

**A theoretical model for social licence to operate for  
the mining sector in South Eastern Europe.**



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## **Abstract.**

This thesis investigates the methodological narrowness used to interpret social license failure in the mining sector. Using a mixture of Actor-Network Theory (ANT), Poststructuralist theory, Political Settlement theory and knowledge from the mining industry, it investigates the core premises of existing models of social license, finding them lacking. It details challenges facing the mining sector, highlighting a disjoint operationally at a temporal level and spatial level between communities and industry. Representing the inability of the sector to address social licence failure as evidence of ontological narrowness in assessments of local community consent, it demonstrates it is the totality of relationships around the mine project that is critical. A new model predicated on a *Political Settlement* framework at a meso level, is created and populated as a visual model with icons. These icons, make up within the Social License Settlement Model (SLSM), a representation of the dynamic balancing act of relationships defining social license. The model is set in Thirdspace, reflecting that different participants have different perceptions of space, time and symbolism. The model was tested by showing how a social license was not solely about the mine and local communities but wider relationships. An examination of Rosa Montana mine project failure in Romania as it joined the EU, demonstrated that the process of ascension caused aspects of civil society to change, making securing a social license more difficult. Field research in Serbia, in a similar position in 2018 to Romania in terms of EU membership when Rosa Montana failed, with State mine regulator officials, private sector mine development actors and people living adjacent to mining projects. Similar issues with civil society appear likely to develop in Serbia, driven by the introduction of transnational environmental regulation. The SLSM captures how this might be avoided and mitigated.

## DECLARATION

This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree.

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Lastly, I need to thank my lovely wife Cathy for all her help and support and to my parents Joan and Dennis who truly valued education and opened the door for me but unfortunately are no longer with us.

Beware of the thing that is coming, beware of the risen people

Who shall take what ye would not give.

Did ye think to conquer the people, or that law is stronger than life,

And than men's desire to be free?

Pearce (1915) The Rebel

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## Acronyms and Abbreviations.

Actor-Network Theory (ANT),

Aquis Communautaire (*Acquis*),

Bilateral Investment Treaties (BIT)

Corporate Social Responsibility (CSR)

Environmental and Social Management Plans (ESMP)

Environmental Impact Assessment (EIA)



Environmental Permit (EP)

Environmental Social Impact Assessment ESIA

European Union (EU),

Free Prior and Informed Consent (FPIC).

Gabriel Resources (GR)

Good International Industry Practice (GIIP)

International Finance Corporation (IFC)

International Finance Institutions (IFIs),

International NGO (INGO)

Organisation for Economic Co-operation and Development (OECD)

Public Disclosure and Consultation Plan (PDCP)

Romania Ministry of Waters and Environmental Protection (MWEP)

Romanian Government Order (Order no) and similar

Rosia Montana Gold Company (RMGC)

Shareholder Value (SV).

Social license to Operate (SLO)

Software supporting the collection and mapping of spatial data (ArcGIS)

Terms of Reference (TOR)

World Bank (WB)

World Trade Organisation (WTO)



## **Chapter 1 Introduction.**

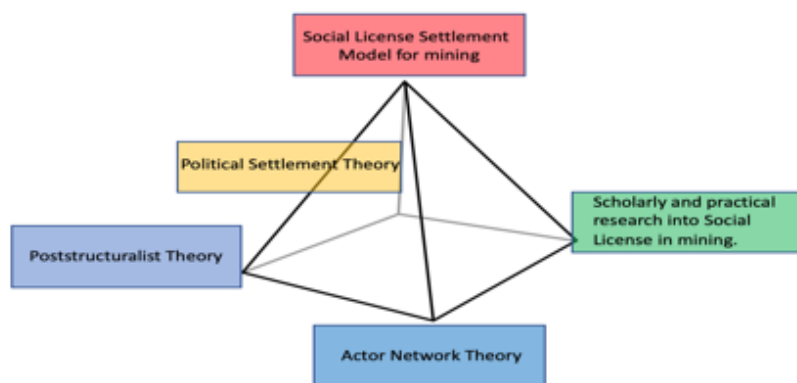
### **1.1 Rationale for the Research.**

This chapter outlines what, where and why research was undertaken to support the creation of a new model of social licence. The term *Social Licence to Operate* was first coined by a Canadian mining executive, Jim Cooney, more than 30 years ago (Cooney, 2017). Its definition and purpose, while still debated, relate back to the work of Joyce and Thomson (2000) as being “when a mineral exploration or mining project is seen as having the approval, the broad acceptance of society to conduct its activities” Boutilier (2017:2). The notion of ‘broad acceptance’ is reliant on normative, or positional terms such as *fairness*, *trust*, and *shared value*, the corporation may think it is fair, but the community may not. The result is a concept that is ambiguous and a “tendency for the mining sector to routinely talk in terms of gaining, and retaining, a ‘social licence to operate’” Kemp and Owen (2020:3) associated such attainment with a lack of protests or negative perceptions about a project. As Kemp and Owen (2020) go on to suggest, such an approach removes the need to develop a strategic approach or incentive for understanding of community values, priorities or any of the potential drivers of acceptance that a mining project would depend upon to achieve a social licence.

In reviewing and critiquing existing theoretical models of social licence I argue that, in addition to a range of inadequate or flawed ontologically approaches regarding the anticipating and mitigating of mining impacts on host communities, there is another critical factor promoting social licence failure. That is the lack of a coherent “development” framework by corporations that inevitably directs them to erroneously, to pursuing social licence with communities, through a focus on philanthropy. In a sense, when compared to the international development aid sector, with relation to host communities, the mining sector is ideologically stuck in the 1970’s.

Over recent years social licence failure, meaning the withdrawal of consent by the host community, forcing, through a variety of possible processes, the stopping of mining operations, has become the number one risk facing the mining sector globally (EY 2019, 2020). As such, it is logical to assume that either the existing theoretical models for social licence are either inadequate in supporting the mining industry to identify how to frame their risk operationally or these models could be effective but are not utilised. The assumptions are that no mining corporation wants to lose its ability to operate as a business and those providing the finance for mining operations will not want to invest in businesses which are a hostage to fortune.

Broadly, a theoretical pluralism approach has been used to position this new model. Such a theoretical pluralism approach has been used before to explore project failures, notably documented in the work of Sage, Dainty and Brookes (2014). As illustrated in the ‘Pyramid of Theories’ in Figure 1-1, the model is located within a catholic interpretation of Actor Network Theory, Poststructuralist Theory, Political Settlement Theory and current academic framings of a social licence to operate.



*Figure 1-1 Pyramid of Theories*

## 1.2 Where and Why?

A major driver for undertaking the research was the desire to drive change within the extraction industry, to lessen the intensity of conflict between corporations and communities. It was felt that a visual model would be useful to engage those with limited interest in social theory but concerned at conceptualising the underlying tensions of a social licence in real world application. The resultant new model for a social licence seeks to represent social licence to operate in the mining sector, and has been developed through both a desk case study and field research in Serbia.

The theoretical starting point for the development of this model was MacCallum's (2017) work on social licence to operate. In contrast to Thomson, Joyce and Boutilier, she emphasises the critical role of the governance structures (the State) in achieving a social licence, through their role as controllers and sometimes owners of the natural resources and their relationships with all of the users. MacCallum defined the relationship between the State and the communities that host mining projects as essential for social licence creation and maintenance in a mining context. The model being conceptualised goes further, illustrating State involvement in mining company relationships with communities is in fact *pivotal*, through the ongoing modulating of regional or local institutions, to ensure that a social licence becomes and stays a reality. In this thesis, social licence is one product from an ever changing and evolving set of relationships, *assemblage* in Actor Network Theory terminology and is not solely within the gift of the corporation, although mining corporations can certainly facilitate its creation and maintenance through their actions and engagement with host populations and the State. This "Social Contract" or Contractualism basis for social licence results in my model for a social licence, characterised broadly as a balancing act, representing a series of trade-offs between necessarily included actors.

Such a proposition for a model of social licence must therefore be premised as much on the formal relationships between the citizen and the state (host communities to mining projects), as between the mining corporation and the citizen (mining project to a host community). In the developing and testing of this new theoretical model premised on that citizen state relationship, it was necessary to explore how a change to that relationship could impact on mining social Licences in a real-world context. Similarly, there was a need within this thesis to define a theoretical framework capable of capturing the multiple and dynamic nature of society to illustrate social contractual relationships and having it produce visual products that can support analyse of Social Licence for those with little interest in the social theory.

### **1.3 Experiences Supporting the Research.**

#### ***1.3.1 Roots of a Professional***

Discussing with fellow Ph.D. candidates it appears that it is never easy to outline how one's personal experiences are definitive to their doctoral research. In some sense, my journey is the one aspect of my doctoral research I have been reluctant to open up. I have moved through many careers; social worker, drug abuse specialist, youth worker, community development specialist, project manager, director of NGO's, livelihood expert, entrepreneur, civil servant, social forester and finally, consultant to the infrastructure/extraction sector (whilst running a not-for-profit NGO with strong ethical drivers). What got me to undertake a relatively theoretical doctoral research thesis? Investigating notions of community acceptability and legitimacy, I need to nail my colours to the mast and illustrate that some of the analyses I bring to bear in later chapters, has been underpinned or coloured by considerable experience and constant reflection over many years, on the relationship between authority and communities. Writing from a perspective aimed at supporting the extraction sector to more effectively deal

with potential and actual conflict, might offer up the allegation as you will see, that I am in fact, a poacher turned gamekeeper. I have never subscribed to either perspective but have always had both a burning sense of social injustice and a pragmatic streak. I would argue that both these traits emerge from the personal experiences of powerless and exclusion. The journey to my doctoral research has been a rather long one compared to most PhD candidates, given that I started my candidature in the same institution I took my undergraduate degree, some thirty years ago. Having said that, I think I must go back even further to indicate where my notions of community, legitimacy, exclusions, class, and identity were first forged. The intellectual conceptualisation of those terms is one thing, knowing how they can be and are operationalised, what they feel like or might be expressed from a community perspective and ultimately how they drive community members' responses to authority, is where my childhood provided my career an enabling shove. That is what has formed the basis of my reflexivity in this thesis.

Growing up as a working-class boy in Portadown, County Armagh, Northern Ireland (UK), the emotional dissonance I experienced with regards to politics, safety, violence, trust, legitimacy, and social justice, all seemed to relate to what is euphemistically known as "the Troubles". It took me some time to realise that my experiences were not just related to the conflict but that my experience of the conflict was underpinned by what I now recognise as poverty. The '70s and early '80s were challenging times for working-class people anywhere in the British Isles. I would contend that it was a significantly different experience where there was a seemingly intractable conflict tying up one-third of the British army on the Rhine. Reiterating episodes of my childhood now, as a qualified social worker, I find it hard to argue I was not neglected, yet I was not. I lived in a different time, with different expectations and different perspectives of freedom, childcare and violence. Having already heavily sanitized

this chapter before running it past my supervisors, I am chopping it yet again. Perhaps best to say it was a childhood that although situated in what was a drab mid-Ulster town, delivered a range of experience more akin to a ghetto. Growing up immersed in the “troubles”; checkpoints, gunfire, searches, and bombing, desensitized a young man to violence and sensitized me to the fragility and limitations of the State, concerning control and violence, as well as human life. Lord Wigg was one of the few to stand out from Hansard UK parliament records of the mid-70s, as someone with extensive military experience, including in Ireland, yet who was not an ardent militarist said that “in Ireland, the extremist always wins” (Hansard 1974). The news on TV brought nightly exposure to burning buildings, sometimes ones we knew, and the radio was hourly everywhere, detailing bombings, shooting and strange *received pronunciation* (RP) voices from somewhere else, like on Blue Peter (BBC Children’s programme). Both growing up in a close community and understanding how that operated and having directly and vicariously experienced marginalisation reflecting on my parents’ years living in Wolverhampton before returning to their home town, was a powerful force in delivering an ability to empathise with powerless communities affected by the mining sector.

The period up to 1981 when I became 15 years old was littered with family members and family associates being murdered, bomb attacks in my small town, oppressive security, greyness, and puberty. This and the exposure to media management of realities packaged for an apparently largely gullible GB audience, by what was locally dubbed the *Biased Broadcasting Corporation* (BBC) gave one a sense of reflectiveness on society in general. As a young child, I had felt and seen protests that closed Northern Ireland down for 13 days in 1974 (Boyce and O’Day 2001:255). The State lost control and it happened again in 1986. In 1986 the UK government considered the protests to the Anglo-Irish Agreement (November 1985) as a possible precursor to Northern Ireland’s succession and the Irish republic had troops



poised on the border to race to the defence of the nationalist/Catholic community in Northern Ireland (BBC. 1). The agreement was seen by the Protestant community as ushering in de-facto joint authority over Northern Ireland, the UK sharing responsibility with the Republic of Ireland government for the internal affairs of Northern Ireland through an inter-governmental body. Orange marches and band parades became the focus of conflict between the State on one side represented by the largely Protestant police, Royal Ulster Constabulary or RUC (Source RUC 1) supported by the British Army and on the other, that significant part of the population that wanted to remain British. That same population that had been fighting and dying to preserve its British identity. I understood the not unexpected betrayal and what it meant to rural Protestants who were exposed to the campaign by the Provisional Irish Republican Army (PIRA) based in east Tyrone and South Armagh areas. These rural areas provided the catchment for my school and some of the highest death tolls in the trouble occurred here when measured by the percentage of electoral ward population (Source Cain 1). Border farms, some owned by protestant families for many hundreds of years, had family members working the fields, guarded by other family members with automatic weapons. They had the weaponry because they were "part-time" Ulster Defence Regiments (UDR) British soldiers (Source UDR 1). Without the weaponry, they felt they would have been exterminated, yet by joining the UDR they became *legitimate* targets for the IRA. A total of 258 Ulster Defence Regiments (UDR) soldiers died during the troubles and 300 police officers, with some 9000 injured in the conflict (Source Cain <sup>1</sup>) The conflict was nightly and brutal.

There was an excitement to the violent tension, tinged with an awareness not that the State had been usurped but rather was impotent and those that were not, had little or no sense of liberalism. This was critical in developing my awareness of how power operates in communities where the State does not have a monopoly on violence and the attendant risks.

### 1.3.2 Dissonance.

As a young man, I had friends, family and associates scattered across the spectrum of Northern Irish society, some in the police, some connected with fundamentalist churches, some linked to international conflict and others having served time in prison for terrorist offenses, all more confusing in that the categories often merged. Everyday life gave the opportunity to both develop the conversational practices that are needed to negotiate the intellectual and social tank traps of religious fundamentalism and develop an awareness that there are different realities that we all share. It was a land of highly charged symbols and signifiers, linguistic, colour, space, music and dress, perfect priming for a university sociology student! This experience and awareness of the diversity of what to many externally and internally would conceptualise as a homogenous society was significant in shaping an understand of community complexity. That the community was portrayed as a homogenous entity politically as a device by Unionist politicians, was highly informative in demonstrating the utilisation of narratives and their power in replicating themselves. Recognising how myths and external narratives are created and utilised as political capital, has informed my professional career and the dismantling of those monoliths in the pursuit of conflict resolution.

Arriving at university I was fortunately appointed a personal tutor who understood the community from whence I had come. Richard Jenkins, then as now a hard-working academic, was kind enough to be a touchstone for my interpretation of middle-class university life, straight from my building site summer job in Northern Ireland, with evenings of kickboxing and drinking. The work of Richard Jenkins, from Larne in Northern Ireland, who had worked as a youth worker in a large Protestant housing complex outside Belfast, rang so true to me that I found it hard to consider it “academic”. Blackman (1987) reviewed Jenkins’ 1982 and 1983 research having spent time working in that same locality and appear to have

understood some of the tensions represented by that body of work dealing with the stratification of youth in what was a very troubled period. Later when I started a Ph. D. programme in the Politics department at Swansea under the late Prof George Boyce, which I was subsequently unable to fund, Jenkins was supportive in terms of access to contacts with the community in Northern Ireland. Prof Boyce was an eminent political historian who like myself originated from mid-Ulster (Lurgan) and one of his areas of specialisms was Irish politics in the period up to the start of the most recent “Troubles”. Meeting academics who understood the levels of complexity of the Northern Irish security apparatus and how they impacted on communities, gave relevance and saliency to my early machinations on legitimacy, political history and how communities relate to state and non-state actors. Dealing with powerlessness is what drives communities in conflict.

During and following my degree I ended up arguing with “key players” in the very working-class, Ulster Loyalist movement, that I should be facilitated by them to enable Protestant communities to have a voice. I recognised that the poorest cohort of the Protestant community was patronised by their political representative, safe in the knowledge they had no one else to vote for within the "Orange and Green" dichotomy of nearly every aspect of Northern Irish society. I verbally wrestled with those well known as, senior loyalist terrorists, engaged in what they saw as fighting the IRA, in arguments about legitimacy, the State and forms of democracy. State legitimacy, the “movement’s” legitimacy, the legitimacy of violence, real tangible violence, nothing was entirely in the abstract, it was all very palpable. “Legitimacy” was viewed as a real currency of consent or support and determined the viability of “military” actions, or terrorist atrocities depending on one's perspective. My arguments, when addressed to those engaged with political violence, were often met with, "The community doesn't know what is good for them".

This was to be a recurrent theme in my later professional life. Professionally, the community, that amorphous entity lacking a single voice if indeed any voice at all, are euphorically embraced if they agree with those that want to use them to legitimise established courses of action. If they disagree with the powerful, they are either not representative or deemed ill-equipped to make a sensible choice.

Moving into the “end game” of the “peace process”, opportunities for meeting and arguing with a range of new actors didn’t always go so well. Understanding the limits of and opportunities for affiliation, how that can give licence to action, was a significant plank in understanding how non-state violence is often self-regulated. In my experience, non-state violence is rarely mindless, often poorly directed and limited by a range of social factors. Violence is a form of communication as much as an expression of power. Knowing how to calibrate and sequence engagement with violent people is a useful tool in engaging communities. Knowing the anatomy of constraints, they might face in operationalising violence, is critical to bringing non-violent change in any given locality. Those individuals that can mobilise violence which can be successfully portrayed as legitimate, can create a gravity that helps those mobilising further violence, to promote their own personal or political interests. As a social practitioner, one has had to be careful not to become the proxy target, violence requires a perpetrator and a victim. The last category is to be avoided.

By 1995 I was employed running a large EU programme on the Belfast Peace-line, the interface between Protestants and Catholics marked by a Berlin type “Peace-wall”. On an EU exchange visit, guests from east Berlin were shocked to hear residents shouting at their comments to remove the *peace wall*, calls of “no don’t pull it down, we want it higher!” By then I was a qualified UK social worker, specialising in community development and drug misuse, had met President Clinton’s advance party in covert meetings, mapping potential risks

from Loyalist terrorists to the then US president on his visit. I was pulled into the Clinton meeting with no warning to make local working-class Loyalist's sound coherent (I had a university degree!) and met with several US officials. That road of meeting governments ended up with my brokering discussions in the peace process with the UK and meeting the secretary of State Northern Ireland, the late Mo Mowlan and her entourage. My ongoing argument about working with communities had been won and I was "authorised" by senior Loyalists to work in rural Protestant areas organising communities. This was in no small part due to the successful weaponizing of communities' resident's groups by the Provisional Irish Republican Army (PIRA) and their political wing, Sein Fein. PIRA used/equipped or motivated these groups in the preceding 10 years, ostensibly to protest, against Orange marches/parades that touched or passed through what had now become, with changing demographics, republican/Catholic areas. For militant republicanism, this was a strategy that enabled the next generation of young people to be engaged in conflict, feeding off in some cases real grievances.

The patchwork of space; Protestant or Catholic, Orange and Green, Loyalist and Republican, it was impossible to escape the almost universal dichotomy of social life in Northern Ireland. Arguably the setting up of these groups was a clever tool for widening the potential of their political wing's, Sein Fein, development and deepening the links of their military movement into the community. My view is that it also tapped into wider discontent by working-class Catholics about the lack of effectiveness of their politicians in delivering positive social and economic change.

As an Alinskian (Alinsky,1971) trained community worker, I scoured hard-line Loyalist communities in three rural counties, setting up resident groups and equipping them to organise and construct arguments to try and get them to look at what their communities needed. Bus stops, youth provision, development funds, rural Protestant areas had even less access to

these European Structural funds than their Catholic counterparts. Many of these Loyalist areas were poorly served by their unionist local councillors, who often blamed allocation of resources to Catholic areas not on the presence of well organised articulate groups, working with their elected Sein Fein representatives but on a notion that resources were somehow freely given to them and Protestants were ineligible or discriminated against. I met with the Orange Order and much as my father predicted, their inability to either envisage or consider change was awe-inspiring. Their sense of entitlement and lack of appetite for change, and a hunger for entrenchment, meant I quickly realised my further engagement was pointless. Today I still argue that communities need to both build social capital and develop the capacity to articulate a perspective, otherwise they simply follow leadership, however poor. Poor leadership is threatened by community development as it brings challenge and change.

Engaging and equipping Ulster Loyalist communities to have an internal debate, to be able to rehearse and develop their arguments to challenge very coherent, well-practiced and highly skilled Catholic republican community representatives, was less about preparing them to engage in conflict, than preparing them to engage with conflict. Sophistry and an ability to negotiate are learned as are refined behaviours and skills. Representatives, political, or otherwise retain currency by being able to bring people with them. That requires both a physical and social space for discussion and trust-building.

### ***1.3.3 Developing professional credentials***

In Northern Ireland, by 1997 it was obvious that the conflict resolution process was one where violent actors would take ownership of delivering peace. Conflict, as an asset was wholly owned by them and the State approved a chosen few of which I was not one, to operate in this space as brokers. Supporting the release of former combatants from prison required mechanisms for ensuring they stayed “on board” with the peace process. Community

development person become a euphemism for – just out of gaol. It gave often poorly educated, unemployed former combatants (new designation for convicted terrorists) value and that value could potentially be extracted financially at some point from the process, either through employment or grant aid. This was my first realisation that conflict capital had a financial value. Holding on to conflict as a capital asset that can be financialised with violent people tugging at it, is a risky business. The risk is intensified when a panoply of interested national states buy into a process that wants violent actors to own the capital as part of the political engagement process. I had organised a charitable entity and secured some EU funding to develop a programme to work with former combatants who wanted to free themselves from the controlling ropes of their former terror organisations. This did not play well and eventually, I returned to Wales, essentially traumatised without knowing it.

The squandering of the thirty years of relative peace in Northern Ireland since the Belfast/Good Friday agreement by the British government, in terms of failing to be interested in addressing the isolation of poor rural and urban communities was to be expected. As urban centre transformed with a mixture of state and private capital, the people who had neither the skills or assets to participate in that development, clung to what they knew.

My professional work took me to Zanzibar where I have had the privilege of working with communities, again in a complex and oppressive political setting. I have been involved in several publications on community, education, and participation the most recent on a global learning project (MacCallum, Proctor and Hoad. 2020). Everything I encountered whilst working with communities in east or west Africa, Wales, or eastern Europe, resonates clearly with my Ulster quickening. In 2005 I was studying for an MSc in Planning and Regeneration at Cardiff University. I had a local town centre manager reject my participatory research approach to my project in his small Welsh town as flawed. His argument was, “Local people

don't know what is good for them". He assured me, as only an English professional in a cheap shiny suit in Wales could, that when I "worked in the real world" I would see that local people had nothing to offer on strategies for regenerating their towns. I have heard this type of statement being made in Northern Ireland by local counsellors, by Bulgarian, Romanian and Slovakian State officials about the Roma, hotel complex owners about the rural coastal poor in Zanzibar, town mayors in Serbia, representatives of large industry in Wales, politicians in Wales and mining company officials in Africa. Having worked in the "real world" for a considerable time and with an awareness of brutality, power and the sliding legitimacy of the State and its designates, I became more committed than ever to the "truth" that can be created through using participatory methodologies, in what I would consider a development context. I define a development context as one where change is required for the benefit of the poorest to live a dignified sustainable life.

As a professional who utilises participatory methodologies with communities, I recognise that the engagement process can be transformative, both personally and in terms of local civil society. It is essentially promoting the conditions to transfer the mechanisms for people to organise civil society. To deploy engagement techniques convincingly with communities requires a personal skills base, underpinned by aptitudes borne out of experience with communities over time. Understanding how powerlessness feels and understanding the factors that enable "social space" for engagement to occur are not in my experience behaviours that can be learned in the abstract. This is one reason there is a paucity of equipped social science trained people in the extraction (mining) sector. Creating skilled hydrologists, mine engineers, financiers and security specialists who can work in the field, equally requires time spent and exposure to success and failure enabling reflexive practice. There is a route to selecting, training, and enabling this process in those fields and a defined, agreed skill set that



can be concretised through practice. Currently, in the extraction industry, this is not the case for community development.

### **1.3.4 Objectivity and the need to unpack the academic.**

I currently work as an expert trying to predict and resolve the conflicts between communities and the extraction industry. Expert status is what underpins much of the legitimacy of knowledge creation in the sector (Joseph, Gun ton, Rutherford 2015, Radosavljevi and Radosavljevi. 2009). In my experience, many such experts appear to have worked their whole (rather protected) lives, operating in corporate groupthink. Social licence failure may, in part, be linked to faulty knowledge creation regarding communities being undertaken by “experts”. Largely, in my experience, these experts do not live in, belong to, or understand the type of personal, economic, and social relationships that dominate the lives of people in those communities they are paid to comment on. Rarely do they possess the academic, social science discipline to enable them to unpack the alternative realities of affected communities.

The creation of knowledge and ultimately narratives about communities, knowledge which becomes the building blocks to social licence solutions for mining companies, is always undertaken by professionals external to the community under investigation. The recent rise of social licence failures may be evidence of a range of changing social landscapes where competing narratives driving conflict have sometimes more value in the short term for communities than is likely to be realised by those communities from the underground mineral deposits. Conflict can be a product as well as a form of capital, certainly from the perspective of those in the media. In terms of those that may be equipped intellectually to unpack community conflict there is good reason why there are so few in the industry.

Coumans (2011) details at length the precariousness of development practitioners and anthropologists operating in the mining sector, those specialists who have professional training in interpreting communities. Embedded specialists are rare and most social specialists are contracted to deliver reports and solutions in a pre-determined format within a short timeframe. The paucity of alternative perspectives on communities may be one of the root causes of the extraction sector's failure to grapple with a social licence. Raising this issue of whether corporate selection, recruitment, retention, and indoctrination/conditioning were a critical aspect to social licence failure, a seasoned, strategic thinker and operator in the global precious metals mining sector, expressed his views on the issue. Bemoaning the socially and professionally restricted background that most mining professionals dealing with communities go through and the impact that has subsequently on their views of the community, he said in his educated Australian drawl; "It's the E word Mark,..... Empathy" (Interview 4, LM 2018). I understand what he is saying, having worked with communities for what is now on, in excess of 30 years. Fleckenstein (2007), using a range of theorists, skilfully unpacks empathy as not "just" an emotion but as a tool to support thinking and identified that it is essentially rational, although often created only through experience. She quotes (ibid:12) White (1983) who, "distinguishes empathy from sympathy".

Empathy consists of a "realistic understanding of the thoughts and feelings of others," while sympathy is "feeling with others. " My own experience is, that with all major project development, communities are viewed in a comparable way to endemic flora and fauna, something to be "dealt" with. Empathy or something eliciting a similar sense of understanding about the impacts of a mine is a necessary factor in terms of engaging with mine-affected communities but also in terms of facilitating the interpreting of and predicting community reaction in conflict situations. I am therefore unable to avoid reflexivity as a post-structural

geographer, regarding my own experiences underpinning, how I engage with research subjects. Finley (2002:4) makes a very good point when he says regarding research analysis that “[r]esearchers have to negotiate the ‘swamp’ of interminable self-analysis and self-disclosure”. A doctoral thesis of this type is not the place for extensive “swamp” wallowing but this notion of “empathy” and defining the relationship between the researcher and subject, very clearly needs unpacking. That in a sense is what I have tried to do earlier on in this chapter by detailing my own personal baggage. Specifically, this is pertinent in terms of understanding the veracity of, or my application of the selected method of data collection and my understanding of the relationship between “consent” given by a community and the role of “legitimacy” in terms of state and company on social licence issues. Oak (1997:10) details that “research is [as] a co-constituted account, adherents of participative research argue that as research participants also have the capacity to be reflexive beings, they can be co-opted into the research as co-researchers”.

This notion of reflexivity as something to be managed in research participants as well as essentially utilised by the researcher (Sage, Dainty 2014), raises significant issues of competency in terms of undertaken field research. Managing participants, in my case ranging from Roma people living in tumbledown housing to government officials, through to academics and mining sector professionals required, to illicit "real" answers rather than stock answers, certain personal skills. It requires “empathy” and the ability to demonstrate it in a culturally appropriate way, to enable the research subjects to feel safe. My reflexivity was equally qualified or enabled through my own experiences as outlined earlier. Outhwaite and Turner (2016:21) detail the philosophical destruction of "objectivity" that might seem as a counter argument to my emotional/rational investigative process when they say, “Bourdieu agrees with Foucault (and Derrida) that the idea of scientific ‘objectivity’ must be

deconstructed, that power always plays a role in sustaining scientific belief. He agrees also that ‘reason’ needs to be historicized and that there can be no appeal to a transcendental subject”.

