

I seek to present a model of public justification via a convergence of reasons, for use in the context of a community which includes a wide variety of different perspectives. On the basis of this, I set out some problems for those who seek a social license for a special exemption from community rules. The purpose is to demonstrate the effectiveness of the model, and to provoke further enquiry into several methods used to make one’s project or professional endeavour justifiable to a diverse affected community.

Graham Wood

The role of 'dual systems' theory of cognition within the processes associated with social licenses to operate

A social licence to operate (SLO) is a concept that does not currently have a well-established definition, but here I will assume it involves a real or assumed authority held by a society (or a social group) that gives legitimacy to or takes legitimacy from the activity of a corporate entity. The concept of a SLO can be applied more widely than this, but the relationship between society and a corporate entity will be the starting point of this exploration. The granting and revoking of a SLO is a social process. However, the social process as such will not be the focus of this paper. This paper will focus on the cognitive processes within an individual (within the relevant social group). This paper assumes that within a human mind there are at least two systems (or processes) of cognition, thus it employs the so-called 'dual process' or 'dual system' theory of cognition. System 1 is often characterised as 'intuitive' (and fast), and System 2 is often characterised as 'deliberative' (and slow). This theory of cognition is presented and applied to the granting and revoking of a SLO. Central questions of this analysis will be: (1) when is the process within the mind of an individual (that is relevant to the granting and/or revoking a social licence) 'fast and frugal' (i.e., running in System 1) and when is it 'all things considered' (i.e., running in System 2)? And (2) what implications follow from the answer to the previous question.

(Note this is not a developed paper but a work in progress. So, the presentation will be shorter than normal, but hopefully the discussion longer.)

General Ethics Presentations

Charuka Ekanayake

Moral liability, response and outcome: Approaching counter-terror responses through the Pressure Points theory

Acts of terror can take place either during times of peace or of war. These acts can only be understood, and appropriate responses determined, when their physical and mental elements are appreciated. This paper will examine how the ethical frameworks relevant to the use of force during armed conflict can contribute to delineating more accurate counter terror responses. The paper limits its analysis to uses of force that take place within conflict settings, regardless of the intensity of the hostilities.

The in bello moral framework relevant to armed conflict is generally thought to comprise of two principles; distinction and proportionality. The principle of distinction permits the targeting of combatants and proscribes the targeting of non-combatants. Distinction does not however deal with the *amount* of force that can be used on a target and legitimizes any amount of force regardless of individual moral culpability. This paper argues that Distinction, in its unadulterated version, cannot guide appropriate counter-terror responses because it fails to distinguish between distinct sub-categories of persons that belong to the same general category. It submits that this shortcoming (along with other defects) also impinges on the accuracy of the in bello proportionality calculation. The paper thereafter explains that the factual matrix relevant to a given use of force can be divided into distinct components which, either individually or collectively, inform the morally permissible amount of force. The paper argues that approaching counter-terror responses through this Pressure Points theory can bring about outcomes that are far more justifiable on the moral plane.

Amir Rafee

Philosophical and Legal Approach to Moral Settings in Autonomous Vehicles: An Evaluation

Autonomous Vehicle (AVs) promise great benefits, including improving safety, reducing congestion and providing mobility for elderly and the disabled. However, there are discussions on how they should be programmed to respond in an ethical dilemma where a choice has to be made between two or more courses of action resulting in loss of life. To explore this question, this paper examines the current academic literature where the application of the existing philosophical theories to ethics settings in AVs has been discussed. It also looks at the legal framework, specifically normative principles in criminal law used to regulate difficult choices in an emergency, which some have suggested as a suitable contender in programming crash algorithms of autonomous vehicles. It critiques each theory, highlighting their benefits and limitations. Using our assessment, we then suggest certain objectives for manufacturers and regulators in designing and programming ethics settings for their AVs that are technically conceivable, and would make them morally acceptable and fair.

Sunil G Savur

'Right knowing' and 'right behaving' – the consciousness ethics approach to ethical decision-making

Several approaches and models of ethical decision-making have been postulated over the last several decades. These include descriptive, prescriptive, and integrated models. Universities and schools have been teaching ethics in business and other professional areas. However, unethical and illegal activities abound all over the world, some shockingly large, resulting in enormous damage and costs to all stakeholders including society and environment.

This paper will suggest that it is possible to slow and perhaps reverse the unethical trend by integrating the concept of Chakraborty's 'consciousness ethics' with the well-known Rest's ethical decision-making four-component model. It is observed that most people know what is right and yet cannot act upon it, and also know what is wrong yet cannot desist from doing it. This 'right knowing' relates to being aware of the existence of ethical issues and possibly having the knowledge of what is the right thing to do. This ability could be acquired from compliance (codes, legislation etc.) and cognitive (ethical theories) sources. However, considering that 'right knowing' does not necessarily or automatically lead to 'right behaving', Chakraborty suggests the 'consciousness ethics' approach – i.e., to do the right thing in the right way in each case and at each moment, one must be in the right consciousness. This paper will draw on the understanding of 'consciousness' from both western and eastern traditions, explore the concept of 'consciousness ethics', understand the term 'right consciousness', and suggest practical elements that have been identified for applying 'consciousness ethics'.