The use or referencing of personal “experience” as a tool in investigating issues around social licence has become an accepted practice. Eerola (2017) in his investigation into failures of corporate social responsibility in mineral exploration references the need for learning in maintaining the social licence to operate and made four judgments underpinned by his own experience in the sector. Notably in the subject area of dialogue development, that which underpins social licence, experience is defined as critical but this time Mercer-Mapstone, Rifkin, Louis and Moffat (2017:140) define it as that which must be changed or disrupted, “Thus, dialogue in both models involves and inspires processes of creation, and potential social and personal transformation, through the disruption of perspectives and experiences (Bohm, 1996; Buber, 1947; Freire, 1972; Gadamer, 1975)” (ibid:140) . The first part of this chapter outlined historically the major influencing experiences that underpinning my reflexivity regarding community, legitimacy, and notions of consent.

## **1.4 Introducing the Chapters**

Chapter Two sets the scene within the mining sector to frame an investigation of the pressures on mining companies as corporate entities to operate and how they relate to state sponsored forms of capitalism or market economic activity. The temporal aspect of how mining corporations are driven towards short term operational decision making are discussed as well as the constraints placed upon the sector through lender regulated enforcement processes and associated implementation challenges. The current dominant mining business model still utilised processes where capital is attracted through speculative investment by early stage

mining exploration projects and these may either fail or be developed. If an attractive enough financial model is presented the mine can possibly change hands many times before becoming fully operational. There is currently nothing within existing business models that support the continuity of stakeholder identification and engagement. Promises made by respective corporations to local host communities hold little value as they are normally unenforceable. The exploration of “Contractualism” as well as developing an understanding of agency, necessitated an investigation of the nature of the factors driving decisions making by a mining company. The mining company or corporation, used interchangeably, has been viewed herein, as a capitalist-based shareholding entity. This is predicated on the latter’s potential freedom from a range of financial and governance pressures such as the need for servicing shareholders and notably the need to service capital in the short term, a process inherent through *Financialisation*. In contrast to this, the ability of Chinese funded mining projects to plan over a longer term due to fewer theoretical pressures from the financial market and shareholders are also explored.

Chapter Three focuses on the ‘Pyramid of Theories’, illustrated in Figure 1-1, designating "where" in a theoretical, spatial and agency sense, the new model will need to reside. Addressing the “agency- structure” debate and that of "space" was critical but I had to utilise several working propositions, rather than undertaking an extensive unpacking of the significant and vast bodies of work from both a philosophical and social theorist tradition. Recognising the need to develop a framework and foundation not just for deconstructing existing social licence models but building a new one a range of theoretical paradigms are introduced, and decisions made about what has utility.

Chapters Four and Five detail case studies research findings and analysis. They present a retrospective case study analysis of a mining project in Romania that was being developed

while the country was in the process of joining the European Union (EU) and current day case study on the mining sector in Serbia.

Chapter Six draws together the findings and analysis with the conclusions from the research to present the trialled Social Licence Settlement Model.

## **1.5 The Research Questions**

Both the desk and the field research investigate different aspects of change within the relationships between the State and citizens and how this affects mining projects social licence in their respective localities. Drawing inferences from the desk-based case study research, looking at evidence and in particular at the Rosa Montana mining project in Romania in the context of Romania joining the EU, stakeholders related to the mining sector within Serbia were identified and targeted for a series of interviews. These interviews were aimed at both understanding the relationship between the respondents and the state. This was an attempt to understand how this might change during transition to EU member state through the introduction of new opportunities for dissent, protest and paid involvement in regulatory processes. I investigated what respondents anticipated what would happen, based on their knowledge of what had impacted on the industry in a neighbouring country. This cross-case analysis within differing temporal setting was an attempt to identify aspects or factors that influenced citizens relationship to the state with regards to influencing mining. It also sought to illustrate that the State through losing aspects of its hegemony with citizens, was less able to be the sole regulator of consent required to operate a mine successfully.

Some of interviews in Serbia were with individuals and some were in a group format. A paid interpreter was utilised for engaging with non-professionals but in terms of mining professionals and government functionaries, this was not necessary, due in large part to the

generous support given from a Serbian academic professional and those speaking English within the sector. Access in Serbia to officials, academic and mining sector professionals was generously facilitated by a professor of mining at Belgrade University, and it is unlikely that the research could have been undertaken without his participation. Access to community stakeholders was undertaken both through direct approaches (Bor area) and through those representing tourism development in others. In addition to these formal interviews, a number of visits to Serbia were undertaken, accompanied by an interpreter, talking to communities affected by mining and investigating the respective drivers for a social licence. Based on emergent concepts and themes that were coherent across the two case sites and reflecting on factors identified as driving change, tentative hypotheses are constructed utilising aspects of the theoretical framework developed within the thesis. These hypotheses were subsequently compared iteratively with observed evidence to and the observed data to validate the structure of the new Social Licence Settlement Model.

## **Chapter 2 The Social Dimensions of Mining**

### **2.1 Setting the Scene**

In this section, the thesis addresses how some of the pressures that business (mining corporations) function and operate with. It attempts to illustrate, how aspects of mining corporations established global practices and the nature of how they do business, has shaped the parameters of theoretical discussion around social licence and driven the analysis of the loss of host community consent, into a theoretical cul-de-sac. The pressures from a rapidly changing twenty-first-century business ecosystem are explored and the impacts of some of those changes, namely *financialization*, can be seen to have changed the dynamics of what could be perceived as traditional or historical approaches to Corporate Social Responsibility (CSR). By CSR this thesis means those activities undertaken by industry to engage or secure compliance from communities whilst supporting their corporate image. Global business processes < where is the rest of this sentence?

#### **2.1.1 Why we need mining and European challenges.**

The EU has identified exploration and mining of certain minerals, it has classified as Critical Raw Materials (CRMs), as a key prerequisite to achieving the ambitious targets set out in the EU Green Deal. Whereas a Circular Economy is seen by many as the ultimate goal, for now, the EU currently acknowledges that CRMs still need to be accessed through mining. Past initiatives, including INFACCT Horizon 2020 project, that has supported some to research supporting this thesis, focused on developing innovative exploration technologies to discover metal ores and minerals to transform Europe into a sustainable resource-efficient and competitive economy. They identified the importance of social and environmental acceptability of the sector and the challenges faced in building mutual awareness and trust



between communities, society and the mineral exploration and mining sectors. The European Commission Joint Research Centre produced a report entitled Critical Raw Materials for Strategic Technologies and Sector (2020:79) detailing that “these materials are the basis for all industrial value chains and ultimately contribute to societal well-being to secure current and future supply of materials”

European’s face a stark choice in decarbonising its economy (Herrington 2021). Either they find mechanisms for obtaining these CRMs from under the ground in Europe, negotiating the building SLO storm from communities distrustful of the mining sector or they rely of CRM material from localities where the social and environmental impacts are less likely to be regulated. If they do the former, they can erect trade barriers to imported minerals, drive positive change within the sector environmentally and socially globally and strategically their industries are insulated from trade conflicts. This thesis with its SLSM, points to a need for mining companies engaged in working in Europe needing to radically change their business models to deliver mines with a workable SLO over time. Failure to mine in Europe for the EU, will result in its citizens being hostages to fortune and dependant on national states that might well see the EU as a competitor. It will also contribute to continuing environmental and social devastation in locations like the Democratic Republic of Congo (DRC). The former course of action, mining in Europe, offers major challenges. There is a rising tide of well organised networks in the EU which it would be possible to broadly typify as anti-mining. A good example of this is the Joint civic statement on the European Horizon 2020 project MIREU (2020), signed by signatories from Bosnia, Finland, Ireland, Portugal, Slovakia, and Spain in a well-crafted academic paper sent as complaint to the European Commission (EC). This complaint was directed at the MIREU project’s lack of community consultation with the construction of their SLO guide through the EU funded Horizon 2020 project. The EU is ill

prepared for this process of enabling mining, given that the rules for financing the mining sector with Green Deal EU monies have not been defined. There is no guidance for investors on how to define a project with a potential mining project with a social licence. The EU Technical Investment Group (TEG 2020) identified the need for a mining taxonomy. Such a taxonomy covers many sectors in the EU and identified critical issues that have to be addressed before investment of EU sourced funds can be committed. The TEG 2020 group recognised the complex nature of doing this for mining and their inability in terms of time and expertise to complete this task. My discussion in February 2021 with the head of the European Commission's DG responsible for issues such as mining and industrial growth demonstrated that there was very limited institutional understanding of the nature of the challenge. The lack of a taxonomy guidance framework for mining is in marked contrast to taxonomy guidelines relating to the financing of agriculture, energy production and a myriad of other activities.

### **2.1.2 Financialisation and the mining corporation.**

In reality, profit maximisation is not a legal mandate for corporations but a standard of conduct for private corporations (French, Leyshon, Wainwright 2011). The nature of the corporation and corporate governance has changed over the last thirty years, largely through a process of *financialisation* and with it the relationship between capital and directors. Zhang and Andrew (2014) delivered a definition of the term. *Financialisation* describes the evolution of the development of financial capitalism during the period from 1980 to the present (Sawyer 2013). This was a product of the increased prevalence of "hot" money, moving freely through the range of unregulated banking institution facilitated by London and US central banking measures and in Britain's case, tame former colonies (Özgür. 2008). Britain turned its decolonisation process into a financial opportunity and created a root for the London money market to access resources stripped by elites from former colonies, the results of criminal

activity and assets salted away from tax authorities with plausible deniability. This also explains how Barbados and the Cayman Islands became financial powerhouses. In this period in the UK from the 1980s, debt to equity ratios increased and financial services accounted for an increasing share of national income, relative to other sectors. As such, they became increasingly important within national economic and political contexts of the UK and other major financial centres notably the USA. Financialisation describes the economic process by which exchange is facilitated through the intermediation of financial instruments. Financialisation may permit real goods, services, and risks to be readily exchangeable for currency, and make it easier for people to rationalize their assets and income flow. In basic terms, risk as a trading commodity, through financial services and products becoming commodities, exerts pressure on how those commodities perform.

French, Leyshon, Wainwright (2011) detailed the impacts of financialisation and the birth of that concept, to account for the empowering of financial markets and those market processes extending influence over the unfolding of economy, polity and wider society. These processes “manifest at several scales, ranging from higher levels of instability within the economy as a whole, through pressure exerted on corporations by capital markets, to the equity effects of the financial system on individuals and households. In seeking to explain the change within contemporary society, financialization has, to date been relatively underplayed, particularly when compared to similar and related concepts such as neoliberalization” (Ibid 2011:2).

In this, French, Leyshon, Wainwright (2011) are alluding to the relatively little attention given to financialization as an offshoot of international neoliberalism. They are addressing the wide-ranging and extensive debate around neoliberalism itself, particularly given the impact of the former on business and that this critical aspect of the outcomes it drives has largely been

ignored. Gregorčič and Krašovec (2016) cleverly packaged up the pervasive nature of the impacts of financialization in their paper on participatory budgeting and social learning. The concept was seen to drive a process that coupled with global economic constriction caused a widely experienced political and fiscal realignment. They defined it as, “[t]he result of the global financial crisis and economic downturn in 2008 was socialism for the rich and capitalism for the poor, forcing citizens to shoulder debt through economic austerity measures that had different implications in different continents.” (Gregorčič and Krašovec , 2016). For them, the poor were forced to deal with the failure of the banking systems through governments introducing austerity programmes restricting their public services whilst those that benefited from government bailouts of financial institutions they had invested in; the wealthy, benefitted from their debt being carried by others.

The new "reality" of financialisation and the measuring of success is captured by French et al (2011), who describes the mechanism where shareholder value becomes the metric for business success, coupled with increased transparency and pervasiveness of electronic mechanisms for engaging with markets. The notion of shareholder value is critical to the arguments in this thesis. In that financialisation drives short term decision making in mining corporations, that inhibit long term relationship building with communities. The pressures by these processes act internally and externally on the mining corporation as international businesses. Within a social licence context, this is critical. The temporal aspect to both social licence conflict between community and corporation is set within the context of the (relatively) short term needs for companies to perform well and retain their share value. Financialisation could be one contributing cause to the documented increase in social licence failure over the last 10 years (EY2019). The pressure caused by Financialisation on mining corporations as they respond to short terms aspirations of those controlling their working capital, means long

term commitments to communities are hard to sign up to. Quarterly profits of mining companies are published, and this represents total income from the sale of product, minus overhead costs. If communities are viewed as an overhead cost, there will always be the temptation to squeeze the economic cost to push profit and shareholder value up. Similarly, although potentially very damaging to mining corporations, social licence failure may provide opportunities for new financial products to emerge. Financialisation is self-serving, it is not about wider societal utility.

This is expanded on by French et al referring to Froud and colleagues definition of the financialisation mechanism and its machinations as “[t]he rise of the discourse of shareholder value and a burgeoning economy of financial metrics to measure it, underwritten by the expectations of institutional investors for constant asset price appreciation, has led to the radical realignment of the interests of corporations and corporate managers in the US and UK since the 1990s” (French et al, 2011:4).

Zumbansen (2008) also charts these changes and whilst demonstrating that the very nature of a company as a legal person is a creation and a fabrication, he argues that external changes to the sources of companies' capital have changed the game, with regards to wider corporate social responsibility (CSR). Note here that he is addressing the wider concept of CSR, not as it is routinely applied in the mining sector and within this thesis, but more generally as the name for activities producing *social goods* or outputs from business that are a benefit to society. Zumbansen demonstrates with his wider concept of CSR, the company must adapt how it conceptualises and operationalises its social goods production, to engage with the new reality of short-term financial accountability. This thesis argues that mining sector businesses operating in instances where they might be exposed to factors which could precipitate the collapse of their social licence, need to pre-empt this. Pre-empting or anticipating the need to

build a secure social licence means not only making a realistic assessment but recognising the temporal aspect. Working with communities can be a lengthy process and processes for working with communities are difficult to "hothouse" or compress as Schirmer & Vanclay (2014) point out. To avoid the scenario that directors will be hamstrung by short term financial accountability, they will need to adjust to a new temporal reality with regards to shareholder value and expectations.

Directors will need to operate long-term strategies to secure social licence and to do that, they need to make the case for certain types of longer-term community engagement, to those controlling their access to capital. Recognising the prospective costs of community engagement throughout the life of the mine as early as possible within the mine exploration and valuation process would help. It would still represent an overhead but a non-negotiable overhead. The business model for mining must change in some way if it wants to reconcile the short-term pressure on capital return coupled with the long-term investment into communities. This may be tantamount to stating that there is a need to reconceptualise the business model, not just ensuring that investments can be sufficient long-term but perhaps to facilitate that situation, the mine corporation could have to surrender control over the ore asset. The mining sector could end up operating as a combination of service providers and others, governments, supranational governments, or agents of long-term bond production (banks), used to finance, facilitate, and broker social access to that ore body.

As Zumbansen says, "[i]n order to remain operational, the model had to be adapted to the processes of financial engineering, which – at least partially – moved the corporation out of the centre of the labyrinth of contracts in which it, or its securities, are entangled" (2018:5).

The global rise of social licence failure could be seen as being driven less by issues such as digital technology or resource nationalism (EY 2019:3) and more by a failure to respond to

the structural issue of changes in capital flows. It is important to explore the nature of Agency within a mining business as this defines why and how corporations operate with relation to host communities. The decisions taken at board level reverberate out to the communities.

Fauziah, Yusoff and Alhaji define agency in a business corporation sense as referring to the “agency role of the directors [business] refers to the governance function of the board of directors in serving the shareholders by ratifying the decisions made by the managers and monitoring the implementation of those decisions” (2012:54).

The agency of directors within a private company or corporation setting although expansive in pursuit of exclusively business motives is normally seen to be directed by law towards the primacy of interests for the shareholder, that of profit-making. The famous Dodge versus Ford Motor Company Michigan Court determination of 1919 is often used, incorrectly as a rationale for profit maximization by the corporation as the sole driver of business processes. Henry Ford, as the major shareholder in Ford Motor Company, had wanted to end special dividends to shareholders and reinvest massively in the company. Through the court he declared, “ ‘My ambition,’ declared Mr Ford, ‘is to employ still more men; to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this, we are putting the greatest share of our profits back into the business’ ” (Mich. 1919).

It is possible that Ford wanted to deprive the minority shareholders, the Dodge brothers of capital to start a rival company which of course they later did. His “charitable objectives” were seen by the court as outside the scope of the purpose of a private company, detrimental to shareholders and he was ruled against (Zumbansen 2008). If he had rephrased his intentions in purely business terms and not philanthropic ones, it would have been likely that investment back into the company would have been authorised.

### **2.1.3 Political ideology shaping corporation's social goods.**

The argument as to the *purpose* of the company rumbles on as demonstrated by the CEO of Blackrock, Larry Fink, in his open letter to CEOs in 2019 (Fink 2019). Blackrock is an investment company, started in 1988 and at the time of writing manages self-declared assets above \$6.84 trillion (Blackrock 2020). Fink's letter dated 14<sup>th</sup> January 2020 comes on the back of 631 institutional investors managing more than \$37 trillion in assets, urging governments to step up efforts to tackle the global climate crisis and achieve the goals of the Paris Agreement at the United Nations Climate Conference (COP25) (Investors 2020). Fink as an industry leader has declared that climate risk is a business issue, not a political one. As an industrial leader and as part of a cadre of investors who wield considerable economic power transnationally, both directly and indirectly, it is worth considering Fink's views. Mining requires "lenders", those that support the extraction of minerals through directing large amounts of capital and mining is a truly international industry. The focus of this thesis may be a model tested through research in South-Eastern Europe yet the finance for such mining activity in that region is European, Canadian, American, Australian, and Chinese. The views of Fink on the purpose of a company will have an impact on choices made by those allocating capital globally and will influence mining.

Two concurrent lines in Fink's (Fink 2019) letter are, "Purpose is not the sole pursuit of profits but the animating force for achieving them. Profits are in no way inconsistent with purpose – in fact, profits and purpose are inextricably linked."

If we accept Fink's proposition, it appears that financialization as a process and reality, has not, despite being a driving force for short term profit creation, managed to ensure business directors are programmed to support the purity of profit as the sole purpose of business. There appears to be a conflagration of risk evaluation and defining of company purpose in Fink's



most recent letter. The statements from the 631 institutional investors also appear to have resolved that pure profit as the motive for business is simply not enough. It may be, through exerting pressure towards shorter rather than facilitating longer-term plans and long-term value for shareholders, financialisation is about to be challenged by specifically the need for longer-term investment in risk management regarding climate change. That remains to be seen and the present Covid-19 global pandemic and the likelihood of similar recurring pandemics offer the corporation a platform for a longer-term purpose; promoting corporate resilience through building collaborative functions that can support human society resilience. Notably, Mr Fink sees investment preference and choice of employment for those most talented, being driven through an expression of social awareness that will drive corporations forward. This thesis is not the place to argue extensively on such matters, yet it is important to recognise that different value or political systems where companies draw their staff from, are likely to precipitate different interpretation of “social goods”.

Social goods as argued earlier, are those products of business that are positive and a by-product or co-product of business activity. Social goods are what a company might intentionally deliver to ameliorate a social licence conflict and hence are pertinent to discuss here. Given that the Bor mining complex in Serbia, where the most extensive aspect of the field research for this thesis was undertaken, has been bought by Chinese investors it might be interesting to investigate this concept of social goods, given that different political systems, are likely to precipitate differing social goods. Social goods could perhaps be termed here as social products and as products will have different values in different locations, producing water for a community in Wales is less likely to be viewed as positive than producing water in an arid zone in north Africa.

It is worth considering from a social licence perspective, how we might compare the values underpinning Chinese and western-based businesses as that might reflect different the production of different types of social products from each. The perspectives differ yet the location of where these businesses operate may overlap as in Bor. A third perspective from those countries which desperately need investment to reform or develop their economies, also needs to be considered. The Pew Research Centre (Pew 2018) researched attitudes in many countries towards China. Significantly, numerous African countries had significantly more positive views on China than those in the traditional “developed” or what is better termed, the industrialised global North. Current narratives in the UK for example, underpin a strong attachment to capitalist and nationalist values. Oxford University suspended involvement with a Chinese firm following intervention from head of MI6, Alex Younger. His critical point of concern was about China’s prowess in the engineering of data and the underlying political ecology.” China, he said has “a different legal and ethical framework’ whereby they ‘use and manipulate data sets on a scale that we can only dream of’ (Younger 2019).

The politicising of competition between Chinese “state” industries and large independent US, French or UK defence companies could be argued to be more about business, soft power and competing ideologies, given the latter countries “PLCs” are heavily dependent of state defence contracts. Chinese firms do not have shareholders and are state or communist party entities. Are western firms less able to be controlled by their respective states than Chinese firms by the Chinese state? Is there a merging of types of social goods production between western, North American centric mine operators/infrastructure developers and Chinese ones? The author is not aware of any such study. The purpose of a corporation may depend on the political origins or residence of that entity. The question is, would Fink differentiate between a social and a political purpose? The political and governance regimes impacting on a mining

corporation will ultimately determine aspects of their activities in mitigating social licence. The global issues caused by social licence failure, affecting Chinese, Canadian, US, British and French firms may drive competing political systems to produce similar forms of public goods, if such products are proven capable of resolving the issues of social licence.

In summary, Fink as an industry leader, appears to be resonating with thinking within the global North's investment sector, has defined climate change as a business risk but also clearly stated that business has a purpose other than making a profit. It is argued here that the type of social goods produced might be driven as much by the political ideology of where the business has its roots, as much as where the business is operating. Social good production, therefore, as included in a SLSM should recognise that the Mine as an entity or a container of activities and interests, is likely an entity which is political imprinted from a jurisdiction different to the one the model is operating in.

#### ***2.1.4 Capitalism and social obligation.***

In *Capitalism and Freedom* (1962), Friedman argued; "There is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud" (Friedman 1962:29).

Friedman's refutation of any attempt to attribute general social obligations to the business firm, is grounded in the idea that a corporation is a physical entity, created and structured through a series of private agreements among individual businesspeople. Attributing a *general* social responsibility to a corporate manager would, in Friedman's view, constitute both an unwarranted expansion of his *duties* and a non-permissible violation of management's duties to its employers, the firm's shareholders, echoing the Ford Vs Dodge (1919) court decision

outlined earlier. Friedman and Larry Fink at Blackrock from his letter (Fink 2019) agree that whilst a notion of general corporate social responsibility is not in line with the purpose of a company, corporate social responsibility that services the interests of the shareholder, would fall within the business purpose. Climate risk being viewed as “business risk” by a significant section of investor (Investors 2020) would support this assertion. It is too early to see how the Covid-19 pandemic will feature in shaping corporate purpose. For Fink there has also to be a “purpose” and intention, or corporate agency is framed within the company mechanisms and support for the interests of shareholder should be explicit. Friedman's position does not exclude it. Utilising or labelling as corporate social responsibility (CSR), forms of agency by the corporation board aimed at mitigating business risk, creates new questions such as who determines the temporal limits of shareholder's interests. Is it one year, 10 years or 50 years? Mitigation and management of social risk related to the mining business, and corporation agency toward the local community, is governed not by morality or social justice but by the 'financial bottom line'. Yet what is it that defines the temporal limits of that ‘financial bottom line’, given that a mining project may last 20 years?

In a discussion on social risk, Sandy Worden made the point concerning corporate reporting that Barrick Gold's (2012) Community Relations Standard, for example, defines a social risk as “a risk to the business related to external stakeholders, particularly the local community. ”(2016:337). It is worth clarifying, this is a potential risk emanating *from* the local community, not that which might *affect* the local community. What this approach does, is connect *social risk* to the business ‘bottom line’. This notion of a business bottom line relates to the precedence of financial considerations. The challenge appears to reside in the uncertainty of allocating resources to certain courses of action designed to secure and maintain a social licence.

Deanna Kemp, an experienced applied academic makes the point very well, in writing “[T]he difficulty is there is always uncertainty as to the appropriateness or effectiveness of social engagement with communities. Social licence and conflict between host communities and mining corporation is rarely about that ‘bottom line’” (Kemp et al. , 2016).

Shaping this notion of agency within corporations, Muellerleile (2013) examines and compares two separate views of the function of capitalism. He attempts to illustrate common purpose between Polanyi’s conception of (dis)embedded markets with the *performativity* thesis, authored mainly by Michel Callon. Polanyi viewed modern liberal capitalism as inherently linked to the increasingly remote or dis-embedded markets. Whereas “performativity” for Callon represented the power of language to drive change in the world, noting that language is not just a signifier or describing device it but may function also as a form of social action. Muellerleile (2013) points to this recent change in the process of global capital allocation characterised by financialization as evidence of Polanya’s accuracy but also in the way the language of business shapes the function of that capital.

From the 1970's we have, Muellerleile states, “The emergence of a market-based model of financial management that over the next thirty years would drive Western socio-economies toward many of Polanyi's worst predictions through the marketization of 'almost everything' (Leyshon and Thrift, 2007). ” (Muellerleile 2013: 1625). He goes on to ask a very pertinent question regarding the mining sector and communities hosting mine projects, in exploring the changing relationships between labour, capital and land, “What kind of methodology should we use to analyze a system where fictitious or not, financial markets influence many of the political, social, and even cultural decisions we make?” (Ibid:1626)

This might be a particularly prescient question given that there are pressing obligations to successfully extract critical raw materials within Europe, to support the technological

advances needed to combat climate change (INFACT 2019). Many of these critical raw materials are located in South-Eastern Europe and the "Baltic shield" of Northern Europe, hosting investors and mining operatives from across the globe. These countries with their CRMs are in very different political jurisdictions, yet a large percentage of these CRMs are under the ground in localities that are either governed through stringent transnational environmental regulations (parts of the EU,) or in locations like Serbia, who are in the process of accession to the EU, with a target date of 2026 for EU membership. This makes the process, in a practical sense, of getting these critical minerals out the ground, difficult to near impossible. This is the case because a mining sector trying to satisfy relatively short-term financial markets, using valuations systems that are ill-adapted and lacking an effective language at present to encapsulating social risk, do not have the tools to enable extraction. Given the current guidance from regulatory bodies such as the World Bank (IFC 2014) and throughout the plethora of literature on the social licence (Franks and Cohen (2012), Owen and Kemp (2013), Zhang, Moffat and Lacey (2015) Constanza (2016), Vanclay (2019) and many others), long term strategic engagement with host communities is a basic requirement of obtaining and retaining social licence.

The role of companies within the mineral sector and their business model is underpinned by the financialization process and the other aspects driving capital investments. If mining corporations are going to keep an ability to access capital successfully and deal with short term market pressures, they will need to ensure that "social risk" and its necessary mitigation, are factored into mining project valuation. They will logically have to ensure that the language, concepts, and business systems are there to drive *performativity*. There must be an engagement between neoclassical economics and the new reality of an ever-changing social discourse. As MacCallum and Proctor (2019:10) put it their "Canary in the Cage" paper regarding social

licence, “This requires the financial sector to recognise the need for risk reduction measures and classify them”.

We can see that “climate risk” has been flagged by the investment sector and there are clear metrics for assessing this. The social risk appears more problematic in terms of how it is measured and finding and what the metrics are. These metrics, perhaps workable social licence indexes, are needed to value social licences as assets linked to company performance, much as carbon, another invisible but tangible asset that can be measured, is starting to be valued. Mining company performance, a key metric for attracting capital, is not abstract and aggregating results may produce a market "logic" reflected in Muellerleile's *performativity*. Muellerleile (2013: 1626) defines this concept of *performativity*, “as it has been put to work to analyze financial markets by Donald MacKenzie and others, [as focusing] on the ways neoclassical economics influences market construction. Thus, performativity demonstrates how abstract market logic can be productive of actually existing markets that appear to reproduce that logic across a diversity of social and geographic contexts.”

Callon (1998:2) instead defines performativity as the concept that economics; “performs, shapes and formats the economy, rather than observing how it functions”. Observing, “how it functions” is, for Callon, less important than how it shapes the economy and the subsequent outcome. Economics incorporating new “truths”, will drive change in how the global economic system designates investment and assesses financial risk. In that sense, given that EY (2019) identified social licence failure as the biggest single risk factor facing mining sector operators, there is a major failure in the mining sector that needs to be captured by a performativity thesis. Current forms of logic utilization are not working, the logic must change and drive new business models and practices or abandon the resources.

Muellerleile's point is well made, that by merging Callon's performativity with Polanyi's theory of embeddedness, linking land, labour, and capital interests, it is possible to create a more holistic approach to analysing how markets can serve the wider socio-economy. Polanyi defined the economy as an "instituted process", meaning that it was not an independent sphere of human life, but instead "embedded" or "submerged in social relationships" (Polanyi, 2001 [1944], page 48). Callon's wariness of "institutions", makes him view the *assembled* social as a continuous creation or translation and (Callon 1998) views *society* as a flawed, counterproductive construct. Muellerleile (2013: 1629) says, "he has attempted to overcome the society/ economy binary, and as such the paradox of embeddedness (Slater, 2002), as well as the debate between formalism and substantivism (Caliskan and Callon, 2009). " For Muellerleile, "These processes of marketization are defined by action, agency, and assemblage" (Ibid:1629).

Agency results from the interrelatedness of actants, or "sociotechnical agencements" and are transient but expressions of *truth*. Assemblage is the English version of the French word *agencement* and this terminology was created by Deleuze and Guattari as a way of using Dynamical Systems Theory to address social theory requirements. Agency here could be termed as the actions taken by a mining company by its directors and their proxies on site. As Muellerleile (Ibid 2013: 1630) succinctly puts it, "and with intellectual debts to Deleuze and Guattari, agencements are ephemeral, but all-encompassing configurations of reality. As such, like Polanyi's autonomous or disembedded markets, agencements in effect have no consequential 'outside' (Caliskan and Callon, 2010, pages 8–10) as they draft their own contexts. It is the relations between *market components, particularly framing mechanisms, market devices, and scientific knowledge systems, that constitute both the agency and the context of the agency*" (italics added).



This useful quote from Muellerleile relates to the validation of why a new model of social licence is needed and as to how the author has gone about creating the building blocks of assemblages. The creation of a new language which the new model will drive, can itself support change within the industry if we are to except the premises of performativity. Similarly, if we look at the italics in the quote above, it demonstrates that framing mechanisms and a range of component parts set the context for agency and agency itself. They are at the crux of what this thesis is trying to encapsulate.

### **2.1.5 Conclusion.**

The standard analytical frameworks link social licence failure to management practices through designating standard operating practices in engaging, normally unsuccessfully, with communities. This argument for working in this fashion is grounded in a form of basic transactionalism embedded in capitalism. The corporation functions within a larger marketplace and this affects not just the sale of the product but access to finance for the corporation. This chapter details why we need mining and the challenges within the EU. It then tracks the effects of financialization on the functioning of businesses and agency of the directors of the company. In doing this it explores both the role of directors and profit maximisation practices and questions how financialization, with its propensity to shorten the timeframe businesses operate in, might be contributing to social licence failure. It points to long term planning and relationship building as critical to social licence building but illustrates how that might be at odds with global financial pressures. Recognising that the new social licence model must sit within a wider economic theory, *performativity* and *disembedded markets* concepts have been utilised. This has been done to demonstrate whilst reflecting on a discourse on business purpose, drawing from current real-world events and debates, that company and directors' agency are linked to language and global financial processes, latterly

focusing on financialisation. Relating the realities of the temporal and the volatility of social licence, this section identifies a critical real-world failure of the current mining model in Europe that will over time, if Polanyi is correct that business is “submerged in social relationships” (Polanyi, 2001 [1944]: 48), lead to a transformation of current mining business practices. To follow his logic, the needs of European society to access the rare earth materials from elsewhere will generate the space for a new business model, so long as the current social and environmental architecture of EU remain unchanged.

The wider debate within the corporate world that business has a purpose other than profit maximization would resonate with this. In a sense mining is the perfect petri-dish in which to explore the agency of corporations, society, markets, land, changes to global capitalism and their interrelationships. It is the nexus of competing concepts of space; the corporate, financial, and geological between global finance and mine companies on the one hand and a range of community actors and activists on the other. The varying conceptualisation of natural asset value and use are supported through the embeddedness of meaning, symbols, experiences, and livelihood. Similarly, there is a divergence in temporal frameworks of those involved for it might be a project, a job, or a home. There is a clear need for a theoretical platform or model to enable some form of clarity. Lenders or finance capital demand either regular returns on investment, and/or unambiguous assessment of risks to future profits. This ‘impatient’ capital makes it increasingly difficult for mining corporations to invest the time and resources necessary to seek ongoing consent from ‘society’. Fichtner (2015) details how the selective practices of Dutch and Belgium property developers engaging with impatient resulted in differing outcomes for national economies more generally. In a mining context the ability of communities to delay or push production cost up through social/community resistance, lenders

drive to can lose patience and force the mining corporation to cut their losses and abandon a project.

## **2.2 A Social Licence to Operate (SLO).**

### **2.2.1 Introduction.**

It is necessary to both define what social licence is and give an overview of the scale of the problem to the mining (extraction) sector represented by social licence to operate failures. This *problem* with a social licence to operate, is not confined to one country or indeed one continent and the financial implications for both those that operate mines and those that finance them, are huge. Otto, (2017:2) states that “The respective roles of government and extractive companies, with regards to community development, are complex and vary considerably from nation to nation and from project to project”.

The complex nature of this tripartite relationship underpins whether a mine can operate or not in all localities. The relationship between these three realms, the state, the company and the community is difficult to unravel and the cultural and social factors, as well as the legal and political factors, make it difficult to take away little more than generalised lessons from the literature and recorded experience. The reality is that the failed relationships between communities and mining corporations, characterised as social licence to operate failure, represent the biggest single market risk to the extraction sector in 2019 (EY2019).

In Andrews, Elizalde, Billon, Oh, & Thomson[‘s] (2017) study of the conflict between communities and the mining sector between 2000 and 2013, the Canadian based team of researchers pointed to a sharp rise in recent years of issues of conflict between communities and companies and substantiated this with reference to “The Business and Human Rights Resource Centre (BHRRC), EJOLT ,various Peruvian sources including the Sensoria del

Pueblo and a recent compilation by the International Council of Mining and Metals (ICMM), 2015.” Their research which has drawn together many of the top North American academics in the field of Social Licence to Operate (SLO) in mining and is underpinned by an assertion (ibid:11) that despite innumerable conflicts having been widely documented, it has still not been possible to design a model for social licence conflict as the process was partly being driven by “*rapid globalization*” (Ibid:11 emphasis added). Rapid globalisation is not defined, and this is unfortunately symptomatic of much of the literature around social licence, in that plausible factors are put forward, remedies suggested but there is little in terms of theoretical analysis of the relationships or even an agreement on what they are. The lexicon of analysis is locked into rather woolly wielding of terms such as “*stakeholder*” “*trust*” “*community*” “*shared content*” and a range of others. Furthermore, research is limited by pragmatic constraints caused by clients’, by which I assume they mean mining companies’, need for confidentiality (ibid:12). It is important to realise within the terms of this thesis that the “confidentiality” issue has provided certain challenges when working with the private sector, the State and academic actors. It is precisely because various theorists in the field utilise a variety of terms coherently and logically, that it is so difficult to discard many of these “umbrella” terms for the relationships between actors, yet there are so few prescriptions for success.

The approach of this thesis is rooted in the objective outlined in Sage, Dainty and Brookes (2014) in,

“[a] critical argument in favor of theoretical pluralism: Project failure and the many and varied limitations of project management”. Like this thesis they “do not claim to provide a definitive survey of critical engagements with project failure; rather we hope to provide sufficient momentum, reflexivity and plurality to open up project failure, and similar emblems

of managerialism in project management, for more critical analysis ” (Sage, Dainty and Brooks 2014:554).

The aim of this thesis is to produce and test a model that offers plurality and reflexivity as is implicit in understanding of representing social licence. The term *Social Licence to Operate (SLO)* was first coined by Jim Cooney (Cooney, 2017) and Boutilier, (2017:2) makes the point, that Joyce and Thomson (2000) made the first attempt to define an existing social licence to operate within the academic literature, as quoted earlier in this thesis, as being “when a mineral exploration or mining project is seen as having the approval, the broad acceptance of society to conduct its activities”. Interestingly Thomson’s most recent papers detailing extensive research into conflict within the mining sector, fails to use the social licence to operate term once, despite him having written numerous papers on that subject. Almost twenty years on from social licence to operate being coined as a term, it appears to be mutating. Boutilier suggested “usage of the term ‘social licence’ has spread outside the mining industry to such an extent that the qualifier ‘to operate’ is falling into disuse” (2017:2). Morrison (2014), sees it necessary for all organisations to have a social licence for their activities, including government and non-government organisations.

Kemp and Owen (2018) in their social performance position paper, write of a social licence becoming tactical rather than the outcome of strategic relationship building and measured by absence of protests and positive perception studies. Whether ‘social licence’ or ‘social acceptability’, it is a useful and accepted catchall phrase for defining something that is required and without which business or activities based in a locality cannot operate, for reasons associated with the social context and those within it, yet defining social licence continues to be problematic. Building on a designated social licence as the number one risk factor facing the extraction sector (EY2019), EY produced a promotional YouTube video (YouTube2019)

that details a range of potential contributing factors to social licence failure, and I quote; “the rise of nationalism, disrupters”, “changing stakeholder landscape and stressed the need for mining companies to, *make it part of your companies DNA*” (emphasis added). The question is *what* part of your company’s DNA and what does this mean in terms of operating a mining business? There are many questions compounded here, who are the stakeholders, who are the communities, how can a company tell their social licence is under threat and what can they do about it, how much will it cost to resolve or secure, is it viable to invest in processes with no guarantee of financial return and how will the board justify spending money and increasing debts or operational expenditure/costs to the shareholders? The current state of play within the industry is that social licence is treated like a "Black Box" with inputs and outputs but unlike the processes of environmental compliance, engineering and cost analysis of production, the factors driving the analysis of social licence or essentially remain largely anecdotal in terms of their analysis. Frederiksen (2018) neatly framed the issues of relating the complexities of social risk to practice through utilising the work of Bice, another theorist struggling with the lack of application of theory to reality. He quotes one study which sought to interrogate risk noted that “a key challenge of exploring the mining industry's application of social risk assessment is the paucity of empirical studies on this topic” (Ibid:14).

In a sense, arguments for preventative approaches, always have the same validation issues to address; do we really need to do anything, how do we spend as little money as possible for maximum benefits and what are the mechanisms at play which drive change? As with other fields of practice, for example, health promotion specialists in a western democracy trying to design community interventions, these are the types of standard questions raised by companies, financiers, and investors, in trying to deal with social licence matters. Thompson (in Andrews 2017 et al:22) alluded to the complex nature of engagement when talking about

CRS, Corporate Social Responsibility, "[c]onflict can arise in the absence of such programs and in the event that they are poorly designed or poorly implemented. While CSR practices have contributed to progress in company-community relations, given the high degree of complexity involved in successfully applying such practices, there are many pathways leading to unintended consequences and failure".

As with the health promotion analogy, there is a need to identify the vectors of disease, or whatever behaviour one is trying to alter, so/therefore an accepted language or lexicon is needed. The extensive lexicon of a social licence offers opportunities for investigating the extensive range of understanding on how to approach working with communities. There is however no clarity in terms of identifying vectors or proven relationship between approaches and remedies. An example might be CSR implying a one-way relationship of responsibility from the corporate towards those in the social realm. It does not, to my interpretations, imply a negotiable relationship, although that would no doubt be the stated ends. Is CSR solely about reputation or trust-building through distributing resources to assure legitimacy and is there anything wrong with that? Argenti, Landucci, Spadoni, & Cozzani. (2015) in their paper titled, "[t]he assessment of the attractiveness of process facilities to terrorist attacks", identified the operating company's reputation with the local population, as a factor reducing the likelihood of an attack. In their words, "[c]ompany reputation and image are extremely positive if the local community judge company activities beneficial" (Argenti, 2015:175).

Within the academic and grey literature as well as in practice, there is a "feel" for the importance of relationships and reputation. Nevertheless, little has been published on either proposed metrics or mechanisms linking a reduction of business risk from enhanced social acceptability in an empirical sense and no coherent model demonstrating the relationships and their connectedness. The process of "engaging" with the community, however they are

conceptualised, as stakeholders, as a single community or otherwise, is seen as critical in all the academic and grey literature. “Failure to engage stakeholders in meaningful ways is seen to be the predominant cause of social conflict in resource extraction, with the costs of such conflict running high (Davis and Franks, 2014; Hall and Jeanneret, 2015; Hindmarsh, 2010; Lloyd, Luke, and Boyd, 2014; Pullin and Knight, 2003)” (Mercer-Mapstone et al 2017:137). Mercer-Mapstone quote Davis and Franks 2014 when she lays out the consequences of this failure, “Potential costs to resources companies can run into the billions of dollars when stakeholder engagement is not carried out successfully; expensive delays can result from resistance in the form of protests, violence, campaigns, or activism (Davis and Franks, 2014)” (Ibid:138).

The lack of progress on dealing with the issue within the industry and the lack of a coherent theoretical model may be why one of the leading global auditors ranked social licence failure as the most significant threat facing the extraction sector with, “54% of 200 mining executives” (EY 2019) questioned identifying social licence as the number one threat to their industry (mining/extraction). Gehman, Lefsrud, & Fast. (2017) point to the proliferation of the concept of social licence to operate in North American media, “after mentioning the concept of social licence in less than 10 articles a year from 1997 through 2002, news media mentioned social licence in more than 1,000 articles a year from 2013 to 2015, and more than 2,000 articles in 2016”.

The term “Social Licence to Operate” (SLO) may be a useful catchall but it remains problematic in terms of defining the parameters except whenever SLO is lost. One knows when one does not have a social licence to operate because despite holding all relevant statutory Licences, your business is inoperative, and your capital is not working. The company can usually locate the site of the “disruption” both in terms of communities and operations but what



is it they have lost and how can they get it back? Does it degrade by levels or switch on and off, if it has levels how can they be calibrated? Does it remain stable and who was at fault? The conflict causing an SLO may be compounded or driven by issues of litigation or staff retention but more importantly for the stymied operator, what could have been done differently and what can be done now?

The formal mechanisms for resolving a conflict between investors and national governments are starting to recognise the permeability of its standard operating procedures to a range of shifting social and ethical norms. A range of critiques is starting to emerge that present the importance of a wider strategic review of how issues like a conflict between corporate and community stakeholders can be challenged. Mercer-Mapstone is one of the few theorists to analyse how to categorise concepts and actions set within industry culture. Relating to a classification of types of (approaches to) dialogue into what could roughly be construed as the dichotomy between a “learning” and a “goal orientated” approach she succinctly puts it in a way which resonates with my own experience from the field, “[i]n an environment such as resource extraction, where outcomes are corporate if not government economic imperatives, this structured strategic approach to dialogue can be seen to make sense, and that may be why it predominates. While certain affordances are allowed by the strategic conceptualisation, challenges also arise. Dialogue that is goal-driven and time-constrained can limit opportunities for learning and relationship building” (ibid :144).

The constraints are driven by sectoral culture, which is term is driven by both a lender/board accountability model and the reality that key international staff who control local business processes are highly mobile. Starting to develop, is pressure on corporations which may force them to change some of the established practices and foci of their businesses.

### **2.2.2 The SLO context.**

With a review of some of the factors that drive the failures of existing models of social licence in mining several factors are clear not least the necessity to cut free from the current academic and industry framing of the subject, towards a new working model of social licence to operate. Such a model, to have utility for the mining sector, need not be reliant on normative, or positional terms such as *fairness, trust, shared value*. The corporation may think it is fair but the community may not. It goes on to detail the existing theoretical models of social licence and the lack of a development framework by corporations, erroneously pursuing social licence with communities through a focus on philanthropy. The chapter then identifies the critical aspect of MacCallum's model, which is adopted into the model created in this thesis, namely that the State not only is essential for a social licence to exist in the mining context but that it is *pivotal*. Putting the models in a tabular format, it is clear to see where some of the gaps to be filled by any such new model might be. The subsequent sections begin to set the framework for this new model and explains how a form of "contractualism" offers opportunities to reconceptualise social licence as a product of a dynamic, complex social process. This highlights a need to develop new theoretical containers to support the development of a new model of social licence based on "*Political Settlement*".

### **2.2.3 Failures of existing social licence models**

This section looks at some of the factors that drive the failures of existing social licence models and the consequences of diverse methodologies underpinning current thinking. It looks at how we might, though going back through the history of political and philosophical thought, find a new foundation for developing a model of what is a complex business, social and environmentally linked accommodation necessary to enable mining projects. It is important to make clear that any attempt to design a formulaic model to encapsulate the precise

machinations of society, locality, actor choices, time and subsequent outcomes concerning social licence to operate, is doomed to failure. Natural or physical science, even with the arguable advantage of working with physical material rather than with relationships between individuals and societies, has been unable to develop a consistent Theory of Everything (Hooft 2019). Yet there is consistency in that numerous academics cite examples of extraction sector projects being compromised by public opposition or social licence issues and note that this has been extensively documented (Brown et al, 2011; Davis and Franks, 2011; Prno and Slocombe, 2012; Thompson and Boutilier, 2011). Debrah, Mtegha and Cawood outline the link between lack of utility of the concept of social licence and the questionable theories use to explain current social licence thinking, “[d]espite the momentum that SLO has gained, there have been reservations about the theoretical underpinnings of the concept. Because of the lack of theoretical rigour as a construct, opponents often argue that SLO is not clearly define” (2018:97). What this tells us is that there is no single theoretical or legal definition of Social Licence to Operate and the opportunity exists, as defined in Chapter One, to construct some sort of framework with utility for the mining sector. In a sense this thesis represents an approach were, to quote Layder (1998: 9), “social research and theory should be brought together in the service of explaining how particular configurations of activity and structure (or system) combine to produce specific outcomes in any area of social life”.

Moving forward towards a working model of social licence to operate in the mining sector requires us to cut free from the current academic and industry framing of the subject, as these are harnessed to normative terms such as *fairness*, *trust*, *shared value* (Zhang, Measham, & Moffat 2018, Mercer-Mapstone, Rifkin, Moffat, and Louis 2017 and Salmi, 2000) to represent a small sample or work engulfed in this approach. In addition to this normative positional based approach underpinning existing approaches, there is a general absence of

reflection on the temporal component within the research and how time can put pressure on relationships. What one configuration of the community has previously agreed to, could change for numerous reasons. When the visions of mine and community regarding shared benefits from the mining activity, diverge or community experience contravenes anticipated reality; dust from mine vehicles or mine workings start impacting on people's health, for example, a social licence can experience a range of new or previously non-present pressures. The work of Vanclay, & Hanna (2019), and previous work and joint publications by Vanclay (2014, 2016 and 2017) all point towards the temporal aspect of social licence production, but this does not get reflected across the wider literature.

Deploying these value-laden, normative positional terms as central to SLO does not enable us to investigate or analyse power relations or indeed uncover the critical path of interactions necessary, to move forward with a mining project through obtaining a social licence. The use of normative positional terms in themselves does not stop the analysis of power relations. However, their use within the context of social licence analysis, feeds into a diverse range of theoretical amalgams of social justice, sharing of benefits between communities and corporation and local conflict, used to fill the conceptual cavities of existing social licence theories. The use of terms such as *fairness*, *trust*, *the shared value* within an analytical framework for social licence moves away from a holistic, structural analysis based on the totality of relationships. Better for the mine corporation to move away from trying to build globally valid generalities through what could be characterised as the two traditional practical approaches to securing and maintaining a social licence; using philanthropy to barter with communities for their consent and secondly regulating all aspects of production based on adding value to the mine product. This second approach is predicated on being able to differentiate the product in an increasingly socially and environmentally sensitive global

marketplace, giving a financial incentive to the industry to behave better towards local community. Most of the literature around social licence is written from a mining perspective or banking (Lender) perspective and that which is not, generally uses the SLO term to attack specific mining ventures.

## **2.2.4 Review of existing models.**

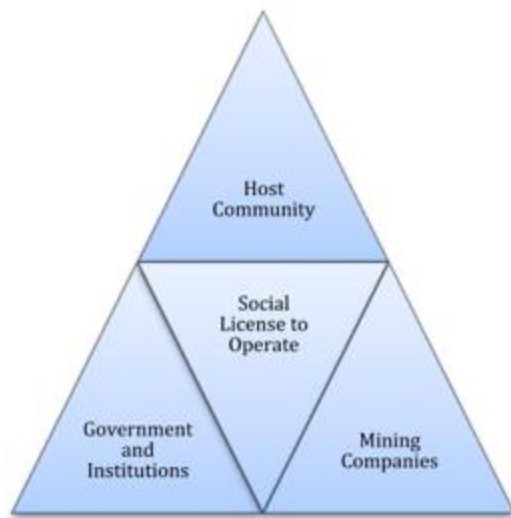
The widening debate following the recent rise of SLO failure has pointed to enhancing transparency and promoting standards of non-core business activities as mechanisms for dealing with the elevated level of uncertainty facing investment in mining. Debrah, Mtegha and Cawood succinctly categorized existing theoretical paradigms as follows: “the authors posited that there are three varieties of SLO. These include the pyramid model (from Boutilier and Thomson, 2011), which is premised on trust, credibility and legitimacy; the three-strand model (by Gunningham et al, 2004, 2003; Morrison, 2014), which requires a mining company to obtain the legal, economic as well as social licence before legitimacy is acquired; and the triangle model (by Wüstenhagen et al, 2007), which points to asserting socio-political, market and community acceptance of a mining project (see Gehman et al, 2017) for a detailed overview” (2018:97).

Current theoretical models are all driven by industry attempts to achieve two outputs. These two outputs are, firstly attempts to identify and quantify the factors driving social licence failures in *project development* and associated *project investment* and secondly, being able to translate the associated uncertainty into *Risk*. Doing the latter offers the opportunity to map successful and unsuccessful approaches to dealing with the *Risk*. That risk itself is something that can be *financialised*. By this, it is meant that the risk, can become a product, something to be traded. This issue of the creation and global trading of more and more financial products over the last thirty years, is dealt above in looking at financialisation as one possible underlying

drivers of the rise of social licence failure, given that it drives short term investment pressures on directors of mining companies or corporations.

MacCallum (2015:2) mapped how the financial sector responded to SLO issues in lesser developed, or countries of the global South, whilst pointing out that none of the concepts utilised in the literature for managing SLO failure are linked to what we might identify as strategies for "development" or creating sustainable change in poor affected communities. She drew attention to “examples of promotion of good practice such as The Extractives Industry Transparency Initiative (EITI), which is a Global Standard to promote open and accountable management of natural resources. (EITI, 2015). There is also the World Bank’s International Finance Corporation (IFC) that stipulates environmental, social and governance requirements for all World Bank investments in private sector projects and the Equator Principles (EP) which is primarily a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and facilitates responsible risk decision making by investors”. In looking at how the mining sector has traditionally responded to engaging host communities with Corporate Social Responsibility (CSR), MacCallum (2015), highlighted that the approach acts “as the bridge between these ambitions [promote mining outputs], but the persistent emphasis on charity and corporate image does not align stakeholder's interests with the host's locality” (ibid:1). Charity, for MacCallum, is not a tool for aligning the interests of all those in a locality, if anything, it illustrates the disparity between corporation and community. The public and commercial image of the corporation has a value that is being protected and enhanced through gifting to the community. The community receives but they have no right to receive, benefits flow due to the magnanimity of the corporation. The mining sector, various aspects of the State, and the host community sector are all for MacCallum, vital to defining an SLO and this thesis concurs with that. MacCallum’s

(2015) approach is interesting in that those three entities, containerized, make up the space that is occupied by social licence.



*Figure 2-1 MacCallum's SLO Model*

The trilateral relationships of a Social Licence to Operate (SLO) depicted in MacCallum's SLO model (20016:6) presents the only conceptualisation to date that would logically be said to assert that SLO cannot exist without the endorsement of mining activities by the State (Government and Institutions). The shape of the model and the interlocking triangles, notably all the same size, creates the space for a social licence yet does not show the relationships between the other containers Host communities, Mining Companies and Government and Institution. It is thought-provoking because it moves away from a purely normative description of social licence and shows it as a set of relationships that must include all three containers. In comparing the different SLO models, Table 2-1 the gaps between them are highlighted.

Table 2-1 Comparison of SLO Models

Model	Predicated on	Drawback
Boutilier and Thomson, 2011	Trust, credibility, and legitimacy	Normative terms in a normative hierarchical framework and fails to demonstrate the pivotal role of the State. Excellent at defining what are necessary “products” but less useful at showing relationships between actors over time.
Gunningham et al. , 2004, 2003; Morrison, 2014	Legal, economic as well as social licence before legitimacy is acquired	Social licence is a component, and it does not show the relationships between those involved and the brokering process nor define the type of institutions needed to secure social licence.
Triangle model (by Wüstenhagen et al. , 2007)	Socio-political, market and community acceptance of a mining project	It does not demonstrate how social acceptability is linked to a brokered agreement with institutions and hard to use to locate solutions. The State is not identified as pivotal.
MacCallum Model	A form of agreement between host communities, mining companies and government and Institutions	It does not illustrate the nature of the relationships between those names entities or illustrate how change can happen within the system over time.

## 2.2.5 Contractualism and conceptualisation of social Licence.

This section deals with contractualism and the need for a cohesive conceptualisation of social licence as a product of dynamic, complex social processes using new theoretical containers to develop a new model of social licence based on a Political Settlement concept. That new model is trying to demonstrate that to move beyond the MacCallum model and provide a conceptualisation that can accommodate the changes brought about by the temporal aspects, a new paradigm for framing the relationship between actants needs to be created. That



new model is aiming to deliver a cohesive conceptualisation of social licence as a product of dynamic, complex social processes, applied within a contractarian approach. The theoretical construct of *Contractualism* can be utilised to unpack how an institution, moral or political rules are framed within a wider context to obtain the consent of all persons concerned with it and represents an umbrella term for a type of political theory related to Social Contract theory. MacCallum's model is unfortunately neither dynamic nor able to capture the temporal aspects of social licence as there is no potentiality for the model to change. Neither does the MacCallum model define relationships between the actants although she might argue that that is implicit. Heffron, Downes, Ramirez Rodriguez, & McCauley drawing on Wilson (2016) and Morrison (2014) are correct to recognise that the origin of the social licence to operate term goes much further back than Jim Cooney to the notion of a social contract; “SLO could trace its roots philosophically from Rousseau and Locke whom both wrote on the 'social licence', i.e. the concept of the social contract is where society supports ruling government activities when societal needs are met (Wilson, 2016; Morrison, 2014)” (Heffron et al 2018:2).

Iterations of social contract theory, arguably dating back to Socrates, have containerising concepts of free will, legitimacy, and agency, opening the door for a reworking for example by firstly John Rawls, of a Kantian version of social contract theory and then by others such as David Gauthier. Critically, social contract theory has become used as a mechanism for packaging containerizing components such as “citizen and individual agency”, “State”, “legitimacy” and others, and explaining how they interact. The World Bank made the point concerning citizens and the law, which has pertinence to the social licence issues when they state, “even if a government delivers on its commitments and is able to coerce people into complying, there may be “legitimacy deficits” if the process is perceived as unfair and people may not be willing to cooperate and would rather opt out of the social contract” (2017:31).

Utilising a form of abstract Contractualism to demonstrate how relationships need to be managed to ensure citizens "buy-in", gives direction to the necessary component and utility of a new model of SLO which does similar. What is more, the notion of a Contractarian approach brings into play a range of additional and potentially useful theoretical devices for tackling the issue. For example, as Demuijnck and Fasterling draw a distinction between that which underpins social contracts by contrasting a "Hobbesian version of contractarian theory must be distinguished from the Kantian one, in which consent is not based on interests, but 'reason'" (2016:677). A contract in the Kantian tradition is a hypothetical agreement made by people whose judgment is rational, that is (in Kantian terms), "not distorted by prejudice, passions, interests, and starting from the idea of each person being an end in itself" (Kant 1788: 94–95).

Distinguishing consent based on reason from that which is based on interest opens the door for unpacking numerous aspects of the complex relationships involved in securing and maintaining a social licence. It gives space for representing the varieties of realities of stakeholders surrounding a mining project as "weighing up" matters such as the impact on their livelihoods and the likelihood their agreements will be honoured. The notion of rationality and judgement support both the encapsulation of normative aspects used in models such as Boutilier and Thomson (2011) yet assumes communities are capable of giving the correct conditions or being reasoned and bartered with concerning consent. Looking at the utility of drawing parallels in paradigm development around "consent", it is worth noting that no practical template or standard working model for the "social contract theory" has ever been adopted, yet there is a loose understanding of how components of the theory are linked. These components are assembled to create social contract theory are what might be labelled *container* terms; *legitimacy*, *society*, and *ruling government*, to name but a few. The term "container" is not new, French, Shaun & Leyshon, Andrew & Wainwright, Thomas in "Financializing Space,

Spacing Financialization” represent the, “nation-state as container of economic activity [ ]” (2011:18). Although in that particular case they challenge the primacy of the State in financial matters and containerise UK and US financial institutions and practice. This packaging together of geographically and legally separate entities into one term demonstrate the utility of packaging interests which are not geographically contained to facilitate analysis of both relationships and overall outcomes. The creation of the Social Licence Settlement Model (SLSM) utilises this approach.

It is unlikely that mathematical equations would have much purchase in linking those concepts or container terms to demonstrate how the *social contract* works, yet it is not difficult to understand some of the tensions and the relationships between individuals and the State. An example of how the social contract paradigm is still used today in modern political discourse is Kapaau (2016) *Triumphant memory of the perpetrators: Putin's politics of re-Stalinization*. She uses the notion of a "new social contract" to demonstrate how the current dominant political class in Russia is changing the relationship between the state and citizen through the promotion of a range of narratives. The application of the social contract paradigm is loosely applied and therefore very pertinent to demonstrated that in terms of a wider application, there is a broad consensus of what the component parts are, relationships and beneficiaries. Kapaau was selected as an example to illustrate that social contract theory need not only be applied within a western European political or academic context.