Alan Tapper

Comparing "Modern Moral Theory" and "Morality-as-Cooperation"

"Modern Moral Theory" (MMT) is an account of morality developed by psychologist Jonathan Haidt and other. "Morality-as-Cooperation" (MAC) is an account of morality developed by anthropologist Oliver Scott Curry and others. In this talk I will outline each account and compare them, focusing especially on where they differ. MMT contends that morality has five components: care; fairness; loyalty; authority; and sanctity. MAC postulates seven components: obligations to family; group loyalty; reciprocity; bravery; respect; fairness; and property rights. Both claim to be grounded in empirical evidence, MMT from psychology, MAC from anthropology. Both differ in major ways from any of the standard moral theories offered by philosophy. All this suggests we have work to do in rethinking the nature of morality. This talk will offer some reflections on these issues. It will put a case in favour of Morality-as-Cooperation.

Leila Toiviainen

How do you communicate with those with whom you have nothing in common?

At last year's AAPAE conference I spoke about the art of conversation; the paper was inspired by Craveri's *The Age of Conversation* (2006) about the great intellects of the French salons, such as Voltaire. This year I'm going back to basics by talking about forms of communication that are more important, sometimes they may be a case of life and death. For instance, many professionals such as nurses, doctors, paramedics and police officers have to be able to communicate with "the naked one, the destitute one, the outcast, the dying one". These are the words of Alphonso Lingis in his book *The Community of Those Who Have Nothing in Common* (1994), the inspiration for this paper. His work has been "situated within the debates among communitarianism, Marxism and postcolonial studies" (Nealon 1995). These narrow classifications do not do justice to a philosopher whose 14 books are characterised by compassion and the admission of the difficulties in communicating with others. More importantly, he gives answers to the question of how we can be ethical in our encounters with the less fortunate by following the example of Kant, "to recognize the other is to respect the other" (Lingis 1994: 23).

Adrian Walsh

Markets and Moral Leeway: towards a theory of moral latitude in the economic realm

In this paper I present an original theory of economic ethics which Joakim Sandberg (from the University of Gothenburg) and I are developing that has at its core the concept of 'moral leeway'. In much of the normative literature on markets, commerce and business, opinions are divided between the opposing poles of *Moralism* and *Economism* which we suggest is an unhelpful dichotomy. According to Moralism, market relations should be subjected to exactly the same moral norms that we employ in all other areas of social life. The market is simply one more sphere of moral evaluation. At the other end of the spectrum, we find a view called Economism, according to which the market is an entirely separate sphere in which morality is irrelevant. Our theory of Moral Leeway defends the claim that in the market a certain leeway or latitude is afforded to agents in terms of what is morally acceptable or morally permissible. The idea is roughly that the *norms* that apply in everyday morality – such as those that assert that we should not lie, that we should provide full information, that we should not undermine other people's interests or threaten their security, be that security physical or economic – still apply, but are simply *enforced less rigorously*. (Let's call this the "Latitude Thesis".) It is not that ordinary morality is entirely irrelevant but that there is more latitude given – acceptance of behaviour that we wouldn't accept in the sphere of *Hearth and Home*. The market is not a normative sphere entirely distinct from the rest of the human social world – ordinary morality applies (we call this the "No complete separation thesis"). In this paper I shall explicate what we mean by moral leeway, explore some of the practical and theoretical advantages of such an approach and finally I shall consider briefly some possible objections to the view.

Peng Yuqi

Integrating Ethical Awareness into Engineering Ethical Education

With the rapid development of the engineering industry, more and more ethical issues appear but are not noticed by engineers. Since a large number of engineering students are going to become future engineers, it is essential to awaken their ethical awareness. However, ethical awareness has not received enough attention in engineering ethics or engineering ethical education research. This article will clarify the concept of ethical awareness, explain the reasons that engineering students lack ethical awareness and demonstrate what kind of ethical awareness they need to have. Ethical awareness is the recognition of ethical issues and professional responsibilities and is closely related to a moral agent's occupation. The ethical awareness that engineering students ought to have includes the attention to micro-ethical aspects of considering individuals and internal relations of the engineering profession and to the macro-ethical aspects of applying to the collective social responsibility of the profession and to societal decisions about technology. This article suggests that ethical awareness should be integrated into all-round engineering ethical education, that is, self-education, school education, social education and family education.