The overall working construction of social contract theory has an intrinsically dynamic facility, detailing the necessary relationships to a social contract. These are often loosely defined and rarely incontestably. We understand if one aspect changes, it has some effect on others and can upset the apple cart transgressing the ‘social contract’. Notions of legitimacy, authority and agency are represented as products of a balanced system, as demonstrated

through the very existence of a "social contract". To clarify, this thesis is content to use a mash of all three of Weber's classic categorisation of "legitimacy with authority", where people have faith in a particular political or social order because it has been there for a long time (tradition legitimacy), because they have faith in the rulers (charisma legitimacy), or because they trust its legality, echoing Kantian concepts of Contractualism, through the rationality of the rule of law (Weber 1990 [1918]; 1964).

The existence of "legitimacy" as a product, in standard social contract models, provides a significant opportunity for drawing parallels with a model for SLO. Gehman, Lefsrud, and Fast in their conclusions looking at "different models of social licence, [and] showed how it appears to be little more than a new name for legitimacy" (2017:311). Identifying social licence as legitimacy, does not in itself move us any further on in terms of understanding what the factors are that cause SLO to exist, disappear or degrade. Calling it *legitimacy* obviously illustrating that there is at the heart of social licence, a relationship that is dynamic, but it gives us no more purchase on how to advocate for one. It does, however, point to the logical conclusion that there is a utility to SLO being represented in something akin to a social contract. Indeed, a "societal umbrella" conceptualisation of relationships around a mining project, is more inclusive than a business defined "stakeholder" approach. In the case of this thesis, the development of a model of SLO based on contractualism demonstrates considerable resonance with that of the social contract. In developing such a model there is a need to similarly "containerise" those entities and process so that the relationships can be illustrated, interrogated, and illuminated. Through recognising the existence of a myriad of social processes, relationships, financial and environmental contexts and the wider political context, this thesis is an attempt to move away from solutions that are predicated on models driven by business conceptualisations of social reality.

To conclude, within both the considerable body of academic and grey literature there exists a consensus of a range of factors which are significant in terms of developing a model to replace those existing models that appear to be either temporally or normative positional challenges. *Contractualism* offers well-established arguments in dealing with the relationships between some of these factors and may offer a more holistic, realistic, and dynamic framework than business stakeholder theory for reviewing social licence to operate.

#### **2.2.6 Social licence, an international processes of governance.**

Barnes (2019) analysis of research undertaken by the Organisation for Economic Co-operation and Development (OECD) into the language used in bilateral investment treaties (BIT), identified a proliferation of phases supporting sustainable business practices and aspects of sustainable development in recent years. Barr (ibid:22) states that, “[t]his indicates that investment tribunals are starting to recognize the 'potential interactions' between international investment law and other matters such as sustainable development, responsible business practices and human rights in general”. She drives her argument home, citing the findings of and investment tribunal arbitrating in the 2017 case of the Bear Creek Mining Corporation v Republic of Peru (the Bear Creek Mining Corporation v Republic of Peru ((ICSID Case No ARB/14/21). The former was a Canadian investment vehicle seeking damages of USD522 million and were subsequently awarded USD18 million. The central issue in the reduced damages was indicated to be the failure of the claimant to develop aspects of their SLO. Although there appears to be no definition of SLO used in this finding, it does appear to have been conflated by the BIT with Free and Public Informed Consent (FPIC). This latter term refers to a requirement under a range of international conventions specifically supporting the rights of indigenous peoples.

FPIC is about ensuring consent at a specific point in time, and one could argue, SLO requires a continuous assurance of consent, Free and Informed Continuous Consent may be more accurate. Working towards a single temporal hurdle requires a different strategy and approach to developing a relationship capable of sustaining consent over the life span of a mine site. FPIC is also something that must be negotiated before physical operations commencing. During the production phase, the community will have a fuller understanding of the factual issues likely to diverge corporation and community interests. The evidence emerging from the latest BIT processes also sends a stark message to both corporations and international pressure groups and NGOs. This relates to the Rosa Montana desk-based case study further on in the thesis. The mine developer in that case, Gabriel Resources (GR) had their permits withdrawn by the Romanian government despite complying with all legal requirements. This was done on the grounds that GR had failed to secure a SLO. Given that there is no EU legal definition of a SLO, GR took their case for damages alleging a breach of the BIT rise concerning a proposed open-pit mining development in Roşia Montană, Romania. Findings, issued as an “order” from a BIT tribunal (7<sup>th</sup> December 2018) currently presiding over Gabriel Resources Ltd and Gabriel Resources (Jersey) Ltd vs Romania (ICSID Case No ARB/15/31) excluding the amicus curiae submissions from three international NGOs are significant. Amicus curiae submissions are covered by the World Trade Organisation (WTO) and are a theoretical means for experts or interested people to be introduced as a “friend of the court”. WTO describes recognises them as, “[a] controversial issue [which] has been whether panels and the Appellate Body may accept and consider unsolicited submissions they receive from entities, not a party or third party to the dispute. These submissions are commonly referred to as amicus curiae submissions” (WTO <sup>1</sup>). There is space for this type of evidence to be more tightly bound or excluded from the processes altogether as, “[a]micus curiae means “friend of the court”. These submissions often come from non-governmental organisations, including

industry associations, or university professors. Neither the DSU nor the Working Procedures for Appellate Review specifically address this issue”(WTO <sup>1</sup>).

The scope of these forms of evidence/brief appears to be defined by this recent tribunal order. A briefing to the tribunal from three international NGOs, representing the local protest group, was excluded from the legal process on the basis that the three international NGOs were acting as a conduit for evidence from a local (to the conflict) organisation, rather than being local themselves. On a practical level, this drives the need for the operator (mining company) to drive a wedge between external (non-local) environmental actors and local communities and for those international environmental actors to legitimise their activities through closer affiliation (work through, rather than with local entities), if they are not to be automatically ruled out from briefing future BIT disputes. Similarly, WTO participating governments who consider that they may end up in a dispute with companies over issues such as social licence, need to integrate local organisations into their original argument if they wish those community views to be considered. WTO’s position on this is, “Amicus curiae submissions have frequently been filed in Appellate Body proceedings. When these briefs are attached to the submission of a participant (appellant or appellee), for instance as exhibits, the Appellate Body considers such material to be an integral part of the submission of that participant who also assumes responsibility for its content” (WTO1).

This is rational given the tribunals need to weight a final settlement decision based on a binary decision, responsibility for controlling the veracity of briefings will fall to one of the two partners and they will be held accountable for its accuracy. What the finding does suggest, is that if in the case of Rosa Montana, the local organisation had had presented its argument directly it may have been included. Local communities can then, represent a form of conflict capital within BIT but not if they are not direct contributors to the briefing and attached to one

of the two sides directly. This notion of conflict as a form of capital will be revised later. It is significant that to date, only a few panels have made use of their discretionary right to accept and consider unsolicited briefs and “[o]n the basis of the Appellate Body’s interpretation, panels have no obligation whatsoever to accept and consider these briefs. Accordingly, interested entities, which are neither parties nor third parties to the dispute, have no legal right to be heard by a panel” (WTO1).

It would, in practice, have been politically more difficult to exclude evidence such as a briefing from a local protest group and one ponders as to why the Romanian government did not introduce the briefing as part of their evidence unless they had concerns about the quality of the evidence. These are some of the questions that have been precipitating theoretical models of social licence to operate and be the driving force behind the creation of the neologism. Creating a theoretical model that can support action and remedy would provide the mining sector and others with a useful tool to review ongoing inputs in specific localities.

### **2.2.7 Conclusion**

This chapter isolates from the defined literature the main inadequacies of existing conceptualisation of social licence. It links their failure to offer solutions to or explanations for social licence failure, to the lack of rigour in the theoretical context and subsequent social research. It is argued here that there is a need to move away from the utilisation of value-laden terms such as *fairness*, *trust*, and *shared value* as they drive what herein has been characterised as two traditional approaches by the mining industry towards engaging host communities in a social licence process. These two approaches are philanthropy and utilising increasingly vigorous quantitative environmental standards seeking added value to the end-product, giving



social licence through better environmental and social stewardship. This latter approach is validated as a social licence driver as it is seen to follow that better environmental standard "lift" the mine's relationship with the community to secure a social licence, a rising tide lifts all boats approach. Next, the section addressed the current models used to analyse and represent social licence and notes their deficiencies. Identifying MacCallum's model as the most useful because although static in a temporal sense, it puts the role of the State central the model. There is a discussion on the failure of existing social licence models to support a process of translating *uncertainty* into *risk* which is a goal of the financial sector, as risk can then be commodified. Finally, the section looks to social *contractualism* as a framework to bolt conceptual tools into so that we might define and explore the totality of relationships involved in social licence situations. These conceptual tools are both containerized entities the state, community, and mining corporations to name the three most critical and relationships.

Detailing the origin of the term *social licence to operate* and reflecting on the methodological narrowness deployed at interpreting social licence failure, the term is still very much what one could describe as a methodological *Black Box*. Social licence is often defined by its loss post event, and investigation into its anatomy suffers from what Kemp et al, (2016:22) described as a "paucity of empirical studies on this topic". The sections describe to some extent what is at stake from mining corporations' perspective, making reference to BIT and projects in North America and Romania that have culminated in losses to parties, valued not just into the hundreds of millions of US dollar but in billions. The loss to communities may be more tangible, than that from poorly delivered mine projects with livelihoods, sense of place, culture and sometimes lives, erased. To engage with the issue in a theoretical manner, the author has opted for a form of theoretical pluralism, building a new model of social licence.

The failure of existing models of social licence to operate in the mining sector, provides space for a new social contract-based model using new theoretical language but the necessity of those responsible for ensuring a SLO on a project is for them to recognise that not all knowledge that is required can be obtained to engage effectively with communities can be obtained from attending academic courses. Experience and reflexivity are as critical to understanding how to design social interventions as theoretical understanding of participation and community. Where the company can recognise that they have little of either of these critical components, they are better placed to locate those that can assist.

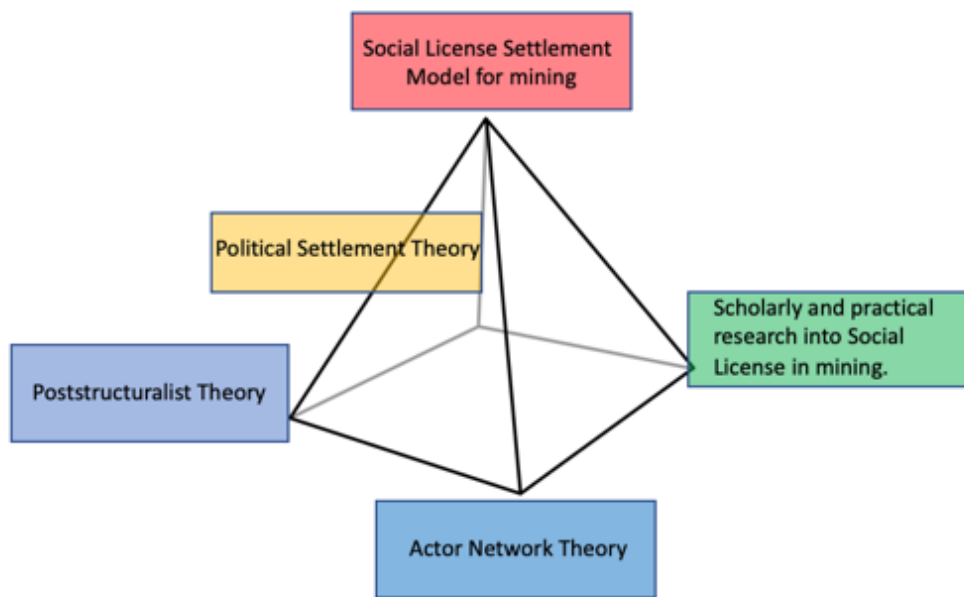
## Chapter 3 Constructing the Pyramid of Theories.

### 3.1 Introduction.

*This chapter explores and critiques the theoretical underpinning of the development of the model. In doing so, this section identifies some of the crucial actors and their relationship which are necessarily present for the existence of an SLO and looks beyond the research, introducing components for the development of a new model. The theoretical construction of a model, one that was to emerge from the research findings, required some fleshing out at this point in the thesis. Theoretically, the approach is underpinned by a pyramid, illustrated in*

*Figure 3-1 Theoretical pyramid*

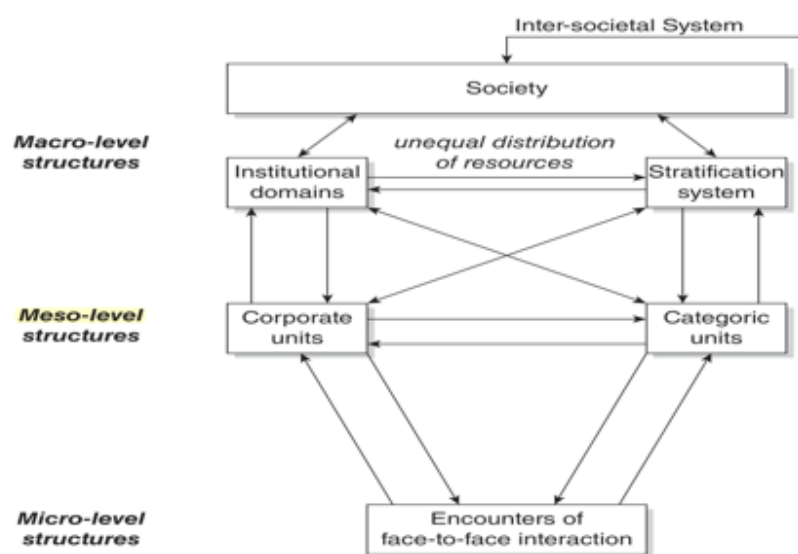
, constructed of Actor-Network Theory, Political Settlement Theory, Poststructuralist Social Theory and finally the current academic/grey literature position augmented by practical experience from the field. Throughout this chapter these four theoretical groupings are explored and interrelated, resulting in a Social Licence Settlement Model (SLSM).



*Figure 3-1 Theoretical pyramid*

Utilising Actor Network Theory (ANT) and detailing the actants or containers defined by activities and interests, necessary to capture reality for the new model in broad brush strokes, it is especially important to recognize the myriad of local, national, and international factors that shape how they relate to each other. The *State*, *mine company*, *lender* and *community* will be defined in later chapters, as critical actants, in developing a view of how SLO is achieved. Yet paradoxically it is important to recognise that all these constructs are dynamic, amorphous and relationships between them have numerous vectors, they are at any given time each an assemblage. Different *States*, *mine companies*, *lenders*, and *communities* as these containers within the model are to be called, have different realities and relationships and this supports the utilisation of the social licence concept as a translation of that wider Assemblage. There is, this thesis argues, no such thing as a single global business reality, standardised relationships between shareholders and directors, states and companies or communities and states.

There may therefore be *principles* developed about what activities support SLO in numerous localities, yet the successful delivery of an SLO by those acting on behalf of the mining corporation, will be dependent on skilful and timely application of activities supporting those principles. Identifying what skills are needed to do this, securing them in and over time and resourcing the delivery of processes, will still be no guarantee for a mining corporation, of securing and maintaining an SLO. Changes occur in all relationships, Turner (1986) makes the point here that any system as it sits is inherently self-replicating, yet change, in reality, is ever-present, “[t]his denotes the use of rules and resources of structure by agents who, in this way, reproduce these very rules and resources that mediate institutionalised patterns of interaction (Turner 1986: 973). Turner’s work is particularly pertinent as this thesis utilises Turner’s Synthetic Model of Conflict Processes (2013:41), to underpin a new model of social licence settlement. In a sense too, it is worth identifying that the work is set within a perspective that Turner would class as meso-analytical, drawing on Giddens’s analysis of agency. Turner illustrates the connections between the macro, meso and micro levels and this provides a useful way to illustrate where the new model is located. Meso modulates the relationship between the macro and the micro.



*Figure 3-2 Turners synthetic model of conflict*

Linking Turner's conflict model to the notion of a SLO highlights the importance of assumptions underpinning relationships at a local level. If we do not want to replicate the institutionalised patterns of interaction that give us the result we do not want, loss or failure to gain a social licence for example, we need to change the patterns of relationships. Social theory can be used to illustrate what, relating to SLO, might not be in the gift of the mining company or corporation. Building on social theory, reframing SLO as a contextualised set of relationships, rather than a range of activities undertaken by mine corporations to gain acceptance from the host communities, is central to my premise.

### **3.2 Actor Network Theory.**

Returning to the Theoretical Pyramid, to explore the relevance of Actor Network Theory (ANT) approaches in containerising this agency-structure argument, recognises the non-human actant's role in the complexity of social licence. It addresses the wider concept of what type of ontology we should be using to get to grips with these, on the one hand, complex issues related to the structure of wider society and wider economic system and on the other, the specific aspects of locality and the relationships around a mine. It also addresses that traditional business management approaches to identifying project complexity recognise, that both the temporal aspect and social context are critical, yet they do not on their own, support any form of social analysis. How does one develop a framework for knowledge which is theoretically robust and internally coherent within the wider literature whilst at the same time recognising the limitations on whatever approach has been decided on?

At its broadest, this thesis attempts to fuse what can be characterised as a "*tall*" ontology with a "*flat*" ontology. This has been characterised using Seidl and Whittington (2014:1408)

approach, portraying the factors shaping social licence and the agency of those involved. Giddens and a range of what could broadly be called Foucauldian ideas, represent the *tall* perspective ontologically speaking, where vertical hierarchy and higher level forces in society determine factors driving social licence failure. The new social licence settlement model is constructed within the meso level of social theory and its rootedness in Giddens explains this, echoed by Turner in his conflict model in the preface to this chapter. Similarly, ANT is deployed to represent the networks and "containers" of *Mine, Lender, Community and State* encapsulating or representing both human and non-human aspects of real-world mining operations.

### **3.2.1 Ontologies “Tall” and “Flat”.**

Linking, as this and former chapters have done, a range of social theoretical perspectives together with developing strategy into practice re social licence, is challenging. The author recognises the constraints and limitation of the ontologies that are applied. Seidl and Whittington (2014: 1408) deal with this challenge theoretical, by defining two separate categories of ontology, *tall* and *flat* and demonstrating that they are complementary and useful in effectively linking 'local' strategising activity with 'larger' social phenomena. The problem of integrating Foucauldian and critical discourse analysis, structuration theory, Archerian critical realism, narratology and Bourdieusian and Wittgensteinian perspectives, into systematic empirical research, has been outlined before (Carter, 2013; Ezzamel & Willmott, 2008 in Seidl and Whittington 2014: 1408). With the *tall* ontologies of Archer (1995), Foucault (1980) or Giddens (1984), micro-level phenomena are explained primarily by reference to meso-level or macro-level structures or systems. That is what this thesis has tried to do, by utilising this type of theoretical approach within a social settlement model framework, at a meso-level.

Taller ontologies, Seidl and Whittington (2014) tell us, tend to situate instances of local praxis in a type of vertical hierarchy, where higher levels forces, enable or constrain what happens on at a lower or ground level. This kind of ontological position is associated with a vocabulary of 'structures' and 'systems', especially as joined with terms such as 'macro', 'societal' or 'levels'. That in a sense is what the social settlement model is framed with. Flatter ontologies locate local praxis or action not within a vertical hierarchy but in a network of interconnections. The characteristic vocabulary of flatter ontologies is one of 'networks', 'constellations', 'ecologies' and 'relations'. The flattening instinct extends to actors, with equal status given to humans and non-humans, including technologies, ANT being an example. Seidl and Whittington (2014) detail that ANT practice theory has already found its way into strategy-as-practice research (see Denis, Langley & Rouleau, 2007 and Jørgensen & Messner, 2010, respectively in *ibid*). Flatter ontologies extend the scope of strategy-as-practice research, by bringing in a range of sites, both local and distant, and a variety of actors, both human and non-human. ANT is used herein, to try and explain both the volatility of SLO as it is currently conceptualised and the myriad of factors that underpin the complex web of relationships around a particular mining project development. This is an attempt to create a new lexicon around the narratives used to contextualise relationships around mine operations. Similarly, illustrating those theoretical perspectives dealing with tall ontologies is useful in supporting an understanding which creates a wider context for an SLO crisis. In



Table 3-1, Seidl and Whittington (2014:1412) have tabulated the range of theoretical perspectives and it can be seen, that Giddens and what might be termed his theoretical position, is portrayed as linked to conceptualising current or existing practices. Current or existing practices and the prospect of changing them concerning mining operations drive this thesis and reflect the importance of actor agency, as discussed earlier.

Table 3-1 Overview of theoretical approaches

Theoretical perspectives	Papers included in the Perspectives Issue	Other central papers	Concepts linking the local with larger social phenomena
Foucault	Ezzamel & Willmott (2008); Knights & Morgan (1991)	Allard-Poesi (2010); McKinlay et al. (2010); Ezzamel & Willmott (2010)	Local enactment of the macro-level discourse
Giddens	Jarzabkowski (2004); Whittington (2006, 2007)	Hendry (2000); Whittington (2010)	Practices-in-use; practice-praxis relation; profession-praxis relation
Archer	Herepath (2014)	—	Morphogenetic-morphostatic cycle
Narratology	Fenton & Langley (2011)	Brown & Thompson (2013); de la Ville & Mounoud (2010)	Narrative infrastructure; metaconversation; local consumption of macro-narratives
Bourdieu	Chia & Holt (2006)	Chia & MacKay (2007); Gomez (2010); Gomez & Bouty (2011); Splitter & Seidl (2011)	Culturally mediated dispositions; habitus
Wittgenstein	Seidl (2007)	Mantere (2010, 2013)	Structural coupling; family resemblance between language games

Seidl and Whittington (2014:1412)

Giddens' replication of social and professional practices sits comfortably with the utilisation of ANT tools in the development of a conceptual model for social licence. Addressing terminology within ANT is important at this stage. Using the ANT lexicon of both *actants* and assemblages to refer to mine and/or corporation, the lender, the state, and the community is particularly relevant. This is because each of them is a complex entity made up of practices, legal persons, and equipment, in a complex web of relationships (assemblages) yet also take decisions and act – hence they are actants. This section will explain why defining non-human actants are important and explain why the packaging up of the State, mine company, lenders, and community, in a meaningful way is central to representing their relationships in a new social settlement model. As outlined in chapter two; developing mechanisms that can resolve, remove, or encompass social licence barriers to enable the

extraction of critical minerals to drive the world's largest market, the EU and facilitate its transition from a carbon-based economy to an electric-based economy, is a major challenge for the mining sector (World Bank 2017). To try and understand what is stopping SLO's from being developed, this thesis proposes utilising a contractual theory as outlined in chapter 2, a political settlement-based framework to illustrate relationships in agency terms between the *mine and/or corporation*, the *lender*, the *state*, and the *community*. Agency from any of these named actants, according to Giddens, depends on the rules and resources of structure by agents [actants] who, in this way, reproduce these very rules and resources that mediate institutionalised patterns of interaction (Turner 1986: 973).

Once it becomes problematic and the rules are no longer replicating, in this case when a social licence is no longer forthcoming, we must assume there has been an underlying change. Something critical has changed in the network. There are innumerable and incalculable potential factors at play and this thesis attempts to present a framework displaying how the totality of relationships, is fundamental to understanding social licence. In temporal terms, all these four key actants; Mine, Community, State, and those providing critical capital (Lenders), *operate* with significantly different time horizons. Time is a critical issue for understanding how each actant is directly or indirectly affected by the environmental and social impacts of a mining project. There is also a difference in the speed with which externally arriving information to the actant, can be processed, and ultimately actioned on by each of them, we might call this the rhythm of action. This rhythm might be driven by organisational capacity, or it may be driven by other structural issues outside the actants' control. This makes it problematic designing a model with any kind of dynamism. Yet recognizing this difference in the rhythms of agency for different actants, is fundamental to understanding how actants need to interact to deliver a positive result for the mine in terms of social licence.

### 3.2.2 Communities and existing models failure.

The ontological crisis at the core of social licencing problems relates to the attempt by the industry to utilise scientific or classical economic theory to try to both understand and develop a series of social processes linking the mining corporation to communities. Communities do not generate their knowledge through a scientific paradigm and their conclusions as to the importance of mining activities, may not be driven by the need to make the mine a successful reality. As Costanza (2016) points out in her excellent paper on social licence conflict in Guatemala, the community will be making their assessments based on what they know about the impact of a cement works, based on how any proposal might impact on, the "social fabric of their communities" (ibid:108). Within the literature, it is clear that the knowledge base of the community and that of the corporation can be juxtaposed. The creation of those two sometimes opposing forms of knowledge is often the result of different ontological frameworks.

In Section 3.2.1, *tall* and *flat* ontologies were investigated with regards to how one could conceptualise various actants within a model for this thesis. The mining industry and host communities also have their ontologies for trying to understand what issues are or will be affecting them. For communities, knowledge is based on experience, perceived impact on not just the present but the future and often on an acute awareness of the social and environmental ecosystems. Knowledge for rural communities can be characterised as "indigenous knowledge" built along with truth over time and reified through community experience. The totality of relationships has an immediate and imagined impact on rural communities, often heavily dependent on social networks of obligation. For the corporation, knowledge is scientific, incontestable, and defined as changes or potential changes along parameters understood internationally. How many parts per million (PPM) of arsenic will be in the water

and how does that correspond to international acceptability? One exchange the author heard was where a mining company had inadvertently driven a road through a sacred grove of bushes resulting in conflict. "They never told us their sacred bushes were in that area" was the defence. The mine management felt it was the community's fault for wanting to keep their sacred bushes secret. Their religious practices were neither understood nor respected. Indigenous and traditional knowledge systems do now carry the same weight in terms of the techno-scientific system when deployed within a neoliberal global economic framework. In many senses, the arguments around social licence, the validity of local forms of knowledge and neo-liberalism, is an echo of the argument outlined in the Kuramoto and Sagasti's (2002) paper.

This details the movement within the international development sector from a paradigm, echoing the Marshall Plan in post-war Europe, focusing on economic growth and productivity in the global South, toward a more human-centric position based on influential thinkers like Sen, as mentioned earlier, who stressed the need for development assistance to focus on supporting people's capabilities where their lives unfold. Notably, Sen's perspective arose through the failure of thirty years of international development aid having little positive impact on the global South. What would be perceived as progressive discussion within the mining sector on "shared value", most recently within the academic literature by Vanclay and Hanna (2019), focused on releasing part of the value of the ore body or sovereign wealth collaboratively to benefit the host community, as a mechanism for delivering social licence. Whilst there is nothing wrong with this in terms of practice, it does not address within a theoretical mechanism, what aim is being pursued. Shared value as an unelaborated proposition fails to recognise that it is the stability of an agreeable totality of relationships that the shared value enterprise is deployed. How that is visioned as outputs need to be shaped through a collaborative process over time rather than some sense of "development" being

delivered. Giving 5 local people loans to buy fuel bowzers and then paying them a premium for transporting fuel for the life of the mine, is not shared value unless it is part of a wider programme and must arise from protracted democratic processes.

Attempts to manage the supply chain (sale of metals) with processes developed to deal with “conflict” minerals/gemstones, best typified by the OECD (see ref 2) can be characterised as, forcing those with resources undertaking mining projects, to support a more in-depth critique of their proposed activities. Similarly, the London Stock Exchange's environmental and social governance (ESG) protocol, is an attempt to recognise community vulnerability in the mining sector and create a framework for guiding mine operators in social practices that reduce the risk of conflict which may precipitate social licence failure (Ref 3). These are attempts to link “responsibility” with categorizing and managing "risk" so that mining corporations might mitigate the mechanisms of imbalance of access to the creation of scientific truth between communities and others involved in the mining process. In these emerging frameworks, there is again a certain wooliness, a use of intrinsically “good” concepts like "responsibility", as aerosol terms, terms used to spray-paint over gaps in different conceptual understandings and enable practitioners and theorists to appear to talk to each other with a coherent logic. The London Metal Exchange document states, "Since its adoption in May 2011, the Guidance has become the leading industry standard for companies looking to live up to the expectations of the international community and customers on mineral supply chain transparency and integrity" (London Metal Exchange:1). This recent conversion, one could cynically suggest, has been a response to the rising crisis of social licence failure. Consumer awareness, social media and international tribunals may have also played a part in a social licence being the number one risk to the sector in 2019 (EY2019). Similarly, debates are emerging concerning the linking of directors' remuneration to good ESG (Wislon 2019).

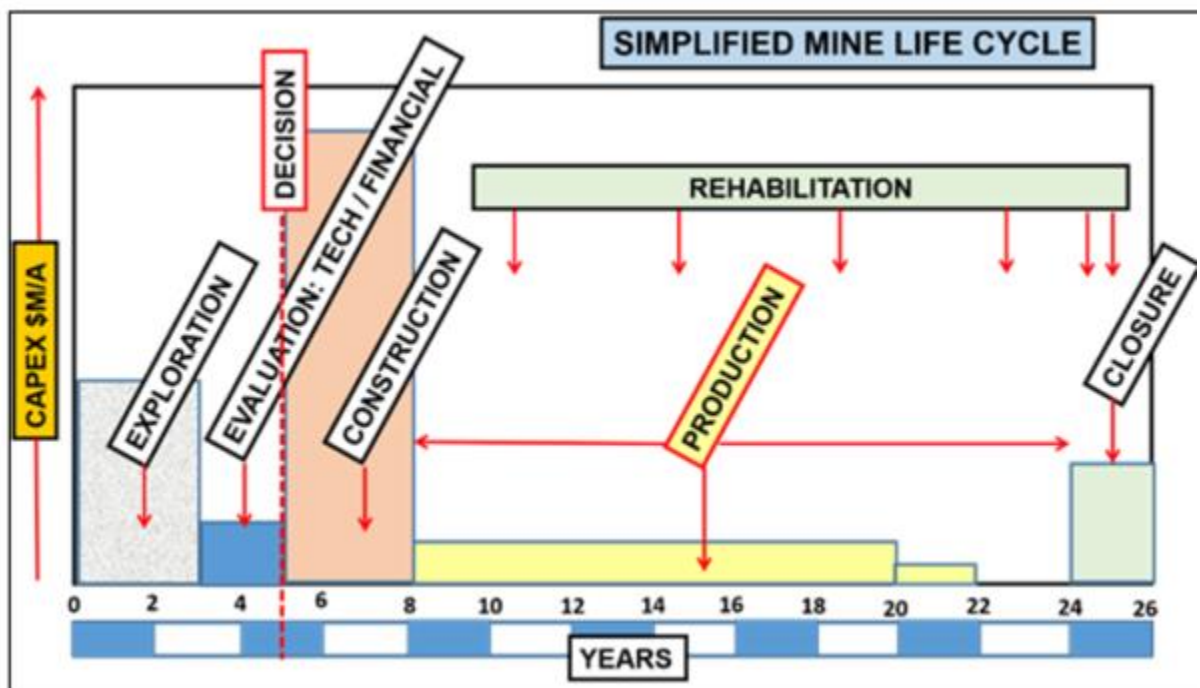
### 3.3 Agency, Entities, and Industry Metrics.

Internally, within the mine corporation, the nature of the complex relationships between directors and shareholders, within the delivery or development of a mine, sets the character for the relationships that emerge between the corporate entity and the other critical "stakeholders", often defined as, the *lenders*, *community*, and the *State*. Lenders have their complexities, yet the latter two categories are themselves complex constructs with complex relationships with each other and this is highly variable both within countries and over time. This presents a range of challenges when trying to construct a generic model of social licence or indeed draw general lessons from project failures. Additionally, in the case of the decisions emerging from corporation and shareholders, Fauziah et al recognise that "the agency problem depends on the ownership characteristics of each country"(2012:54). Likewise, relationships between the state and community, local political issues, and relationships, vary from location to location and are complex, multi-layered, and fluid over time. The challenge is how to containerise these entities whilst recognising the temporal aspect of the relationship between, *State*, *mine company*, *lenders*, and *community*, in a meaningful way. Equally, representing the principles underpinning the relationships between them to construct a model is complex. Agency and actants/actors/stakeholder's ability to choose a course of action concerning how they engage within a social licence or potential social licence system is constrained by manifold problems. Yet it is important to acknowledge that if we recognise agency and temporal aspects to decisions, as Giddens stated, "at any point in time, the agent could have acted otherwise" (Giddens 1979: 56). Through avoiding the dualism of structure and agency, Giddens advances the notion of the duality of structure.

The agent/actor uses the rules and resources of the structure, reproduce these same rules and resources that mediate institutionalised patterns of interaction (Turner 1986: 973).

Giddens' concepts span the three dichotomies that are determinism and voluntarism, object and subject and synchrony and diachrony (Archer 1982: 456-7). Giddens' strategy is to amalgamate (Archer 1982) the two sides of each divide, based on the argument that social reality duels of agency and structure are integral in any social phenomenon. His "structuration theory" demonstrates a "seeming opposition of perspectives disguises a complementarity which they display" (Giddens 1986: 531). In avoiding the dualism of structure and agency, Giddens advances the notion of the duality of structure. This denotes the use of rules and resources of structure by agents who, in this way, reproduce these very rules and resources that mediate institutionalised patterns of interaction (Turner 1986: 973). There are then institutional patterns that develop in terms of how the State, Lenders, mining corporation and communities operate and therefore why experienced social practitioners who work with communities and mining are so valuable. ANT approaches are useful in supporting the containerising of this agency-structure argument in a manner that gives it utility for analysing social conflict notably giving the non-human mine actant, a role. These actants are themselves assemblages but are herein defined as actants when they have agency with other similarly dualistically defined entities. The whole time the mine is or could be operationalised is referred to as the *life* of the mine, illustrated in Figure 3-3.





*Figure 3-3 Life of mine diagram*

This language is significant in that the power or realities that flow through the mine, shapes the assemblage that is a social licence. The language of project management, of life cycles and phases, developed from engineering projects, shapes the construction and perception of risk and the delivery of projects globally, see van Staaldunin, Khan, Gadag and Reniers, (2017) for an excellent example of how quantitative security risk assessments are intellectually framed. It is driven by a specific type of regime of rationality, and this is critical to understand given that Foucault said, “because it’s true that ‘practices’ don’t exist without a certain regime of rationality” (1991: 79). This regime of rationality is reflected in financial investors using the language of engineers to produce the knowledge they use to determine and manage risk. The production of knowledge within the mining sector, its predilection for quantitative metrics, is addressed many times in this thesis. For a look inside the industry see Retfalvi detailing that, “Effective risk management is critical to project success and must be forward looking and continuous” (2011:2).

In developing an effective risk management strategy, determining what one considers as part of the mining project and developing an ability to understand, recruit and deploy necessary resources, as well as interpret the consequences of for example relationships between the mine and the local population, depends on one critical factor. Unless one can understand the social relationships of the host community, for example, as an anthropologist might do, there can be no effective risk management strategy and no sense of project complexity. Abdou, Yong and Othman on page one of their conference papers define the current relationship between risk and complexity. “The project complexity has a negative influence upon project management process particularly on the project performance. The lack of consensus on project complexity is a crucial problem as project complexity is closely correlated with the project management process as well as the project management performance” (2016:1).

Failure to deploy adequate resources to access the social context leads de facto, to poor project performance. Inherent to creating an institutional way of operating is a range of shared value, shared experience, and shared practice globally and more pointedly for this thesis, within Europe. Notably, existing concepts of SLO define and produces the knowledge that drives the decisions made by the mining corporations. This sense of agency of stakeholders, where ‘stakeholders’ refers not just to corporate stakeholders but those are defined as critical at the start of the mine project, to delivery of the project, remains at the core of the discourses undertaken in both the academic and grey literature about a social licence to operate. This lack of clarity on the importance of the totality of relationships drives flawed attempts to construct resolutions between and across a *range of stakeholder*. The mixing of social theory terminology with business terminology relating to agency and stakeholders is, this thesis contends, a factor in the social licence as a term becoming an increasingly debased. Kemp and Owen recognised, what is now seven years ago, that the social licence term was more of a

signalling device than a concept driving types of behaviour or agency on behalf of those seeking a social licence, “there are companies and industry organisations that appear to recognise limitations in the social licence construct, but continue to use it when referring to external expectations more generally” (Kemp and Owen, 2013:30).

Mine corporations do not unpack the meaning of SLO, rather they use it to refer to external expectations as a virtue-signalling device. For any construct or model of social licence to function (have utility in the real world), it must move beyond utilising the normative conceptualisation of "good" and "bad" concerning mining corporation actions and instead view the activities referred to as effective or not effective, with regards to relationship building across a social licence settlement. How actively actions are engaged with and perceived by other actants across the social licence settlement, is more important than intention. These normative, good/bad terms are concepts embedded in the terminology currently utilised to discuss social licence relationships, along with trust and engagement and are used to signal to those external to the social licence settlement. The good/bad terms only work if they are agreed across the actants involved in the social licence settlement.

### **3.4 Political Settlement, a Theoretical Perspective.**

Building on the logic of ANT theory and poststructuralist theory and coalescing with the scholarly and practical research in the field, Political Settlement as a concept, outlines the argument about its exclusivity of use within a national setting, detailing how that argument although coherent, is redundant given the subsequent use of the term by the very government around which the original term was developed. It details that political settlement has been represented diagrammatically within the literature and as such, the new model displayed later in the chapter has a pedigree. Recognizing the importance of the totality of relationships with

a political settlement, details how it might have utility with regards to both wider poststructuralist theory and ANT. Despite ANT being almost the antithesis of a model-making toolkit given the static nature of any snapshot in time, the chapter asks for recognition that the model, although a construct to be viewed within a context of time and space, is constrained by neither. It is trying to illustrate the interrelatedness of relationships between actant, within what one could call the assemblage of a social licence situation. The flexibility of all three residents for the theoretical paradigms, linked with the research and practice related to SLO, give the model an opportunity for existence.

The second part of the chapter deals with describing the *containers* utilised in the model. It then goes on to demonstrate how the model works and relates that to real-world situations. *Containers* as introduced earlier have been used to build the model and their anatomy will be defined in later. The model's utility, as a tool for both academics and practitioners will be to force the further unpacking of these containers in the empirical world. These *containers* explored here, have been purposely kept broad, as this Social Licence Settlement Model is attempting to represent a range of locations/situations and are unpacked only as far as necessary for a working construct to be created, recognising the immense bodies of academic work dedicated to defining each. *Containers* representing the community, state and a range of others are defined by their position with a seesaw type model that roughly appears to obey Newtonian physics to demonstrate their relationship within the whole. If this model is to be used to try and understand social reality and deliver change to mine management perceptions as is envisaged, portraying the totality of relationships, and representing the pivotal position of the state on moderating those relationships is critical.

Similarly, if the model gets used it will establish that state support is critical to social licence and become the basis for a legal defence for corporations being sued by states for failing

to obtain a social licence. Similarly, being able to convey the move in understanding social licence from a binary relationship towards something that those not versed in social theory can engage with, is important. The mine icon represents the totality of the mine and its relationships, and the construction of the *avatar* is unpacked. Similarly, community, relationships, Lenders, money /capital, regional development plan and related governance, international NGOs, international rights framework, the state and international arbitration are similarly 'containerised' although less comprehensively dealt with. I make no apologies for schematising the major components of society engaged in a mining project. That in a sense is the very point. Moving away from the binary into the totality of relationships provides an opportunity to experiment with "what ifs" from a management perspective. It also then requires clarification, "what does that mean or how could that happen?"

### **3.4.1 Summary of Political Settlement in the context of SLO.**

Defining political settlement in terms of social licence to operate in mining, requires the unpacking of the origins of the political settlement concept, its usage with a national forum and the debate on the appropriate usage of the term within academia. There are some signs of its considerations as a concept within the academic literature related to SLO (Fredricksen 2019) but that has been in the field of political science. There has been resistance to deploying the term outside a national political contextual analysis. A caveat here in diverging from the traditional use of the term in that field is it is the structure or a *balancing* proposal that is being borrowed from the political settlement concept, not the relationships between elites and those that govern nationally. Within the model ascribed in this thesis, it is the translation or assemblage that is an SLO, for it is both these things simultaneously. The new model must contend with the actants being continually redefining and sitting within a balanced proposal but for the purposes of the model, we will assume that they are trapped within their proscribed

"containers". All "containers", mine, community, State and Lender, utilised in the model are essentially volatile and change over time. The new model is moving away from current debased binary analyses of corporation community relationships defined through social licence and there is recognition within the academic literature relating to the sector that this is needed. There may be a need for a new model of social licence as the present representations of it appear impotent at supporting fruitful analysis but the term is still useful. Boutilier (2017) supporting the utility of social licence stated, "[n]onetheless, it has a clear, useful, measurable meaning to professionals in community relations, particularly in the extractive industries".

ANT analysis provides an opportunity to move beyond the mine versus community binaries projections of social licence to operate towards recognising the importance of all the relationships in the network. Bruno Latour (1993) outlined the flaws of this creation of binary propositions in representing social reality. In the deliberately rhetorical, *We Have Never Been Modern*, he deconstructs the concept of 'modernity', suggesting it is deeply fragile. This act of undermining the binary, also asks how binaries are constructed by paying symmetrical attention to the semiotics of language and materials. Latour's concern is that modernity has never been pure (Law et al., 2013:173) and that the inherent *reductionism* in social science might be what Latour (1988) refers to as *Purification*, becomes a way of characterising something very complicated and composite, as simply and easily communicable by packaging it into a binary construct. This issue, for this thesis, is the core of the problem of existing conceptualisations of social licence. The mine and the community and the relationship between those two, driven by the corporation half of that relationship, is seen by the industry, as a binary to be maneuvered to assure social licence. This is patently flawed theoretically proposition that underpins the majority of models (except MacCallum that includes the State) and that might be one factor driving the high level of social licence failure.

For a model of social licence to be useful, it must demonstrate the critical role of the state and societal elites as well as other actants and their relationships. It must also demonstrate the precariousness or lack of stability within the network where social licence might apply. Representing social licence in this thesis has necessitated reaching into the realm of political science to borrow "political settlement" as a concept for that purpose. Mushtaq Khan and his seminal work on the matter defined the concept as, "a political settlement is a combination of power and institutions that is mutually compatible and also sustainable in terms of economic and political viability" (Khan, 2010: 4). Political settlement is a term used to define solutions in State level conflict yet instead of utilising the term exclusively at a macro level tool, in the case of this thesis it is being deployed at a meso level, as explained earlier. This thesis uses the concept of *political settlement* as a mechanism to display the relationships between several containerised entities, the State, the mine, the community, those representing NGOs and those representing lenders as well as indicating the wider regulatory and cultural aspects.

Political settlements have traditionally been used to understand the relationships between the State and societal elites in a national or regional context. This thesis contends that social licence is anchored in a sense of locality and accommodation of elites who are defined by factors relating to the locality of the mine operations, as elites. Social licence is the result of a meso level political settlement model with its locus, not at a State or para-state level but at a local level, although they may have national ramifications and certainly regional significance. In developing a political settlement model, it is important to recognize that all actants as defined, have choices. Kelsall (2018) with echoes of Giddens proposed that, "A settlement in a human context implies some degree of agency, even if heavily constrained."

For any political settlement to be resilient to change, it must encapsulate what could be called the actor's "*dunamis*", their potential or capacity to act. Actors or their proxies may not

be able to demonstrate agency when the political settlement is forged but it may be possible to predict or even facilitate that agency. Khan's analysis of the need to evolve the political settlement or suffer the consequences, resonates with the reality of social licence failure. He said, "No political settlement is static, and all settlements are continuously evolving. But the evolution can sometimes be gradual; at other times stability or economic performance can collapse as a result of incompatible evolutions of power relationships or institutions and lead to a crisis. In the latter cases, stability and growth are only likely to recover when a new political settlement defined by a different combination of institutions and power emerges, possibly at the end of a period of significant conflict "(2010:4).

That "*continuously evolving*" aspect of social licence underpins one to the main conclusions of Proctor and MacCallum (2019) paper which details that there is a need for mechanisms to be developed to support emerging voices of dissent in situations where a social licence may come under threat. It also underpins the temporal and spatial aspects of a mine, given that here the national level is not the focus, the spatial is not delimited by national boundaries but by the effects and influences of the mine. Thirdspace, defined by the mine is where the model is operational. Operationally if progress on the mine is to be made, in ANT terms, there is a *need to develop spokesmen* to shape translations of reality and communities need to be supported to become obligatory passing points (OPP) as they have the likelihood to become such at some point in the process if not at the start of the mining process. This interventionist proposal and the practicalities of how that might be done could be the subject of numerous thesis and will be parked here within this one.

The debate around the ability to use the "political settlement" concept not with a national model (macro) but at a sub-national (meso) level is one which is still is a discussion within the political philosophy field. The key papers on this subject relate to the discourse



between Kelsall and Khan. Kelsall (2018) critiques Khan's (2010) seminal paper which appears, much to Kelsall's indignation, to move towards detailing the expansive utility of the political settlement concept. Kelsall takes issue with:

"Khan's equivocation between defining the political settlement on the one hand as a macro-political societal feature, and on the other hand as the distribution of organizational power relevant to the analysis of specific institutional and policy issues. The latter move, in our view, dilutes the concept, mixing it up with lower-level political dynamics, which, while relevant to the study of institutions, maybe more-or-less autonomous of the political settlement" (Kelsall 2018:658).

There appears to be confusion here as Khan is still talking about national level settlements but this paper queries that the term should span how power is distributed across organisations and not just elites within a national settlement. Whilst understanding Kelsall's protective stance to the debasing of the *Political Settlement* concept, the term has wider utility than that of a national settlement. In this thesis, rather than challenging the scale and inclusivity of the concept, it is the representation of a balancing of interests and relationships within the concept of political settlement as a term, that defines the concept's utility with a social licence.

The origins of the political settlement term may indicate why it is so entrenched within the political science realm. It was first used as a term to define the mechanics behind the English Williamite settlement of the Glorious Revolution 1688 with a shift of power from elites to an organisation, in this case, Royalty to Parliament. Its usage by that very national government continued to evolve, given that its subsequent use in 1972 by Her Majesties Government (1972) in the title of an ultimately unsuccessfully document aimed at attempting to construct peace in Northern Ireland. This document looking to encapsulate at least some of the grievances of those community based, self-appointed elites, who were engaged in violence

in a settlement that was not, for the British at least, about national-level governance. Arguably, this was another example of addressing conflict requiring a political settlement at a national level as, without Irish republican violence, there would have been no proposed "*Political Settlement*" in 1972. Nevertheless, for the British, the political settlement in question-related to the governance of only a part of the UK, at a sub-national level. A proposed sub-national-level political settlement was a response to regional and local manifestations of power expressed through political violence. There is then precedence for local-level actors being central to a sub-national settlement defined as a *political settlement* and that reflects what is being undertaken in this thesis.

We can see from the analysis of social licence failures in mining, that at a local level there can be compelling reasons to encompass newly defined or emerging elites in a political settlement involving the various levels of the State institutions and the private corporation. The creation of new social, administrative or governance institutions/actors or the evolution of existing institutions /actor, means that mechanisms for maintaining social licence need to have an adaptive capacity if they are to survive. If the political settlement underpinning the social licence to operate on a mine site, does not enable both the potential for changes and reallocation of resources and opportunities in that locality and provide systems to anticipate the need to evolve the settlement, the social licence will fail. Political settlements are never fixed and what could be called the "*dunamis*", the potential or capacity of actors or in this case actants, to act, needs to be continually reflected upon. Fredericksen (2019) is one of the few to apply a "political settlement" approach within the mining context with his analysis of the "political" nature of allocation of resources to communities, specifically in Zambia. Addressing the use of Corporate Social Responsibility (CSR) within the context of mining and what factors determine the allocation of resources, Fredericksen had this to say:

"The resulting pattern of inclusion and development is argued to result from the interaction of two processes - elite bargaining and coalitions within exclusionary political settlements on the one hand, and CSR practices shaped by risk management on the other" (2019:169). These concepts need interrogating; what is an elite, how are they defined and by whom, what is a coalition and why is CSR being deployed as a risk management strategy? *Bargaining*, for example, implies an ability to be heard and the perceived or demonstrable capacity to articulate an argument towards an enforceable consensus by representative elites. There is a temporal aspect to this perceived or demonstrable capacity. Addressing the potential for situations to change, Kahn (2010:4 ) outlines the dynamism of political settlements, "No political settlement is static and all settlements are continuously evolving. "

A community engaged in the early stages of a mining conflict may not have the capacity to develop a consensus given that the community is very often highly fractured internally and may not understand the implication of proposed mining development. Once they are faced with being relocated and having to deal with negative environmental impacts, they are more likely to organise, particularly if supported by external expertise. Failing to capture those representing the community in an evolving political settlement will mean that the original settlement will come under pressure and collapse. Similarly, if the political processes or institutions change the original settlement is likely to not be fit for purpose. As Kahn says, "A political settlement is, therefore, a dynamic and interdependent set of variables and our first task is to make these interdependencies analytically tractable" (Kahn 2010:4).

Fredericksen, in this 2019 paper, looking at economics and what he frames as "development", draws attention to the potential fluidity of outcomes from political settlements. Khan (2010) sums this up by highlighting political processes and incentives even in the same institutional forms, will produce different economic and developmental outcomes. Khan is

much more concerned with showing the relationships between the distribution of benefits and the stability of the political settlement. Kelsall has defined the uses of political settlements in terms of encapsulating restless elites for the end of state-building,"[p]olitical settlements analysis has been used to explain why some states endure while others break down (Lindemann, 2008; World Bank, 2011; Jones, 2012); why some peace processes result in more inclusive patterns of politics and development than others (Rocha Menocal, 2015)" (Kelsall 2018:1).

For this social settlement model to be of use it must demonstrate the relationship between the community and other actants, to establish a "balanced" or stable settlement. The community are analogous to these "restless elites". Defining the community in a manner that can be used within a working model of social licence in mining presents some difficulties. Community is socially constructed and as such can be contested. Again, rather than delve into the sea of literature on definitions of communities this thesis will give recognition to the core constructs and use a composite to work with the new model. Panelli, (2005:) detailed that issue of difference in within community (for example, Rose, 1997; Secomb, 2000; Young, 1990), and others had concluded, some fifteen years ago, that community is a social construct to be variously and continuously negotiated, for example, Cloke et al, 1997; Day, 1998; Goodwin et al, 1995; Mackenzie and Dalby, 2003. This model of a community as a network, constructed through numerous factors resonates easily with an ANT perspective. Panelli (2005) is convinced by the commonality at the core of the community and identified that some authors concentrate on place-specific or territorial communities (for example, Mackenzie and Dalby, 2003; Rodriguez, 1999; Staheli and Thompson, 1997), whereas other authors have focused on communities that can be stretched beyond immediate, single, place-specific locations (Allen

and Hamnett, 1995; Gandy, 2002; Miller, 1993). She also draws attention to the imagined community, the State, ethnic and sectarian affiliations.

Herein the SLSM model needs some construct that can be operationalised within the model. Only by containerising the multiplicity of definitions of community and yet acknowledging the inherent flux with those many and varied manifestations, can this be achieved. In a mining context, all of these categories as outlined above apply and all have a relationship to the mine. As we have seen represented by the representation of Bear Creek previously in this thesis, corporate sector refers to directly and indirectly affected communities. The binary division has, as supported by both the author's direct experience and the broad swath of academic literature, often represents a narrative designed to reduce financial liability on behalf of the mine corporation. The problems inherent in defining community can be illustrated by some of the author's experience working on a mine in northern Liberia. Discussions with the tribal landowners who own the forest in which the mining concession was based, had to be postponed. Some of the local forest people could attend but two of the key tribal chiefs had to fly in from the USA on their private jets to undertake the negotiations. Seeing the community as simple uneducated forest people would have been challenged again when one of the negotiators turned out to be a professor in mathematics.

Relationships and affiliations are complex. The forests in question contain great wealth not just in terms of land but in terms of the timber assets and threats in terms of zoo viruses. Similarly, in Somaliland, the issues around land and the wild camels roaming the desert had to wait on the arrival from Canada of those that own the camels. Camels represent a lucrative industry in terms of being sold to the middle east. Even relatively poor communities in the global south should be assumed to have aspects of their community that are not spatially located on-site.

The difficulty with communities is that they are hard to define, and they sometimes are stable before a mining corporation arrives with extensive resources and capabilities of removing extensive livelihood resources. Sometimes communities are not stable, and this presents another type of problem for the corporation. This thesis needs to acknowledge the role of elites and elite "capture" of community in social licence conflict. Enabling and supporting communities to create institutions is a "critical process" in stabilising social licence as argued by MacCallum and Proctor (2019). This is a process, not an event and the difficulty here is that this has a temporal as well as a spatial component. They detail some of the complexities recognising that elites must form part of any social licence settlement. This results in terms of building a functional relationship between the mining corporation and communities depend on the quality of the institution-building as these institutions are the mechanisms to encapsulate and accommodate community elites. The institutions must be protected from total elite capture, although it is inevitable elites will be involved and functionally an imperative this is the case. Elite capture occurs when these powerful individuals take control or alter the delivery of public goods and services, usually at the expense of others (Araujo et al, 2008 in Kita 2019).

Kita describes two separate types of elite capture in terms of community process, elite resistance, where there is elite co-option or control; and elite capture, where there is elite exclusion. Kita's concise synopsis of the typography of attitudes to elite capture in delivering public goods and services delivers a series of dichotomies, they are either bad or good, seen as useful or divisive and cites Wong (2010, 2013) in asserting, " that the two approaches are not mutually exclusive, since elites can be co-opted and challenged in the same setting" (Kita 2019:138). This is the key to the "critical process" working, local elites must be involved and to work transparently with less powerful actors in the community a mechanism that meshes

with the creation of iterative translations in ANT terms. There must be benefits for all and communication must be of high quality both ways between institution and mine. To enable this to happen requires a significant investment from the corporation over an extended time to ensure they remain flexible should elite categories slip or shift. There must be a strategic commitment to this approach and support for those tasked with implementing it. Creating mechanisms for dealing with elite resistance may be best done in practical terms before they have something to resist.

The political settlement as a concept can be utilised at a non-State level and has intrinsic, continual change built in. As such it is a more concrete analytical framework to represent SLO than ANT alone, although the use of ANT moves us away from what has been the traditional techno-scientific frameworks for analysing SLO failure, augmented by a range of normative terms. Fredricksen (2019) identified the innovative use of a political settlement framework in terms of mining in Zambia. That Zambia is a developing nation recovering from colonialism may be not insignificant. The political nature of SLO may be more exposed in localities with such history. Similarly in Peru, Póssleman and Sallan's (2019) work reference the Confederación Campesina del Perú, a political movement of which mobilised rural populations over the last 40-50 years. That kind of institution is priceless in terms of preparing communities to engage in meaningful dialogue with the State and mining corporation.

In detailing both the limits and the opportunities for creating a new model of social licence predicated on the "political settlement model", the range of relationships between actants, to represent a stable "social order" within a nation-state are framed. Having established the potential utility of a new conceptual model for a social licence, even given its many inherent failings, the actants and the relationships that drive the model are defined. This new "Social

Licence Settlement Model (SLSM) builds on current, established approaches to determining the components and relationships of a political settlement.

Khan says clearing in terms that illustrate the utility the term might have within the context of this thesis that "a political settlement is a description of the "social order" that describes how a society solves the problem of violence and achieves a minimum level of political stability and economic performance for it to operate as a society"(2010:20). Khan (2010, 2018) uses political settlement as a platform for illustrating the relationships of key groups within society and drew criticisms from those who viewed political settlement as exclusively applicable term, to national-level relationships within the state. This criticism of using the term to explore a range of relationships and defining an outcome other than relating to the nations state was crystallised in Tim Kelsall's critique of Khan's 2018 paper. Kelsall criticises Khan's position that "[a]ll that is required for the existence of a political settlement is that the system is able to reproduce, which by definition means that the levels of economic performance or political violence are sustainable in that system" (Khan. 2018:636).

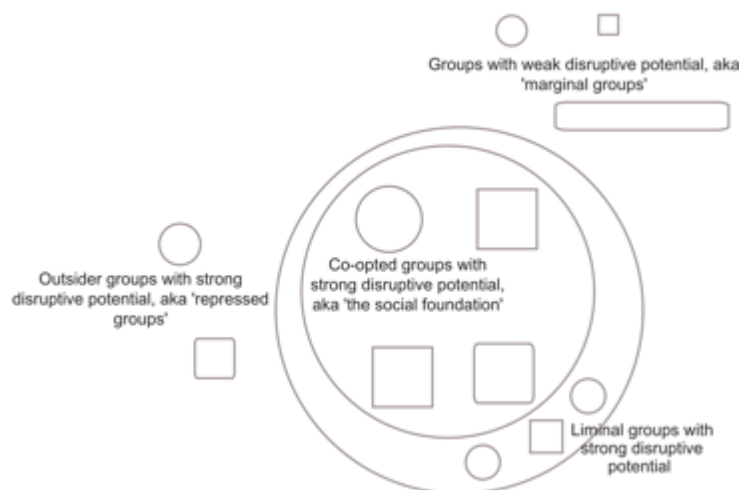
Largely the criticisms are semantic, the Oxford English Dictionary definitions of 'politics' and later 'settlement' (Kelsall 2018:659) being applied to dismember Khan's use of the political settlement term. Also, Kelsall's critique fails to acknowledge that violence is ever-present to some degree within every political ecosystem and that its presence does not negate a political settlement, dependent of course on one's definition of violence. Kelsall rejects the proposition that the 'Political Settlement' term can be utilised to imply a situation where violence is "sustainable" but does accept that, "[a] settlement in a human context implies some degree of agency, even if heavily constrained" (ibid:660). He offers up a definition of Political Settlement as, "(1) an ongoing, conflict-ending agreement among powerful groups, around (2)



a set of political institutions and a distribution of power, expected to deliver, (3) an acceptable distribution of benefits” (Ibid:662).

This conceptual framework works within the context of this thesis, if we were to envisage the settlement as a mine obtaining and retaining a social licence to operate and bastardise the concept of political institutions, replacing it with defined entities which are engaged spatially, financially, or politically with the mine. In doing this, it becomes then a "social licence settlement". The difference between Kelsall's construct of political settlement and the social licence settlement model is only that of how one defines political institutions.

Kelsall's representation of his model of political settlement (Ibid:667), is illustrated in Figure 3-4. It offers few clues to the balancing process necessary within the defined political ecosystem and very little representation of the relationships between actants, or no doubt as he would prefer, political actors.



*Figure 3-4 The social configuration of the political settlement*

This current debate about the structural components, the social configurations, and relationships in an established academic model of political settlement, illustrates the potential

currency in the approach used in this thesis of defining entities and then creating a framework for them to be represented relationally. It also points to such a visual model not necessarily having to be a mechanistic, determinative device but rather a tool to represent complex interrelations. As stated at the beginning of this chapter this thesis will detail assemblages, actants and critical relationship aspects within a model and they will be represented by a range of icons.

In dealing with the construct of Political Settlement in the context of an SLO and demonstrated that there is precedence within the academic literature for using it to try and explain SLO. It details that an SLO settlement model is an attempt to represent an assemblage; a way to represent the dynamic change of continual social interaction in a given space, moving beyond tired theoretical binary propositions in representing social reality. Social licence arrangements, like the rest of social reality, are continuously evolving. That has implications both for the construction of the Social Licence Settlement Model (SLSM) and in the management approach needed to address real-world social licence situations if this model is to be used to try and understand social reality and deliver management. ANT theory gives an opportunity through the fusion with a political settlement framework to move beyond either a reductionist or binary approach in addressing social licence and represent this complex reality. The fusion of ANT and an established political settlement concept, move the new model beyond most models, most obviously, in that the State plays a pivotal role.

In scoping political settlement, the thesis refers to the seminal works of Mushtaq Khan on the definition of political settlement and the challenge from Kelshal. The challenges by Kelshal on the scope of the political term demonstrate that within both the academic literature and political practice there is precedence for local-level actors being central to a sub-national settlement defined as a political settlement. That reflects the position taken herein. The

position taken in this thesis is that the new Social Licence Settlement Model (SLSM) is set, as discussed earlier, at a meso level but that all actants have agency if heavily constrained in their choices.

The theoretical approach herein will never arrive at a perfect representation of reality and certainly never be beyond reproach or challenge, given the width of the theoretical net needed to catch the totality of social realities. An example of this is Kita's (2019) work representing how within one of the adopted theoretical 'containers' used in the model, that of communities, elites although critical to communities' agency can take on a range of different forms of relationship with the wider body. Similar argument tearing at the fabric of the model can be made for all the other containers used in the model. The model does however serve to represent, the structured and multifaceted relationships between containers. This in turn provides an opportunity for these relationships to be challenged and explored. From a theoretical perspective within the social licence literature, this represents a new starting point and one which has the potential to offer a range of new areas of investigation. As a concept, social licence settlement model has also the potential to be taken out of its heavy theoretical heavy setting and applied by practitioners that offering utility to the mining industry.

### **3.5 Opening up Notions of Space.**

The constraints on mining company agency in the field, what they do operationally and how, concerning the securing of and then the maintenance of a social licence, reflects on what might be termed as institutional constraints or those that are intrinsic to the process. These constraints are not just fiscal but are also created and framed through the received wisdom of threats to social licence and ontologically in terms of how information from the field is collected, processed, and understood by the mining corporations. This section identifies the

temporal aspect driving flawed assessments undertaken by the mining corporation for making decisions around the social licence. Through introducing the imperative to resolve social licence failure in the EU, this section has defined the context for the doctoral field research which has been used to test an aspect of the new social licence settlement model generated in this thesis. Through detailing some of the most prescient pressures on the social licence assemblage there is an introduction to this new model as a meso level political settlement. Looking at the potential utility of this approach to generate a tool to enable industry and the state to understand social licence failure, through the balancing of the many interests/relationships of the various containerised participants or actants, it explains that the totality of relationships, drive agency.

By investigating and demonstrating that there are precedents for using an ANT approach to investigate industrial performance problems, this section attempts to knit various theoretical concepts together so that it might illustrate how the presently referenced social licence conceptual frameworks, fail to enable effective analysis. Thus, the need for the pyramid of theory approach and the deployment of a political settlement type framework. This meso level theoretical model is justified and by identifying the critical aspect in the Bear Creek tribunal as a failure on behalf of the corporation to recognise the critical nature of the indirectly affected communities, points to the definition of the project boundary as problematic. This justifies further the utility of an ANT approach which pitches the model at a *Meso* level, represents actants operating (exhibiting agency) with links between local and national level politics, yet opens up the notion of "boundary" or physical space.

### **3.5.1 Starring into the abyss.**

In reframing SLO and utilising a framework grounded in social theory, building on the mixed theoretical approach of the defined pyramid, rather than a business theory analytical

approach., there are benefits for academia and industry. Project complexity is a subject for investigation within the academic business literature yet, although recognising the importance of social context, these approaches are ill-equipped to either portray or investigate it. Poststructuralist geography approaches with a focus on polysemy, provide a means of investigating this phenomenon. More specifically the utility of Assemblage Theory can support the analysis of critical relationships to a mine operation. Such an approach enables non-human actors to be considered within a meso level model of agency, reflecting Gidden's view, in a new political settlement model of social licence, taking cognisance of Turner's synthetic model for conflict.

The new model for social licence needs to present a mine project or operation as an *assemblage/or punctuated network* and explores the iterative nature of the renewal of the relationships that create that assemblage. This then illustrates that the other components of the social licence settlement model, Community, State, INGO and Lender primarily, can be similarly represented and crafted. It is important to define why this type of poststructuralist geography approach is utilised rather than an engineering, business or some orthodox project management or scientific methodology to investigate social licence in mining.

The dominance of tactical approaches to achieving and maintaining a social licence is increasingly accepted as ineffectual (Thomson, Kemp, Owen). Corporate mining's tactical engagement in "development" of localities or communities where they are involved, has traditionally had a focus on productivity and economic growth locally. This echoes the failed neoliberal overseas aid programmes in the Global South, of the 20<sup>th</sup> century, similarly "delivered" by those oblivious to or contemptuous of indigenous knowledge systems. In contrast, an emerging approach to SLO is for the mining sector to assume the role of a "development partner" notably in the Global South (World bank 2018). That said, the

"development" approach within the aid sector, is being increasingly superseded by a more human-centric position based on influential thinkers like Sen (Deneulin and Stewart 2002), who stressed the need for development assistance to focus on supporting people's capabilities, where their lives unfold. Understanding capabilities is about understanding the relationships between communities, livelihoods, culture, and the locale.

### **3.5.2 A question of complexity.**

Abdou, Yong and Othman's (2016:1) address the notion of project complexity from a traditional business management perspective. They detail project complexity through a technological and organisational prism and recognise that project complexity has a negative influence on project management processes, particularly on a project's performance. Their paper is very useful, in that not only does it present numerous business models for managing or mapping complexity but it recognises that context and temporal aspects are critical to measuring project complexity. It is useful to recognise that within traditional business models this field is rarely considered. As discussed previously, the temporal aspect is significant in terms of mine site development. None of the models used in Abdou, Yong and Othman's (2016) paper appear to be engendered with a tool to map social context nor its relationship to the project. Their paper highlights several truths from the business world about risk management that must be reflected on, firstly recognising that mapping communities and social realities are outside the business realm of management. The business sector is not equipped to evaluate nor understand the relationships that are critical to social licence and they have no effective framework for understanding even what to measure. This failure is significant in the real world. Communities are part of "the project" and understanding communities and their relationship to the locale, is critical to being able to understand project complexities where mine corporations are embedded and reliant on the consent of the communities. From a

management perspective and to subsequently understand project risks, so that they might be mitigated, some form of metric needs to be adopted. Current failures of SLO and the need to address it from a business perspective may be the driver to develop social specialists within the mining sector and for corporations to start taking social specialists seriously. Ongoing work by the author and colleagues in terms of defining social parameters for risk within the mining industry and linking that to mine valuations systems are the start of an industrial process. The industry needs to both recognising that aspects of social licence are beyond the control or comprehension of the company and that to maximise financial value from the asset, requires the involvement of social specialists. If community voices are not heard and understood, logically the mine corporation in trying to create the balance necessary for a social licence settlement, is in effect a hostage to fortune. Community voices that are "external" to the corporate table, appear to be significant to outcomes regarding mining profitability and viability.

### **3.6 A Poststructuralist Paradigm.**

Thompson and Joyce (2016) addressed the changes facing society and the mining sector as a part of wider society adjusting to new concepts of sustainability. *Sustainable mining* is an oxymoron, yet in terms of sustaining the lifestyle and global economies, mining is something society cannot do without. Given the decay or failure of many of the sureties of business analysis around mine production, reflecting changes brought about, through a range of international, social and governance changes, wider poststructuralist geography is the perfect tool of choice for developing a working model of social licence to operate. The engagement of human beings within space, often with very diverse perspectives on the use of a specific geographical space, mean that poststructuralist geography is an appropriate tool to analyse the interrelatedness of the attendant concepts to the matter in question.

William's (2005) elucidates this position of the poststructuralist investigator, "the assumption that scientific method is somehow pure, or objective is contrasted with values still at work in that assumption. For example, the language of science and the forms used to justify it are analysed for false presuppositions, with respect to time, space, and reality (Deleuze), with respect to narratives of progress (Lyotard), with respect to ethical or epistemological neutrality (Foucault, Kristeva)" (Williams 2005). As William's indicates, the tools offered by poststructuralist geography are appropriate in terms of their, malleability, adaptability, and conceptual flexibility, whilst still offering us the possibilities of being able to draw conclusions. In addition to this overall approach, as defined earlier, this thesis clusters actors or rather actants into assemblages that incorporate people, practise, and non-human components (the mine itself). It does this so that it is possible to create identifiable blocks of interest and make manifest the dynamic nature of the relationships involved in mining project development in terms of a social contract between key actants, defined in a wider web of relationships. Using a paradigm from the Actor-Network Theory (ANT) approach, Assemblage theory, to create building blocks for social licence model, gives us a new lexicon and framework to understand what creates failure. It also allows us to analysis aspects of what frames any such contract between parties. As Demuijnck and Fasterling (2015:677), represented Kant's view stated, "the contract metaphor is merely a hypothetical device designed to test the legitimacy of the government or of a particular rule." In this case, the contract metaphor is a device for testing the legitimacy of the SLO for a mining company and recognises that that legitimacy is not a binary relationship with the community and Mine but part of a more complicated social system or agreement.

Assemblage theory in unison with poststructuralist theory promotes an ontology that challenges the concept of systems as stable, organic wholes; besides, ANT offers an alternative



ontology for understanding and defining entities that are composite in nature, bonded together in the fabric of impermanent relationships, see Cicmil, Hodgson, Lindgren, and Packendorff, (2009) and Latour (1987) for examples. The mine as a conglomerate of all its relationships, equipment, capital governance of space, is an example of this. Earlier discussion details the opportunity in this case for using such a "flat" ontology rather than exclusively working within a hierarchical theoretical paradigm which recognises the structural aspect to relationships. This thesis conceptualises "the mining project", with all its tendrils connecting component entities, many not located spatially in the project (mine) area, both as an actant and an Assemblage. Anchoring the analysis of social licence in this thesis to commonly understood coalitions, such as 'the Mine' "the Community", supports the potential for industry and government to use this form of analysis to develop recommendations for more effective Good International Industry Practice (GIIP), the standardised guidance that has emerged over the last few decades.

This thesis gravitates towards Håvard and Wanvik (2017:437) on the utility of Assemblage Theory in terms of its supporting of, the levering open of conceptual space to facilitate the exploration of discourses underlying the project process. There is opposition to this position, referencing Brenner and co-authors (2011) suggestion that utilising building block such as assemblages, blunts critical sensibilities. The author rejects this position and echo's Sage, Dainty, Brookes (2011) in that actors/actants/assemblages are defined by and through their networks. There is a utility in applying this type of wide-ranging analysis and changing the very language of the analysis of conflict in mining. The high levels of failure of existing risk assessment systems in mining, call for a new approach that can deliver remedies useful for the mining industry to obtaining and sustaining social licence to operate. Assemblage theory breaks from the established socio-scientific system approach underpinning business risk analysis. It also contrasts with existing linear conceptualisations within the

mining sector of the development of conflict around social licence, see Vanclay and Hann (2019). This combination of post-structuralist geography with its core tenets, that reality is created through language and practice, combined with an aspect from Actor-Network Theory (ANT), Assemblage theory, provides a platform to analyse the manifold concepts underpinning the creation of knowledge informing critical decisions within mining sector operations.

Portraying the mine as an “Assemblage” or indeed a network is recognising it as a complicated, multifaceted social and physical construct and consequently social licence, as one possible outcome or *translation*. Defining what has been and is being iteratively created, in terms of relationships forged by corporate action but also in part by a range of external factors beyond the mine corporations’ control, is very useful in understanding some of the difficulties that arise with a social licence in the sector. In ANT terminology, building on the inherent assumption that all networks are unstable, *Punctualisation* occurs. Punctualisation refers to the concept that the whole network is greater than the sum of its constituent parts and as the networks build, synergistic capabilities are enabled; as networks fall apart, de-punctualisation refers to the collapse of networked capabilities as individual components struggle to pursue their individual goals separately.

The mine as defined in this thesis is an actant when it acts, but simultaneously is a composite, an assemblage or network of interest, people, systems, objects, and places. Actor-Network Theory (ANT) elucidates the heterogeneous nature of actor networks. Building on its semiotic origins, ANT grants all entities of a heterogeneous network the same rational, "semiotics is the study of order building and may be applied to settings, machines, bodies, and programming languages as well as text [because] semiotics is not limited to signs" (Akrich and Latour 1992:259).

This ANT feature of attributing agency to non-human “things”, echoes a much earlier term that was introduced to English by Ralph Cudworth in 1678 as “Hylozoism”; the philosophical point of view that matter is in some sense alive although the concept dates back much further back into time, at least as far as the Milesian school of pre-Socratic philosophers (Long, H.S.,1980). A common notion of both this concept and modern ANT theory is that of inanimate objects or articles having a connection to that around them. With ANT, this is more of a collective, self-supporting yet transient connection rather than anything "hardwired" as with the earlier term. There is a spatial component to a mine but within Assemblage Theory, the mine itself can now be examined as a social construct, more than a large hole in the ground, extraction business, investment or community boon or malady.

The mine’s existence is internationalised through a variety of processes, due to lenders, consultants servicing the sector or the endpoint for the commodity, to name but a few examples. These international consultants produce *Texts*, which in ANT terms are documents used to support the techno-scientific realities. ANT refers to *obligatory points of passage* (OPP) that are critical network channels. They are often designed by the primary actor, the lenders, the mine, or the State, to ensure communication must pass through his or her domain. That is, through obligatory passage points, actants become functionally indispensable to the network. Only when the social licence to operate fails do key OPP within the community reveal themselves.

### **3.7 Failures in the Assessment Process.**

Local consent or social licence to operate is amorphous and granted on an iterative basis, by initially identified, directly or sometimes indirectly affected communities (See Kemp, Worden and Owen 2016, Conde and Le Billon 2017, Andrews et al 2017). There is then, both

a temporal and spatial aspect to the relationships underpinning social licence to operate, yet assessment of social risk is generally frontloaded in terms of mining projects development. By this it is meant, the social impact assessment process is one that begins after mine plans have been developed and before major operations begin to construct the mine. In some ways, the extractive industry could learn from the security sector, undertaking rolling threat assessment reviews, across time, encompassing the behaviours and exposure of adjacent similar or analogous industries (Reniers, Herdewel, and Wybo, 2013). Currently, within the mining sector, there is an industry approach that makes a social risk assessment as a snapshot in time, anticipated "flare-ups" for the community in response to environmental impacts which have social ramifications. Failures in social licence illustrate the inadequacy of current forms of pre-commencement analysis and present forms of mitigation of this type of risk, however one might define it.

Andrews et al (2017) in the Canadian International Resources and Development Institute (CIRDI), is possibly the most comprehensive study to date on social licence conflict in the mining research is consistent in defining the conflict around a mining site as a process rather than an event. One problem then is defining the temporal epicentre of the risk, when is the risk of failure most likely to impact. The second problem is what assumptions to use in developing a useful model for understanding the anatomy of risk in general. An early-stage risk assessment, undertaken when tensions are recognised, leaves us more properly referred to the conflict issues at hand as not risk, which is quantifiable and can be commodified, but *uncertainty*. Whereas risk can be commodified and insured against, uncertainty has no value. There has already been extensive discussion in this thesis as to the issues raised in the definitions of both social risk and social licence to operate within current models.

The conflict between communities and mines which are backed by reputable international investors, can produce reflected reputational damages on those investors. As well as damaging the mine companies' reputation it can affect their ability to borrow from new lenders, potentially destroy the mine's viability and reducing its resale value and reduce associated reputable lenders proclivity to invest in that sector. The mining products can be tainted and lose value; conflict minerals/gems are a well-established concept in popular culture with the likes of the 2006 Hollywood film Blood Diamond starring Leonardo DiCaprio and well documented (Amnesty International 2015) by civil and human rights NGOs. The mine itself is a commodity and the value of that commodification depends on the success of a technological packaging of factors that drive the social licence. Slowly the sector is being compelled by economic drivers, towards encapsulating business risk from social aspects of operations.

Examining the temporal aspect or relationships between actants is crucial to understanding how SLO is created and maintained. Exploring how ANT can be used to introduce a temporal dynamic will support this thesis in introducing a concept of change related to the securing of, maintenance of and loss of SLO. ANT engages with the heterogeneous nature of actor-networks and building on its semiotic origins, ANT grants all entities of a heterogeneous network the same rational; "semiotics is the study of order building and may be applied to settings, machines, bodies, and programming languages as well as text [because] semiotics is not limited to signs" (Akrich and Latour 1992:259).

This order, the assembling of the physical and the social, are all created in both space and time and change continually. The Assemblages as discussed earlier, within Actor-Network Theory (ANT) are defined or expressed as "*translations*" (Sage, Dainty, & Brookes. 2014) where different actors engage with others and build alliances in the process defining their goals,

opportunities, and risks. Punctuation of the network is the result of an assembling or translation of reality that holds all the parts cohesively together. In a social licence situation, it is arguable that communities could be defined in ANT terms as obligatory passing points (OPP). The OPPs are essential nexuses of the network process. Setting for example early and sustainable discussions between Mine, State and Community from early in the establishment of the mine, is likely to be an OPP that supports the development of long-term settlement. To reach this point would be a step to ensure the communities discussions and their introduction as an OPP does not disrupt the networks. Similarly ensuring that the *Community* is a cohesive entity would logically protect the integratory of the system. Shocks to any system that appears to offer a social licence, the entry of external actors, new technology, new events are all likely to disrupt the network.

Translations as expressions of existing Assemblages are subject to constant change with contemporaneously a process of both social and physical displacement. In ANT, relationships exist between actants, and as defined earlier, these are not necessarily individuals or aggregated individuals (groups) but can also be inanimate objects or processes (Latour 1987). The use of ANT to look at a mining project from a project management perspective pulls on ANT's ability to map objects and processes as "real" entities. "Real" in this case means, objects and processes are not just conceptualised but recognised as directly affecting the outcome of processes, they can create and contribute to change. With an ANT analysis perspective, project management, as in the unrolling of a mining project, is considered a complex situation where relationships are enacted to achieve stability (Callon, 1986; Latour, 1987; Sage et al., 2011). An important feature of ANT is that the actants play a prominent role in the 'translation' of processes, creating change. Some of the defining points of ANT are that

humans, objects, and processes play a part in the struggle to achieve resolution in the conflicts within a project and that actors are defined by their network (Sage et al, 2011).

Changes over time, in whatever aspect of the network, resonate throughout the systems which explains why networks are critically dynamic and we experience this through the world being dynamic and changing. Changes anywhere in the network have the potential to lead to major changes, not just in relationships of actant but to collapse of the existing status of the network. Callon characterised this, “for example when actors in the network refuse to cooperate. This leads to the destabilization of alliances as “translation becomes treason” (Callon 1986:15). Callon here draws on a common maxim detailing, that when we try to translate words and phrases between languages, translation is in theory, impossible. One cannot convey all the meaning(s) in the original text whilst also transferring all its aesthetics, because there are too many differences of meaning between languages. In a sense, Callon is detailing that once the relationships that create meaning change, translation of the existing situation becomes a process which ends with a new result, a new reality, or the web of relationships.

Within the complex web of relationships, the process of alliance-building is further carried on with the crumbling of existing networks. The “liberated” actors, those freed from the gravity of previous events and networks, like electrons from and nucleus, tend to construct their own (new) networks. This dynamic of, new order creation, whilst the old order crumbles, explains the processes which this thesis contends can be characterised as the interaction of actors in and around the mine project. In ANT theory, network elements that change or diverge are converted to *inscriptions* or *immutable mobiles*. These are textual, cartographic, or visual representations that, remain relatively stable through space and time, define, and assign roles, and create new realities through being mobilised and/or circulated through *translation*.

*Inscriptions* or *immutable mobiles* may, for example, be narratives about the situation previously, that can be passed around the network, in turn being assigned new values and meaning.

As some networked possibilities are realised other sets of networked possibilities always become unrealised or unrealisable. *Translations* order and produce society and agency, nature and the machine of reality. The process of *translations* which occurs over time drives the machine that is reality, through a process of converting entities, and/or generating new entities capable of substitution or simplifying and condensing, while retaining difference. *Translation* is both a practice of making equivalents and an outcome with realised effects and the displacement of alternative possibilities, comprehended from the perspective of the translator. This can result in what is called a simplification. These *simplifications* or *black boxes*, translate network elements into a single block while retaining difference, support actors to determine their relationships to the network.

Networks characterised by a high level of *convergence* amongst actors are those that demonstrate agreement resulting from similar translations. In an SLO sense, a community that is happy to have a mine extract resources and where all actants feel there is a significant mutual benefit, new translations of reality, will result in little change. All the main actants/assemblages are seeing a similar world, or all are seeing versions of reality that coalesce and underpin the stability of the system. Converged networks are both highly aligned and coordinated whereas divergence of translations amongst actors, augers conflict. *Alignment* describes the level to which networks are defined by a common history and a shared space. *Coordination* refers to the processes that develop a shared adoption of the convention, codification, and translation regiments.



Networks which are closely *converged* may also demonstrate strong *irreversibility*. The level of *irreversibility* demonstrated in a network defines actors' capacity to occupy a previous iteration of the network, as well as determining how valid are the subsequent *translations* for participating actors. Tightly converged and highly co-coordinated networks are, in other words, those that are simplified through translation. Simplified networks resulting in single-point actants are characterised as being punctualised or black-boxed. *Punctualisation*, is similar to the idea of encapsulation in object-oriented programming. Only when the network breaks down do individual components come into view. A positive relationship between communities and mining corporations in a locality with a shared history of low impact, high-value mining and stable society might be characterised in this way. Depunctualisation – is the opening of the box, the collapse of the established order, perhaps only when a social licence settlement breaks, does it become apparent what was keeping it in existence. Punctualised networks are considered only in terms of their input and output and are an established reality or are counted as an asset. All established reality, Black boxes included as a component, can be revisited, opened, and revised.

ANT terms as we can see here, deal with the constant change in realities and attempt to package up generic factors that support that change process. Networks require continual maintenance as the order is always provisional and changes in one aspect of the network can sweep through a network system. Networks are dynamic alliances and subject to possible actors or actants, leaving or joining. Temporary stabilisation of a network, which is all that is possible temporally, involves the ability to dismiss alternative anti programs which arise through testing of the validity of claims and the effectiveness of a *spokesperson*. A *spokesperson* is an actant that can speak on behalf of others, animals or machines who cannot speak, or groups of people defer to the *spokespersons*. Deferring may be active, passive or just

non-contested and utilised by the *spokesperson*. Spokespersons simplify networks of and to others, by articulating their interests, attributing roles and identities, and proposing courses of action. Outside actants can challenge a network's *spokesperson* on grounds of validity, reliability or on the grounds of their legitimacy to represent or on the grounds of truth. This strategy suggests that to understand how actor-networks are formed, the researcher must examine how the trajectories of (sociotechnical) encapsulations enable (or prevent) specific types of knowledge (literacy practices) within specific contexts. By this is meant, how the real-life processes surrounding mining in a specific locality, enable the processes of getting environmentalists, geologists, engineers, and occasionally social scientist on-site to create knowledge.

The key idea is that if we understand literacy as the ability to enact, perform and engage in coordinated practices that recruit both social and technical resources (Lave & Wenger, 1991; Hutchins, 1995), sociotechnical encapsulation reveals itself as a fundamental characteristic of literacy. Socio technical encapsulation is the process of how those with accepted technical expertise package up the locality. Callon draws attention to how significant the role of technologists can be in defining the truth, both in encapsulating and as spokespersons. Working with the mining sector, it is difficult to not think of those international contractors known as FIFOs (Fly in Fly out) undertaking scoping and environmental and social impact assessments as contractors to the mine corporation and lenders; “[m]ore than any other kind of actor, technologists maybe sometimes endowed with the capacity to construct a world, their world, to define its constituent elements, and to provide for it a time, a space, and a history” (Callon 1986b:21).

Whether or not that sociotechnical version of the truth resonates with those living locally will determine how successful translations are or if they can be suppressed. Horowitz (2011)

applied this analytical framework and used the sociology of translation to account for the shifting and conflict-ridden relationships between an indigenous protest group in New Caledonia on the one hand, and urban-based, environmentalist grassroots organisations, a human rights lawyer, the mining company, and the provincial government, on the other. Horowitz's article expands ANT capabilities by showing how it can be used to analyse the power dynamics demonstrating on how translations are successful or get suppressed, and how the success or failure of their alignment, shapes the alliances created by these translations. The basic insight offered by Horowitz demonstrates the utility of an ANT ontology for studying conflicts which are driven by different views of a threatened ecosystem by actants, brings together a dynamic interaction of a variety of actant, is the following: T

his tension between a desire by one actant to achieve their aims, and the necessity of working with those who do not share them. He demonstrates how making alliances, and the power they entail or contain, is a tenuous and fluctuating process, and is at constant risk of collapse (Horowitz 2011:5). *Meaning* in ANT theory is created through network interaction. Latour (1996) utilises the notion of quasi-object as *something* that is created through interactions and holds meaning. He said, "If choosing words for the network-tracing activity has to be done, quasi-objects (Serres 2007) or tokens might be the best candidate so far. It is crucial for the definition of the term that what circulates and what makes the circulation be both co-determined and transformed" (Ibid:16). Returning to the spatial component and recognising, that for the mining corporation as well as, directly and indirectly affected communities, location is central to how social licence is mediated.

Current practice in utilising a social-technical assessment methodology constructed to investigate the impacts radiating out from the proposed or existing mine maps the social and environmental landscapes, utilises a Cartesian analytical format, even when measuring culture.

A focus on the quantitative; *how much*, rather than how important and to whom, underpins the metrics utilised through this sociotechnical lens. There is little opportunity to capture beliefs, values, traditional practices, or concepts of how space is governed but rather a focus on how an already defined project will impact on the locality, who owns it and financial compensation. The impact is viewed as quantitative and usually environmental in nature. The closer to the centre of the mine project a community lives, the more legitimacy is attached to their views on impacts. Yet as we have seen with the Bear Creek determination in the previous chapter, this does not mean those further away have no legitimacy.

### **3.7.1 Concepts of space and place.**

A geographic community or network linked to a mining project generates *tokens* or quasi-objects through interactions and the process of generating a punctuated network. A *token* in ANT terms is something that transforms those it engages with it and crucially is moved around the network. Similar, to how a football might be used in a game between teams. Without the ball the game would be meaningless, engagement with the ball transforms the actants who are the teams and the players. Engagement with the token offers opportunities and risk for actants. If the local issues, social and environmental concerns, and factors around mining legitimacy create a token which legitimises, for example conflict, that *token* has the power to transform all those that engage with it. The further that the token can move away from the spatial nucleus of the network and retains its currency or potency, by linking into other networks, the more risk there is to the stability of the network. An example of this would be when a geographical community manage to engage an international NGO through a conflict-related issue around mining and the environment. The conflict token becomes part of a wider network and the risk to a mining settlement is increased. In ANT terms, this provides an opportunity for a new *spokesman*. Environmental, economic, and social justice issues that

drive anticipated gains or anticipated losses by the community, are constantly redefined within the new narratives emerging from the network. Reality is redefined/remade through the reification process as the token moves between actants. Aspects of the narrative become increasingly punctualised within the translations and are harder to depunctualise the further away, in spatial terms, the token is used. Narratives developed with local legitimacy are difficult to challenge, the further on is from the epicentre, spatially or temporally.

Physical space and its conceptualisation concerning the mining project is important as outlined in the previous chapter and the example of Bear Creek Corporation. The latter's failure to engage with *indirectly* affected communities cost them some USD 504million. This notion of direct and indirectly affected conceptually opens of a range of theoretical constructs of the mine boundary. Challenging established reality is harder the further one moves from the epicentre of creation, possible why a prophet is never welcome in their own land, where the challenge may be easier. Escobar (2001) beautifully outlines the exclusion and reintroduction of locality and 'place' into wider social theories, demonstrating the link between culture, self and location as outlined at the start of this chapter. Moles (2017: 2), crystalises the importance of place in recent social theory; "As such, we should understand Lefebvre's lived spaces (1991), Foucault's heterotopia (1986), bell hook's homeplaces and Bhabha's (1991) third space as part of the Third-space adopted" and utilises Soja (1996) concept to build a space defined to the actor by engagement on numerous levels. There is no direct translation between the Third-space concept and Foucault's heterotopia but there is a coalescence of purposes that may be useful here, to illustrate that place, culture, identity, and sense must be seen by theorists as integral. Mining projects and those working within that assemblage and its translations, see their project as "central" and other spaces as marginal. This notion of marginality for some and not for others is well highlighted by Hetherington.

*'... [T]hese may be places on the edge of things ... but they can also be spaces right at the centre of things, spaces in which the State or big business may ... choose to surround ... with barbed wire, police dogs and tear gas. They may also be insignificant, everyday sites that are only made visible by what unusual goings on may be seen to occur there. In other words, they may be margins at the edge, margins at the centre, or transparent margins that are normally hidden from view. '* (Hetherington 1998: 130)

This view of knowledge puts it beyond that which is captured by the practices of the 'FIFO' transient workers on mining projects, feeding a standardised Environmental and Social Impact Assessment. Undoubtedly ANT through the associated lexicon has significant utility in describing the complex and multidimensional relationships and how they change over time. The difficulty is unless that is shackled or anchored to concepts which are less mutable the thesis could end up without a working model or a model that at least can be used to represent relationships. Horowitz's (2011) research defined the tensions between actants and the process of brokering precarious alliances. It is arguable that balancing acts allow a social licence to be part of the continual translation or assemblage can be best portrayed in terms of a meso-level political settlement made visual. Knowledge creation from a techno-scientific perspective utilising 'external' people, results in static assumptions that do not represent the relativity of local people. Political legitimacy and the complex web of relationships derived from a close spatial connection to a locality, enables the generation of tokens surrounding the environment. This is highly likely around environmental conflict in the mining sense. In more globalised work, conflicts over visions of reality between communities and corporations, indigenous knowledge and techno-scientific knowledge are inevitable.

### **3.7.2 International knowledge creation.**

Investigating the operations of mine corporation and developing a model to encompass a range of mining situations, requires us to recognise that there is a wide range of sites or operation, varying differently from continent to continent. Developing a model that can operate across these multiple domains, compounded by mine corporations themselves often being complex multi-continental entities, is only possible if we utilise types of ontologies that can function across these domains. It is also important to recognise that a locale in the case of the mine site, is usually in some remote rural venue, becomes the centre for major international investigation usually by external actants. This internationalisation brought about as capital, knowledge creation practices and people from outside the immediate vicinity of an ore body or whatever other substance is being mined, has the potential to link “the mine” into a range of conflicts as well as opportunities well beyond the local. Mining in states other than those that are despotic, supports states to make manifest their hegemony with regards to regulating or permitting activities. Most states have, if not exclusively owning it, a significant call on the underground minerals/resources, what we can represent here as the *sovereign wealth*. This fact permeates all the literature on social licence and the existence of national and transnational “codes” for determining the value of mining requiring state endorsement, supports this. Agyemang, Fantini and Ansong (2016) illustrate how in Africa the effectiveness of the state as a regulatory body will often be one of the major determinants of foreign ownership of mines.

There is always a role for the state to play in articulating and modulating the relationship between those digging up the resource and those that are impacted on by that process. Both the State and the Mine that rely on external investment capital, through the creation, deployment or representing of scientific knowledge, engage in an annual reification of science and truth of the mine locations reality, a reality endorsed by the state and lenders such as the

World Bank, in a manner consistent to that defined by Latour. Bruno Latour's work, drawing on the work of Foucault, addresses both the, "epistemological and ontological problems in the production of scientific knowledge by interrogating how such knowledge is negotiated and by challenging the limited, anthropocentric domain of agency in accounts of materiality" (Woodward, Dixon and Jones 2009:7).

Latour's scientific truth, as all truths are, is invented and continually reworked and validated through iterative exchanges by those within the scientific community and in the case of mining and associated finance, that community is predominantly situated in the "global North". Latour's truth, like all, must be defensible and uncontested, reified through engagement between those inventing the truth and those viewed as powerful and legitimate. As with all knowledge systems, any subsequent emergent challenges discourses are dependent on the existence of other forms of similarly manufactured pieces of knowledge which have been similarly validated. If there is scientific evidence that noise from the mine is not damaging local people's health, any challenge to this truth must be supported by suitable evidence. An inability to secure the resources to build such a case leads to challenges being largely ignored. New knowledge manufacture requires both time and resources. In the event, that truth cannot be challenged by communities through their lack of access to appropriate resources, the roots of community conflict and social licence withdrawal are formed. Models of conflict within the social sciences are as old as a social science. Marxian, Weberian, and Durkheimian sociology have informed a range of more modern social theorist such as Bourdieu and Talcott Parsons and conflict has traditionally offered a rich platform for a range of analytical positions. Turner developed a synthetic model, illustrated in Figure 3-5(2013:41), for conflict based on these forerunners, see Figure 3-2 and Figure 3-5. They are particularly useful for understanding how communities responded within a mining context.



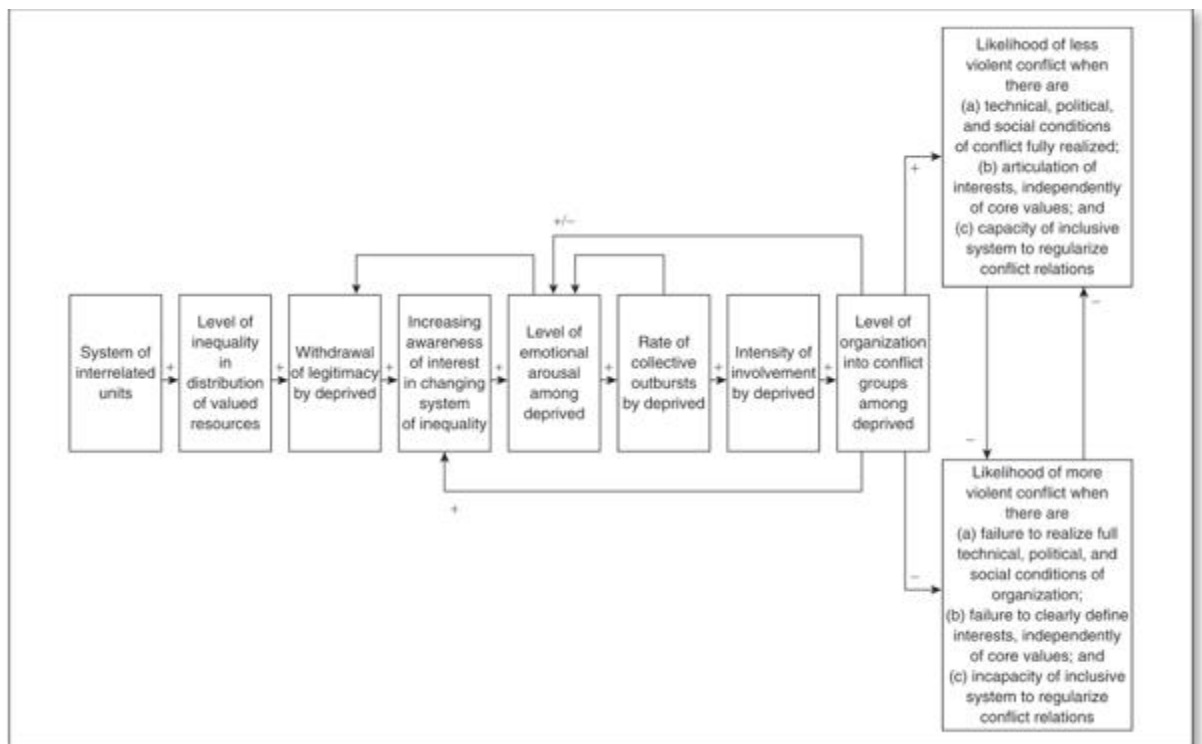


Figure 3-5 Flow diagram of Turners synthetic model

The key starting point in terms of this thesis from the above diagram is: "Level of inequality in the distribution of valued resources". Within the terms of this thesis, his diagram might support the new model more if "*perceived inequality*" were to replace the level of inequality. It is the perception of inequality and the relationship across all actants that destabilises the relationships that hold the social licence settlement together. An increasingly robust global mining regulatory framework for undertaking social and environmental mapping of new and existing mine sites has developed in the last ten years (World Bank 2017, Costanza, J. 2016). This framework sets the scene for the production *Texts* which we might define as acceptable narratives and these frameworks drive the creation and shape *Texts* for interpreting impact and risk are techno-scientific and highly internationalised. These texts however can also be used as Tokens within an ANT analytical framework. Tokens as described earlier are the quasi-objects created through the synergy of network punctualisation. Their repeated

creation strengthens and reifies the network. Failure of constituent parts to perform their roles, whether material or human, and whether through incapacity or disinterest, leads to network breakdown and de-punctualisation. Most recent advances by the likes of the influential, The London Metals Exchange, producing publications and guidelines on mapping Environmental and Social Governance (ESG) factors, utilise a range of existing risk mitigation methodologies (See FT1) that seeks, as those before, to identify drivers of potential conflict. Conceptualising conflict as a Token explains how their repeated creation and use, strengthens, and reifies the network.

Failure of constituent parts to perform their roles, whether material or human, and whether through incapacity or disinterest, leads to network breakdown and de-punctualisation. As tokens are quasi-objects, they are objects that are neither quite natural nor quite social and that derive their meaning with the network from their relationship with others. The cascade of reports (texts) that move throughout the life of a mine (network) are also Tokens that, through their use are reified and represent a techno-scientific truth. This sole truth is only broken when there are challenges to the social licence by the local community as the network fails to stay punctuated. With nearly all project management and delivery approaches in the mining sector, *stakeholder analysis*, usually only happens at the commencement of projects or when there is a need to re-evaluate failing social licence processes. It is interesting that the language of business, that of stakeholders, is used to capture communities which are external to the corporation. Sage, Dainty and Brookes (2011:209), quoting Jepsen and Eskerod (2009) typified this failure to build a platform for relations within the project approach as, “mainstream stakeholder analysis usually only operates at the front-end of the project, as a basis for on-going decisions and planning (Jepsen and Eskerod, 2009).”

This approach is personified in Free Prior and Informed Consent (FPIC) (see Owen and Kemp 2014) as GIIP (Good International Industrial Practice) and is driven by the need to legitimise mining against the challenge of the global indigenous movement (Sawyer and Gomez 2012 in Owen Kemp 2014:91). That FPIC is the result of organised local protest on a global scale is held up by the evidence and the lawsuits. Bear Creek Corporation Vs Republic of Peru (2018) is an excellent example of the financial imperative to driving both a clearer definition of SLO legally across jurisdictions and the penalties for failing to be seen to seek it. The corporation and its associates claimed damages of \$522m but were awarded \$18m because they had not gained a social licence with indirectly affected people. This underlines the importance of undertaking and documenting measures to secure and maintain a social licence. Significantly this judgement was based on evidence that the company had not sought to gain access to, engage and effectively consult those *indirectly* affected communities. By focusing on indirectly affected people, the judgement raises significant questions as to where the boundary of a project extends to. With the FPIC protocols, consent is given at the start of mining operations and that consent is then used as a totem or Token, in ANT terms, to support the delivery of social licence throughout the life of the mine, with no need to revisit that consent given, unless the community threaten to revoke the SLO. The reality of practice would likely mean there would have to be an ongoing process to placate lenders and possibly the State. FPIC is a requirement for GIIP where there are "indigenous peoples", and that definition is nationally given.

This creation of reality through relationships is at the heart of a Social Licence Settlement Model, yet to try and create a useful tool rather than an amorphous network, a political settlement model framework has been adopted.

### **3.8 Theoretical underpinnings of a new model.**

This chapter is focusing on the need to address the widespread failure of existing social licence conceptualisation has constructed a whole new set of *foundations* for a new social licence settlement model. The foundations have drawn on the strengths of the four defined theoretical positions that make up the pyramid to frame this new model. Before detailing the reasons for a juxtaposing of industry produced and internationally validated techno-scientific quantitative truths with indigenous knowledge delivering social licence failure, there is a clarification on why it is essential to approach the issue at hand using a poststructuralist and ANT augmented framework. Although sides of the pyramid are distinct, they all crucially connect and are interconnected. Using aspects from the pyramid, constraints on mining company agency in the field can be outlined, illustrating how that reflects on established approaches to delivering a social licence. Unpicking the temporal aspect to assessments undertaken by the mining sector for making those decisions, the combined theories suggest a social licence should be based on a political settlement paradigm, should be pitched at a meso level. Regarding physical space, by identifying the critical aspect in the Bear Creek tribunal, as a failure on behalf of the corporation to recognise the critical nature of the indirectly affected communities, it points to define the project boundary as problematic.

A mining company is, just like states and communities, constrained in its agency by factor outside of its control. An industry such as mining, where mine company ownership is highly dispersed through stock bought and sold through, London, Toronto, and Sydney exchanges, has a range of constraints on long term agency. As Fauziah, Yusoff and Alhaji detail clearly, “[i]n countries where ownership structures are dispersed, if the investors disagree with the management or are disappointed with the performance of the company, they use the exit options, which will be signaled through reduction in share prices” (2012:54). If

we look at how this western model of corporate governance effects mining companies' ability to function, it effectively means that the sector is wedded to a business model that can only commit to short term engagement with the State and Community. It is referred to here as "western" to identify that, it is by no means ubiquitous and that a Chinese and other State-sponsored models of corporate governance also exist. Once significant impediments to short term financial returns emerge within the western model, capital flight is almost inevitable once the share price starts to tumble, and investor's confidence departs. Similarly, building a relationship through many years of investment in a rural community with the possible prospect of obtaining mining consent, is unlikely to support the company's share value. Time matters, the temporal aspect to defining agency is a critical factor within an ANT analytical framework as there is a recognition of the lack of permanence within any social system. Reflecting on reality within the mining sector; it takes time to build relationships with communities and to develop an understanding of critical issues for both the community and state. It takes time for communities to process information, particularly about issues that which they may never have been exposed to. The internal processes within communities that determine who has a voice, are significantly less proscribed than similar debates within a corporation or indeed a state.

More problematic with mining is that very often the major decisions in terms of how minerals might be extracted, are taken by those accessing the value of the mine as a mineral asset, many years before any engagement with local/host communities has occurred. In practice the type of mining process used, underground or open caste, will be driven primarily by cost and only if there were substantial environmental or social challenges, is there likely to be a revisiting of the mining methodology. Underground mining is generally seen as a more "acceptable" approach to communities compared to pit mining, however, the costs are higher. The selection of an approach may be driven by the marginal value of the minerals underground

with little reference to the social acceptability of the approach. It may, for example, be deemed by those constructing a mining project business plan, too expensive to employ a mining process that would have less social impact. Within the EU, the increasing common failure of social licence by mining exploration companies trying to exploit State sovereign wealth has been linked to a variety of factors. As has been reiterated again and again in the literature and this thesis, standard factors are driving SLO failure. Notably the inability of mining corporations to invest in initiating early in the project development, long term dialogue designed to hear, capture, and develop over time, the voices of the civic challenge to the proposed mining activities. This approach is documented as a process to positively shape the necessary relationships for a social licence settlement, leading to secure social licence and ultimately mine success (MacCallum and Proctor 2019). The design of the field research underpinning this thesis, draws lessons from the conditions and necessary engendering factors that enable those community actors opposing the operation of a mine, to bring about the conditions where mine development or mineral production is stopped. Setting the analysis of participants semi-structured interviews within a post-modern geography framework of discourse analysis, whilst borrowing tools from Actor-Network Theory (ANT), this research aims to support the construction of and test a new model of social licence that can introduce a new lexicon and open discourse between those involved in mining, in a new direction.

In constructing a model that supports a definition of social licence to operate that encapsulates some of these existing analytical concepts. Such a definition for a social licence needs to move beyond present conceptualisations, away from one predicated on normative terminologies such as "trust" and away from theoretical approaches which view the social licence as the result of a dichotomy of relationships between a mine and a community.

Mentioned before, divergent themes emerge within the literature on a social licence as it tries to incorporate these important but amorphous concepts such as trust, social acceptance, and risk. The proposition to be harnessed is that those contingent events, actor perspectives and circumstances, are assembled and utilised by actors to both define their goals, opportunities, and risks. That assemblage (social licence) is related to something that could best be defined as a *political settlement* at a meso level, rather than *political settlement* as it is normally applied at a state level between elites. Menocal (2015), referencing Putzel and DiJohn (2012) draws heavily on the concept of the political settlement in defining policy frameworks for peacebuilding in a range of locations. These are national settlements, but the policy framework analysis focuses on challenging elite linkages to violence at a community and State level and the balancing act between opposing elites deliver a political settlement. The use of political settlement frameworks to analysis the agency of local actors within a wider context of national politics opens the door clearly for a political settlement to be used in defining relationships generating a social licence, particularly since the state is a pivotal and every present actant.

The poststructuralist analytical framework enables the recognition that language, wider society structure and social practice create the reality being investigated. The nature of a poststructuralist geography approach focuses on polysemy, that is the plurality of meaning but specifically focusing on meanings and identities. This section demonstrates why these types of ontologies are utilised, rather than an engineering, business or some orthodox project management or scientific methodology. Those who utilise these other approaches have tried to design a regulatory framework to support social licence in mining and have been regularly unsuccessful. This thesis touches on some of the inherent reasons for this failure, linking it to their choice of ontological framework. This section demonstrated how others have also used an ANT approach to enable investigation of an industrial problem, the approach in that sense

is orthodox. Utilising ANT concepts of assemblage, actants, texts, punctualisation, obligatory passing points (OPPs), tokens and translations and unpacks them to define how they are being deployed herein, this section gives some examples of how this might relate to mining, notably around *community conflict* with the mine, that which is at the core of social licence. The research details the aggregating of interests around the mine locality and operations and explains these in terms of an assemblage, defined as a meso level, political settlement. The thesis moves on in the next section to deal with the political settlement concept in more detail. Social licence is neither purely local (micro) nor purely macro as an established political settlement model would dictate, yet has elements of both levels of institutional interplay, as well as being embedded locally in the social fabric of society.

Physically the model for a social licence needs to combine the variety of actants conceptualisation of space and embody an option for change linked to change over time. The model can only be set in Thirdspace if it had to embrace the breadth needed for a model representing both a global and specific context. The mine is an actant, when it acts but also a composite, an assemblage of interest, people, systems, objects, and places. In its current form, the techno-social approach by the mining sector to dealing with potential social licence failure is evidently not capable of capturing or determining what is critical social data nor how to incorporate that missing form of knowledge into mine designs, to enable secure ongoing mining operations. Admirable attempts are being made to design approaches for engaging and supporting communities hosting mines, to benefit from mining operations through notions of "shared value". Whilst being useful in a practical sense, these approaches are hard to integrate within any viable theoretical model of social licence or indeed development. The notion of "shared value" is very much a neoliberal, business approach to supporting local economic growth, echoing the failed aid delivery approaches to the global South.



## **Chapter 4 Methodology and Research.**

### **4.1 Introduction.**

Underpinning the choice of research methodology was the desire to be able to utilise the research from this thesis to develop through its analysis, a more comprehensive and usable abstract model for social licence. Experience from the field made me aware that the lessons that were developed in locations that were not within what could be defined as the Global North, find little currency with those who hold the majority of capital within the mining industry who are based in the Global North. Developing a model using examples from the vast continent of Africa would have such a model labelled as “African.” In a sense the choice of research locations was a happy coincidence of being able to tap into existing ongoing research across Europe with colleagues working on a European Union Horizon 2020 project (INFAC) exploring barriers to mining, and some great advice from Jon Russill (SRK Exploration), who pointed me to critical zones for minerals in Europe. Europe, at least partly dominated by the EU, the world biggest market, was preparing to launch a major investment framework aimed at decarbonising their economy (EU Green Deal), and would need to square the circle of increasing citizen militancy against with the need to extract *critical minerals* to drive their economy. The southeast of Europe with several countries at various stages of hatching from oppressive central controlled states, also happens to be a location rich in critical minerals. I was aware from previous work in the region, that mining had become, for some of those states a political “hot potato”. This prompted investigation which quickly crystalised around the difficulty that appeared to have developed around mining companies’ social licences, in what I term here as “new member states”, basically those recently joined to the EU. There was obviously some change in the social texture of society, and this appeared to coincide with the process of joining of the EU.

## 4.2 Case Study Methodology.

In selecting a multiple case study approach supporting the analysis of broad societal factors driving loss of social licence, it was necessary to recognise certain constraints and opportunities. Like so much in social science the very roots or values underpinning the concept of “case study” have been challenges. Punch (2005:144) states that the case study ‘is more a strategy than a method’ and accepts that: almost anything can serve as a case, and the case may be simple or complex. Vaivio, (2008) identified that during the writing process theory, research questions and data can seem detached. There is little doubt however that the case study is a useful and widely accepted methodology in social sciences and despite a range of distractors or critiques, it persists as a methodological approach. Punch (2005:144) describes the range of diversity regarding how the case might be defined. It could be any congregation of people from an individual to a nation or indeed may be bounded by an event, process or decision, the range is boundless, so it is necessary for this thesis to create those boundaries, to define what we are looking at.

Stake (2005: 445), a leading proponent of the case study identified three main types of case study. *Intrinsic* focusing on better understanding a particular case. *Instrumental*, creating the basis for a deductive logic to provide insight directly into an issue or as the basis of a generalisation. The last criteria, that of *multiple or collective*, focuses on more than one case simultaneously to investigate what he terms a “phenomenon, population or general condition’ (Ibid 445). In a sense this thesis uses a hybrid between a multiple approach, as it uses two case studies, and instrumental, as it seeks to define, predict, and confirm a number of expected outcomes from the research data. The deductive aspects from the first case study frame and are challenged in the second, with the aim of verifying a particular aspect of social licence.

### **4.3 Case Study One.**

This thesis uses two case studies. Firstly, Rosa Montana mine development, set within the wider context of Romania and adjacent Bulgaria, both of which were either in or in the process of joining the EU, during the historic period under study. This later factor is critical to the case study analysis. The richness of material, academic, grey literature and legal documents released as part of an ongoing multibillion US dollar lawsuit between the mine developer and government of Romania provided a rich seam of evidence. Romania and Bulgaria are seen as similar although they are very different jurisdictions politically and historically, but they are both now in the EU. Romania transitioned in during the Rosa Montana mine conflict, under investigation herein.

### **4.4 Case Study Two.**

Serbia mining sector in 2019 with a particular local focus on the mine complex at Bor and to a less extent the anthracite fields of Lavinitza, encapsulates Case Study two. The period of study was as has been discussed later, during the initial period of EU ascension for Serbia. The case study boundary then is looking at the relationships identified as crucial in case study 1 and this drove the field research Serbia. The underlying question for participants was: as social licence issues manifested in Bulgaria and demonstrated through extensive documentation in Romania largely through the arrival or supranational environmental and social regulations, during the later stages and full implementation of EU legislative systems, are similar political, social, and ultimately social licencing challenges likely to arise in Serbia as it aligns with EU regulations? Yet another question: is Serbia as a nation prepared or equipped to deal with the challenges?

## **4.5 Analytical Framework.**

Ragin (1992:1-2) in his exploration of the case study in ‘what is a case?’, argues that the response to criticisms of the case study, that it is implicit to most social scientific notions of case study analyses, is that the objects of multiple case study investigation are similar enough and yet separate enough enable them to be treated as comparable of the same general phenomenon under study. He argues and this thesis concurs that social scientist conducting case studies, frame their cases as typical or otherwise and as “theoretically decisive” in some other way. In this case as part of the research, participant involved in various ways in the mining sector were asked, did they see similar factors and processes at play to what had happened in their neighbouring country? Did they anticipate a different outcome, and did they accept that, irrespective of the underlying mechanisms, social licence for mining was now problematic in those new adjacent member states?

The first of the two case studies in this thesis, the desk research, uncovering a link between mining companies’ difficulties in one or two countries at one period of time and delineating that time in relation to highly important contextual aspects regarding the nation state transitioning to transnational social and environmental regulation. The social phenomena brought about by these changes are intricately related to how social licence is delivered. The second case study uses the first to identify target locations, participants and issues. The research from both case studies is then fed into an analytical framework or a new model for social licence that has developed from noting the deficiencies of other models currently used in academic and industry.

In analysing the results from both the desk research and that of which took place across a broad range of stakeholders in Serbia there was an opportunity to explore similarities and

differences. Utilising this desk and field research and exploring how it might support a new model of social licence or might challenge it offered a number of challenges, not least how to “fit the pieces” together. The research data is explored in detail through the new model and the model as a new theoretical proposition can be said to be a product as much as a lens for the research.

#### **4.6 Summary of Methodology.**

Whereas below is detailed the case research in detail, including the develop of research tools and their application in situ in Serbia, it was necessary to define what type of research methodology was going to be used and why that particular form of methodology was selected. Defining the historical framing of the research in the Global North and as one which emerged from both the support from colleagues across the EU and specifically identifying critical areas for mining in Europe. The context of the rising tide of mining protest, notably in southeastern Europe and the development of the question, was this linked to EU enlargement with these former central controlled states and those states relationships with their respective citizens. Finally, the analytical framework for exploring findings from both case studies took the form of a new theoretical model for social licence. This model was a pliable emergent tool but underpinned by very solid theoretical propositions such as relationships between key actors and institutional factors.

## **Chapter 5 Retrospective Desk Based Case Study.**

### **5.1 Introduction.**

This chapter details the explorative, comparative research undertaken as part of this thesis. It utilises a desk-based retrospective case study method, focusing on the changes to civil society and the subsequent impacts on the mining sector within a European national jurisdiction. It does this focusing on a period reflecting a specific political nexus, the process of that country joining the European Union (EU). The themes that emerged from this desk-based research, were used to construct a semi-structured interview tool to investigate the likelihood of similar outcomes for the mining sector, in a neighbouring state, at a comparable time in that same political process, that of preparing for joining the EU. It is in that sense part historical, given that the desk-based study in looking retrospectively at recorded processes and impacts through the literature. It is investigative in that it is exploring participants' views on something that has not yet happened. Although the process of joining the EU may differ in some ways other than temporality, key aspects of that joining process are standard, notably a regulatory harmonisation with the Aquis Communautaire (*Acquis*), the rules governing admission to and the operation of the EU.

The primary purpose of the research and focal point was to investigate, if the changes that occurred in one country, might be anticipated as likely to occur in another country. Those participants in the field research were all Serbian nationals and through their positions either spatially, regulatory or within the industry itself, were likely to have views on mining in Serbia. The secondary focus of the research was to test some of the assumptions used in the construction of the Social Licence Settlement Model (SLSM), concerning the critical nature of the qualities attributed to the *Regional Development Plan and Related Governance* container. These qualities, such as meaningful long term economic and spatial planning that includes

affected communities and high levels of institutional and community capacity with regards to state community engagement, are critical within the model in securing and retaining social licence through an overall settlement. If the SLSM can capture some of the complexity of the relationship between civil society, communities, the State, and mining projects, through synthesising a new tool or lens, this thesis contends it has utility for the sector beyond that of the predominantly binary-based social licence models, discussed.

The desk component of the research, investigates the closely documented failure of the Rosa Montana mine development in Romania, drawing parallels in timings to between Romania's ascension to the EU and changes in civil society that gave rise to a range of mine failures. Neighbouring Serbia is at a similar point in terms of aligning their environmental governance systems as a necessary part of their ascension to the EU Acquis. As stated, from the desk research, an investigative framework and questions for semi-structured interviews were developed and targeted at key participants concerning the Serbian mining sector. Outlining the interview process and context herein, in the next chapter analysis of the data from participants will be examined concerning the SLSM.

## **5.2 Rosa Montana Mine Project, a Case Study.**

Having explained briefly why Romania was selected as part of this case study, more detail of the reasons for the case study selection are outlined below. It may be prudent to introduce the Rosa Montana gold mine project (RM) in Romania's Transylvania which has been used as a lens to both examine and explore the wider relationships between mining, communities, the state and external NGOs.

Rosa Montana mine is in the Central-Western part of Romania, in Alba County in the South Apuseni Mountains of Transylvania, Romania, in an area known as the Golden Quadrilateral that has a mining legacy that dates back more than 2000 years. Within the proposed mining development at Rosa Montana, which is investigated here, are ancient mine workings (Roman galleries) in various states of decay. The proposed mine-affected four of 16 villages in this district in an area all of which have lived with pre-existing mining legacy of pollution, with heavy metals discharged into the local watercourses. The area has high levels of unemployment largely due to the cessation of the socialist state style mining operations during Romania's accession to the EU. Gabriel Resources (GR) launched its mining project in 1997 at the beginning of Romania's accession to the EU. The Rosa Montana Gold Company (RMGC) was born out of the original conglomeration of entities that held the mining concession (giving the right to mine). Shares were then split with the Romanian state owning Minvest Rosa Montana S.A. holding 19.31%, and Gabriel Resources (GR) having the remaining and majority share of 80.69%. It is worth noting that the Romanian state had a financial stake in the mine's development. This process of effectively privatising State assets was a necessary EU compliance requirement and the steps to effectively privatise the mine were early compared to other necessary EU compliance actions taken on behalf of Romania as it edged towards joining the EU. Up until 2006 Minvest, the state mining company, was engaged in state-funded mining operations by way of a large pit (open cast mine) but its socialist state era mining activities, with low levels of environmental regulation and protection, were, as Romania moved towards European Union accession, forced to stop.

GR's plans for a new mine at this site included proposals to preserve the cultural heritage of the area where possible and to incorporate treatment of the extensive legacy pollution as part of its planned operational procedures. Mapping the steps and timescale taken



by GR in ensuring regulatory compliance so that it can be viewed along that ongoing process of Romania joining the EU, has value in terms of this research. It illustrates the importance of temporality and how GR followed and complied with the then-existing Romanian mining regulatory procedures. This compliance involved the production of a Terms of Reference (TOR) for the Environmental Impact Assessment (EIA) process, and these were subsequently approved by the necessary State bodies. (See paper on GR website). Due to the adoption of EU EIA legislation into Romanian Law in 2003 creating a procedural anomaly, this consent was subsequently withdrawn by the Government and GR subsequently complied with a revised version of this regulatory tool that encompassed EU EIA guidance. Besides, Gabriel Resources undertook a more comprehensive Environmental Social Impact Assessment ESIA guided by World Bank (IFC) Performance Standards that was required by the Romanians yet ensured compliance with GIIP as Romania was not an OECD member country. The ESIA report was modified in 2005 by Romanian Consultants, in Romanian, to deliver an EIA report that met the revised EIA Terms of Reference (TOR) guidelines (Source GR website). Numerous Environmental and Social Management Plans (ESMP) were undertaken (ibid), likely due to GR wanting to both comply with emerging regulation and to illustrate to existing and potential lenders, the quality of their social risk mitigation in the project. There were some objections to their plans both from within the government and the local community. Similarly, there were nationally external entities supporting those objecting, practically, politically, and financially (see BIT transcripts on GR website).

Alburnus Maior was a small local NGO and the focus of much of the objections. Established in 2000 by ten locally affected people, it was created to oppose the project. It appears that the State mining entity Minvest SA representatives and government officials reached an agreement with this local NGO group regarding zoning of future mining operations

and purchase prices for houses from those in the communities who were to be relocated. This would indicate that local organisation was not ideologically driven and opposed to mining per se but rather practical in nature, a form of locally grown institution developed to support local voices. From the literature, the change in the relationship between Alburnus Maior and GR occurred in 2002 contemporaneously with the arrival of a French-Swiss, Cambridge university-educated environmental activist, named Stephani Roth. Roth appeared to have a connection to the Soros Foundation, and it is arguable from looking at the changes in the representation of the conflict post-2002 and the production of what could be called anti-mining propaganda, that the local NGO was effectively utilised by this international NGO (INGO) influence. The Save Rosia Montana campaign, consuming Alburnus Maior, was by this time supported by more than 40 international environmental NGOs (Source German Media <sup>1</sup>). It also had an award of \$426,800 for the Environmental Partnership of Romania through the German Marshall Fund of the United States (Source Capitol Research article). The 'Save Rosia Montana' campaign misrepresented the state of the environment with legacy pollution. In an interview with Serbian man who had attended the *Save Rosa Montana* festival in 2006 (Source interview Belgrade:4). It was apparent that he was not made aware of the wider pollution in the area, just the "beautiful valley" the festival was held in that would be "destroyed". Similarly, an iconic picture of a church submerged in toxic water as a legacy of past mining processes was used to represent what was being done to communities and the environment by GR in both online and hard copy publications (Cuestas 2013). The representation of the conflict and area on social media (Source: Wikipedia Rosa Montana) still presents images which in no way reflect either the reality of GR mining proposal or the legacy of pollution. No indication was given in any of the social and print media that GR had committed to pursuing the new mining project in a manner that had them commit to cleaning up the huge legacy pollution issues. Bearing in mind that GR had not undertaken any mining at the time, environmental investigations in 2003 for

the EIA process indicated that the Roşia and Corna Rivers in the Rosia Montana area and downstream Abrud River were heavily polluted (source BIT documents). This was attributed in the EIA to the State-owned and operated open-pit copper mine, Roşia Poieni, 4km from the planned GR project. Its image used inaccurately on the previously referenced Wikipedia page, as an illustration of what GR was proposing. Potential environmental damage on the GR mine project was a central focus of the ‘Save Rosa Montana’ campaign and this is what was used to effectively mobilise public opinion and civil society across Romania and internationally.

Notably, when reflecting on the SLSM, the focus for conflict was relocated from the local to the international stage. GR actively engaged with the matters raised by the targeted international campaign through their own media programme, and this was essentially reactive in nature. It was not until 2006 that GR decided to address the narratives and tropes of the NGOs by commissioning a documentary *Mine your own business* (2006) directed by Phelim McAleer. Phelim McAleer is an experienced investigative journalist and New York Times best-selling author.

GR also, as shown in the publicly available documents (BIT), acknowledged the political and transboundary concerns given the possible environmental and political concern in neighbouring Hungary. The open evidence from the ongoing international trade tribunal, suggests GR made considerable efforts to communicate and build open and transparent relations and develop broad community support for a new mining project. Within the changing environmental regulatory landscape over the next few years (Ref GR website), GR met all calls for environmental planning and monitoring, and this is not contested by the Government of Romania in the tribunal (Ibid). GR engaged with all the identified stakeholder groups and undertook extensive consultation and engagement processes associated with project development and GIIP, as was required to be in accordance with the IFC Performance

Standards and other international codes and measures. During this period Romania faced a series of governance issues and was acknowledged as having limited capacity to administer the EU regulatory process (DANCCE 2003) required to comply with the 31 Chapters of the EU Acquis. One of the legacies of communist rule for communities was a distrust of all aspects of government and outsiders (Alexandrescu 2012:61).

Alexandrescu's exploration of trust in the Rosa Montana area with field research in 2007 and 2008 is revealing in that there was a very low level of trust in international NGO. Another was the general lack of governmental capacity in building locally grounded institutions such as would be characterised in the SLSM as Regional Development Plan and Related Governance. This lack of trust and capacity of the State were issues that inhibited GR's from effectively developing institutionalised (authorised) plans with locally grounded actants about income generation, jobs, locally accrued environmental and economic benefits. Failure to capture and institutionalise the potential social and environmental conflict enabled other actants to shape and utilise the conflict within the SLSM. The INGO and others inability to do wrestle legitimacy from the community turned the mine into a political football using a Token representing legitimate conflict. Conflict surrounding the project became a Token passed between and across a range of participants ranging from Romanian politicians, civil society, international NGOs, billionaires and even those concerned with perceived historical transnational boundary inequities. Eventually, when we look at the openly accessible evidence at the ongoing (GR website August 2020) tribunal dealing with the case between GR and the Government of Romania, the political classes aligned with the conflict disregarding the possible environmental and economic benefits. Both sides agree in the ongoing tribunal (ibid), that despite GR spending many hundreds of million dollars meeting Romanian government environmental standards and Romania promised both an expensive environmental clean-up

and the realisable promise of economic development locally and taxes to be paid, politicians stopped the project from commencing. They did so by moving out of their statutory systems and by holding a vote in parliament. The no vote in the Romanian parliament effectively ceased the possibility of GR being able to continue with the mine project. Whether the Tribunal finds this in contravention of a particular international trade agreement is irrelevant in terms of the arguments used herein.

### **5.3 Relating to the Serbian Context.**

Rosa Montana mine in Romania was a particularly useful component of the case study, given that the wealth of academic and grey literature available, enabled detailed investigation of the challenges facing nation-states, undergoing transition through joining the EU and adopting transnational regulatory systems. (Pop 2016, Alexandrescu 2012, Parau 2006,2009). Rosa Montana was useful as a case study because the start of the process that stopped the mine's development began in a period in which Romania's EU ascension, is comparable with where Serbia is now with regards to their joining the EU. In responding to the legal action by GR the Government of Romania's main defence at this tribunal is that GR lost their "social licence" for the Rosa Montana mine project. Presently both parties appear to accept in the legal discussions that no such legal term exists (GR Website). As mentioned earlier, GR has posted an extensive array of project documents on their website, some of which have emerged from discussions during the ongoing tribunal. The in-depth analysis of the Rosa Montana case reflects on wider regional patterns of mines losing their social licence in newly EU annexed countries. It is well documented that pressure from EU institutions and transnational environmental expert networks in these countries at this time, energised domestic environmental non-governmental organizations in terms of policymaking. The nexus between the expanding EU and national politics changed the relationship between the state and non-

state actors. (Börzel et al., 2006; Carmin, 2010, Sotirov, Lovric and Winkel. 2015). This drives the assumption that the process of aligning with the EU, affected civil society in Romania and challenged State capacity to protect or enable mining. Alternatively, something was released that enabled or possibly even encouraged civil society to challenge mining successfully in this period in Romania. Parua (2006,2009) found from her research focusing on Rosa Montana and Romania's transition to EU membership that it was certain elites within society and state that became empowered through the transition. It could be argued that through this lack of capacity to aggregate local voices, the Romanian State failed to engage positively with the new opportunities and relationships, which are presented concerning mining, through the EU ascension process.

This aggregating of elite voices relating to governance and space can be represented in the SLSM by the *Regional Development Plan and Related Governance* container. Using semi-structured interviews with individuals and groups of participants in the mining industry and those that are or might be affected by mining in Serbia, was designed as a method to provide insight into how effective participants felt the state might be at dealing with these emerging challenges to mining in Serbia. This type of mixed-method case study offered the opportunity to identify who might be critically groups to target with regards the probable impact on mining activity in Serbia, based on what had already happened in Romania. Engaging with organs of the Serbian state relating to mining, key mining sector people and the wider community was an attempt focus on key groups with similar functionality who had played a role in bringing Rosa Montana to a halt in Romania. It was also an attempt to triangulate the research evidence, effectively trying to avoid being locked into one set of beliefs and offering the opportunity to compare views across a range of interest groups. As has already

been stated, reflections from the desk-based research on what had happened to the mining sector and related civil society in a neighbouring nation-state that had already undergone this transition process in joining the EU (Romania), supported the framing of questions for those in a neighbouring nation-state, the temporal nature of the investigation relates to time within the EU ascension process.

Themes that emerged from the desk-based research, the challenges facing the mining sector, changes brought about in civil society, challenges to State and the leveraging in of external actants (INGOs), appeared because for their temporality to be outcomes of the Europeanisation process. Within the SLSM these relationships are modulated through Regional Development Plan and Related Governance container and were therefore likely to unfold similarly in Serbia as they had in Romania. Comparisons of the neighbouring countries note that both were post-socialist States emerging into neoliberal capitalism towards and ultimately in Romania's case, into EU membership. A "shaking up" of relationships between the range of actants in the SLSM model occurred as Romania went through the EU ascension process and has been mentioned already but is outlined in more detail in the literature below. This directly impacted on the mining sector's ability to secure and retain social licences. The Serbian interviews were consequently focused on the State's capacity to develop Regional Development Plan and Related Governance and the role that the wider community was likely to play in those processes. The organisation of communities and their ability to engage in constructive dialogue with the State and others through institutions is an important aspect of what is defined in the SLSM by the Regional Development Plan and Related Governance container.

Reflecting on the Romania case study, it was apparent that the target interviewees in Serbia should be community members including marginalised groups, representatives of the State (regulatory function) and key people within the private mining sector. The research

endeavoured to open-up and anticipate how the gradual and inevitable imposition of supranational environmental regulation through Serbia moving towards Europeanisation, might cause a change in relationships as defined in the SLSM model. The interviews for the case study provided a mechanism for Serbian based informants to unpick what they anticipated would be the critical factors/processes which would likely affect mining in Serbia in the next 10 years, with the assumption Serbia continues to move towards EU membership. Gathering this data and trying to make sense of it was an attempt to understand aspects of the dynamic relationships between Community, State, International NGO, International Regulation, and other parts of the SLSM as defined by the community, State, and industry. The "container" within the SLSM model, labelled Development Plans and Related Governance, represents that critical nexus of land-based livelihoods, formal community engagement processes, formal and non-formal spatial governance, civil society development processes and how they together relate to the State. Gauging the quality of the content/capacity of this icon within the SLSM is perhaps a mechanism for accessing the level of stability of the whole Social Licence Settlement but that is a doorway for future research. Linking as it does within the model, the State, to International Regulation, the Community and International NGO, *Development Plans and Related Governance* underpins institutionalised civil society capacity.

#### **5.4 A Regulatory Perspective.**

In the European Union (EU), the Environmental Impact Assessment (EIA) process is regulated by Directive 85/337/EEC which came into effect in July 1998. Consequently, it was amended by Directive 97/11/EC, Directive 2003/35/EC, and Directive 2009/31/EC and these three directives then consolidated into one Directive 2011/92/EU, two of these subsequent amendments consider public participation. The first amendment in 1997 brought the Directive in line with the UNECE Espoo Convention on EIA in a transboundary context



establishing minimum information requirements (Directive 97/11/EC). The second amendment in 2003 aligned provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters (Directive 2003/35/EC). Notably, the impact of these changes would have been felt in the processes driving harmonisation and Romanian compliance with the Acquis. The Aarhus Convention stipulates the specific procedures and actions regarding public participation in the EIA process and as expected, that is reflected by the directive. Romania filed its application to join the EU in 1995, commenced formal negotiations in 2002 with 2007 endorsed as the indicative year for accession by the European Council, in Copenhagen in 2002. As discussed, the ascension process involved negotiations regarding 31 chapters of the EU Acquis. The environmental chapter of the Acquis was considered by the European council as one of the most difficult for accession countries to implement. The Romania Ministry of Waters and Environmental Protection (MWEP) had the responsibility of addressing all the environmental considerations and the timeframe for completing adaptation of Romania's legal framework to the EU requirement was the end of 2003. To put in terms of the EU's perspective on this matter at the time DANCEE (2003:21) as a text representing the official stance stated that:

“The MWEP considers approximation with EU obligations in this area as a short-term priority to be achieved between 2002-2004. Similarly, the recent roadmap for accession has explicitly established as a short-term benchmark the need to adopt secondary legislation on environmental impact assessment and access to information, and to improve public consultation with all relevant stakeholders at different stages of the legislative process”.

Environmental Impact Assessments (EIAs) with adequate public access to environmental information were a priority requirement. Similarly, an EIA with public participation was an eligibility precondition for EU funding for infrastructure projects. Concerns raised in the

DANCEE 2003 report regarding Romania's administrative capacity which said, "The adoption of legislation on environmental impact assessment represents a significant step forward. However, to achieve full implementation, it will be necessary to strengthen administrative capacity, especially at the local level" (DANCEE 2003:97).

Reported in the official documentation at this stage, was a concern that local level administrative capacity was not up to the job of being able to discharge aspects of the newly prescient regulations. The EIA Directive was transposed in the Romanian legislation by Governmental Decision (GD) no. 1213/2006 and implemented by the following legislative acts:

Order no. 860/2002 on the approval of the environmental impact assessment procedure and issuance of the environmental agreement modified by Order 210/2004 and Order 1037/2005

Governmental Order no. 863/2002 for the approval of the methodological guidelines applied to the environmental impact assessment framework procedure,

Governmental Order no. 864/2002 for the approval of the impact assessment procedure and public participation in the decision-making procedures for projects with transboundary impact.

Before being transposed into Romanian Law in 2006 the environmental permitting process for mines involved applying for an environmental agreement at a regional level to initiate a project development process, preparing an EIA following ministerial requirements and submitting it as part of the application for an Environmental Permit (EP) to commence operations. This relates specifically to Development Plans and Related Governance container within the SLSM. Parua (2006:54) defines the nature of the earlier consultation in that the

Romanian public was informed that a project development process was starting but opinions and or complaints were only to be received by the relevant bodies once an EIA Report was prepared at the final state of the environmental permitting (EP) process. It is fair to indicate that across the EU, Public participation requirements and implementation vary widely, depending on the national EIA system. Building on significant evidence internationally, as outlined in previous chapters, resources need to be committed over time to build capacity for communities to negotiate, as a fait accompli is difficult to negotiate. Referencing the arguments put forward by Parau (2006,2009) regarding both the state of Romanian civil society and recognising the relative weakness of state institutions, prior and during the ascension process, it is interesting to reflect there was a legal requirement for just one public consultation during the environmental permitting process. The EU EIA directive, as well as the Aarhus Convention (1998), requires that, “The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures”.

This means that appropriate and effective measures should be implemented by developers and respective authorities to enable the public’s involvement in decision making. The EU EIA directive stresses, that *national* legislation should stipulate, “The detailed arrangements for informing the public, for example by bill posting within a certain radius or publication in local newspapers, and for consulting the public concerned, for example by written submissions or by way of a public inquiry” (EU1:6).

The authorities are obliged to take all necessary measures to ensure that relevant information is, “electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level” (EU1:6). This means that the public is entitled to see both the non-technical summary and the full EIA document by

relevant means and at a reasonable price. Additional public consultation is required, in line with the Espoo Convention (1991) should there be the possibility of transboundary impacts.

In 2004, Romania began the process of applying to become a member of the Organisation for Economic Cooperation and Development (OECD), citing it as a strategic objective of the country's foreign policy. This objective still has not been achieved, even though, through becoming a member of the EU, Romania fulfils the OECD criteria. The country's non-membership means it is regarded as a non-designated country by the Equator Principles, a World Bank risk management framework, adopted by the majority of international finance institutions (IFIs), for determining, assessing and managing environmental and social risk in projects. This has been referred to in earlier chapters. *Non-designation* means that Romania is not regarded as having robust environmental and social governance, legislation systems and institutional capacity designed to protect its people and the natural environment. To secure international finance for a project, in addition to complying with national and EU laws and regulations, a large-scale mining project seeking funding in Romania would also need to comply with Good International Industry Practice (GIIP), as defined by the International Finance Corporation (IFC) of the World Bank. An Environmental and Social Impact Assessment (ESIA) would need to be prepared in line with applicable IFC Performance Standards on Environmental and Social Sustainability and the World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines). In the case of GR, these were undertaken and delivered.

These World Bank groups processes designate for non-OECD members, in turn, requires consultation with project-affected communities, other affected and or interested parties and regulatory bodies. These are known as stakeholders at the scoping phase, during baseline data collection, during disclosure and once the report has been finalised. Public

consultation, disclosure and engagement with stakeholders is guided by a stakeholder engagement plan that describes what, how and when consultation is required and stipulates how grievances and complaints are received and managed along the process (OECD). All of these regulations and processes are agreed and accepted by signatory countries. Interestingly, nowhere do these signatory countries mention SLO.

Reference has been made earlier to Bear Creek Corporation versus the Government of Peru which has the international tribunal refer to SLO, conflating it with Free Prior Informed Consent (FPIC). It has this been utilised as a term by an international tribunal but in the case of Rosa Montana, it was the failure of GR to gain social licence at Rosa Montana that is the defence of the Government of Romania from the action brought by GR against them. Social licence is not a term currently used in a European mining context and as illustrated by the many research projects currently funded by the EU on the raw material potential within Europe (INFACT, 2019), it is not even endorsed by the international civil society organisations that lead many of the protests against the European mining sector. In 2017, the European Commission recognised that popular support for mining projects requires effective engagement in 'Western democratic jurisdictions' alongside functioning government and sound institutions. To better understand how this can be undertaken, the EU Horizon 20:20 research initiative has been supporting consortia to investigate strategies on how civil society can be engaged to build public acceptance and trust in the mining and recycling sectors in Europe. There is no agreed definition within or across these consortia as to what SLO is and this has been accepted by both sides in the tribunal (BIT GR Website).

## **5.5 Compliance, Politics and Non-Governmental Organisations.**

Gabriel Resources began to develop the Rosa Montana mining project in 2002, at the beginning of Romania's accession to the EU. During this period of transition, Gabriel Resources followed the given procedure, applying for and being issued with an environmental agreement, preparing an EIA that complied with Romanian requirements.

In 2003 the Terms of Reference (TOR) approved by the MEWM was withdrawn by the Government, due to the adoption of EU EIA legislation into Romanian Law. A revised TOR was issued in 2004 that complied with the EU EIA Directive. In parallel, Gabriel Resources prepared an ESIA that complied with the IFC performance standards. This ESIA was modified in 2005, by Romanian Consultants, in Romanian, to meet the Romanian EIA TOR requirements and submitted to MEWM in 2006. Through this process GR navigated the challenges presented by the administrative capacity issues identified in the DANCEE 2003 and EU progress reports, to maintain effective and transparent relationships with the project affected communities and the regulatory bodies. This was over and beyond the statutory requirements, defined by Romania and the EU EIA Directives although compliant with GIIP in non-OECD countries. Concerning public consultation and stakeholder engagement, GR followed GIIP as defined by the IFC performance standards and had a Public Disclosure and Consultation Plan (PDCP) providing a comprehensive overview of consultation activities undertaken since 2000 as well as ongoing consultation activities. The level and amount of consultations and engagements with project-affected communities, other interested parties and regulatory bodies by Gabriel Resources, was in line with GIIP, exceeding consultation requirements of both the Aarhus and Espoo Declarations and within the EU EIA Directive.

This period is significant and Parau's (2006) detailed how there were significant changes to the drivers of civil society over the period that GR was involved in Romania. She recounts how: "'Shell' NGOs were also set up by political entrepreneurs scrambling for funds which they would not otherwise have been eligible for". (Parau 2006:232) She expands, "Political parties, Members of Parliament, even central and local administrations were reported to have set up their own NGO partners to grab EU funds" (Parau 2006:234). She recounts that this phenomenon was increased in 2003 when the Nastase government introduced the Act on Funding of Political Parties and Electoral Campaigns, (No. 43/2003). The function of the Act she details as one which dismantled all limits on the funding of political parties and electoral campaigns by civil society organisations (Parau 2006:234.). The co-opting of civil society as with all revolutions favoured those with power. Civil society organisations were utilised as a funding mechanism or device not for developing an agreed consensus on social and environmental issues but to galvanising existing power blocks in society. Parau (2006:234) makes the point that this did not go unnoticed or unpredicted and that it; "raised the concern expressed in 2003 by the Romanian Ministry of European Integration-that it might be used by political parties for partisan purposes". To contextualise this, Prime Minister of Romania from December 2000 to December 2004 was Adrian Năstase. He was later the President of the Chamber of Deputies from 21 December 2004 until 15 March 2006, when he was forced to resign due to corruption charges. Sentenced to two years in prison in July 2012, he attempted suicide before beginning his prison term. Released in March 2013, he was sentenced to four years in another case in January 2014 but was released that August (*The Economist* 2012).

The very top of Romanian political and civil life was infected with rampant corruption. Within this context, it is notable that GR managed to operate in an apparent transparent manner dealing with civil society and communities as well as the political system. As mentioned

earlier, during this scramble for new forms of influence and resources in 2000, Stephanie Roth, a Swiss, Cambridge educated environmentalist, arrived in the community near Rosa Montana and was fundamental to developing an international NGO response against the GR proposal. She detailed the start of the protest as, “[i]n 2000 the locals refusing to remain silent united to form Alburnus Maior, an NGO consisting of initially 350 families or local property owners opposing the mine on social, environmental, economic and heritage grounds” (Cuestas 2013).

Local voices were subsequently effectively utilised by a range of ideologically driven international NGO actors and the misrepresentation of the environmental case against GR’s proposal, went on to see the company pilloried through social media. By 2010 however, there was significant local support for the mining company. The “Support Group for Rose Montană Mining”, a multi-stakeholder platform that had among its members over 40 mayors from the local communities, as well as unions and confederations of unions, local non-profit organisations, and universities, was created to support the mining project. The author contends that Stephanie Roth facilitated both the overshadowing of local voices at a critical period of transition and utilising a flow of external influences into the local area. The developing Romanian environmental regulatory system, necessarily incorporating EU compliance, created the conditions where an under-capacity Romanian establishment faced conflict with sophisticated international lobbyists who understood the legislation through previous engagements. Never having dealt with these types of regulation or indeed this type of manifestation of civil society, the Romanian establishment was inevitably under capacity for the situation.



## **5.6 Political Considerations.**

It was mentioned earlier that there was a historical backstory that GR appears to have neglected to engage with. Similarly, there were what can best be described as “irregularities” developing in civil society which supported political capitalisation and GR appear to have been able to avoid this. There is no evidence GR have even been accused of political impropriety. The mine, however, is situated in an area of Transylvania which had been part of a larger Hungarian Empire and was ceded to Romania as part of the settlement following World War 1. There are still native Hungarian speakers in the locality although their number has been in decline, and they are now a minority. Within Romania at the time of GR’s attempt to develop a mine, the Hungarian Minority Party UDMR exerted great political leverage in keeping various governments in power. There is a further Hungarian aspect; George Soros is a high-profile Hungarian billionaire who uses his international NGO, The Soros Foundation, to promote a certain type of neoliberal political and economic interest globally. The contesting of legitimacy over even the very name of Rosa Montana by elements of the Hungarian minority party made the case a platform for his involvement. This in turn provided opportunities for international NGOs to engage in challenging the environmental and social proposals of GR, for their ideological purposes. The Romanian chapter of the Soros Foundation raised questions about the legitimacy of the mining concession, “Our biggest concern is that the Romanian government is not going to take responsibility,” (Henisz and Dorobantu 2012:7) said Gabriel Petrescu, executive director of the Soros Foundation Romania. “It lacks the capabilities and resources to monitor and enforce the actions of Gabriel Resources. I’m afraid of corruption, especially petty corruption of those supposed to monitor the gold mine” (Ibid). This politicising and the subsequent political capture of the environmental regulatory system,

through the institutional capacity being unable to resist and the accumulation of Hungarian pressure, can be seen, according to the Ecomagazin website (2011);

“77 Hungarian NGOs from Transylvania issued a declaration against the exploitation of the mine resources on 3rd of August 2011 and 240 Hungarian NGOs have sent an open letter to the Romanian Minister of Environment.”

More than 110 NGOs from the European Union (Greenindex, 2010) empathised with the anti-cyanide cause after the Baia Mare incident and solicited the European Commissary on Environment Janez Potocnik to take measures regarding the EU vote on using cyanide in mining. (Source Rosa Montana, A Step toward Peace). The NGO internationalisation became not just a platform for those large NGOs to voice their ideological opposition to mining but for Hungarian NGOs to have a voice for the first time in a location that some see as a dispossessed homeland with a religiously and culturally oppressed Hungarian minority. The proposed mining project development became a touchstone for those seeking political and environmental change, as one can see from this 2013 poster (Source indyrikki 1).



*Figure 5-1 Hungarian poster*

## 5.7 Loss of a Social Licence.

The prism for the viewing of some of the changes in relationships between the regulatory body, the State, the mine, INGOs and the community are framed in the detailed procedural mining technical matters and regulations. It is, however, necessary to labour the point, that in the case of the mine developer GR, it is agreed by both parties in the ongoing tribunal dispute that GR complied with all the necessary Romanian national and European regulations and still did not manage to secure a permit to mine from the government. The decision by the Romanian government to move outside their regulatory processes, decide a national parliamentary vote and ultimately turn down the mining permit request because the mine developer, ostensibly (GR), did not have a Social Licence to Operate, stopped the mine from being developed. The dispute, as mentioned, is ongoing and this conflict and subsequent failure of the mine to be able to operate is a useful petri dish to examine a range of regional themes, in terms of developing the SLSM. The SLSM demonstrates the relationships between all the actants are what needs to be considered and how a failure to build institutional capacity with communities led to local conflict not being captured by those who might benefit from a resolution of that conflict. Although local conflict issues were ultimately largely resolved at a local level, the conflict was utilised by an international NGO as a form of currency or as a Token in ANT terms. The result for those trying to develop the mine site was that no final mining permit was issued by the State. The Romanian parliament declaring this was because the mining company had *no social licence to operate*.

With this outcome, within the SLSM it would have been logically impossible for them to be able to have a social licence given that State and necessary permits are part of that balancing act that is a social licence. A footnote to the argument herein is that unfortunately

since the Rosa Montana mine development stopped, the local community continues to suffer from the huge environmental legacy of contamination related to previous mining.

To determine if similar relationships and capacity exist in Serbia now to that of Romania in the period specified, the research needed to access people within and related to key government ministries, the mining sector and the local population who are or might be affected by mining. Field research needed to explore the views of the targets towards the EU, government capacity, anticipated changes, pressures and what might be the outcome with regards to the mining sector in Serbia, if Serbia continues on its journey of Europeanisation. Exploring participants' views of the likelihood of a similar set of constraints and outcomes for the mining sector allows focusing on the utility of applying a political settlement-based model to the mining sector, particularly when reflected on with regards to neighbouring Romania.

## **Chapter 6 Field Based Case Study.**

### **6.1 Introduction.**

The field case study research took place over several months in Serbia and in South-eastern Europe between 2018 and 2019. Outside the formal semi-structured interviews, of which more later, this extended time with communities, the mining sector personal and others, enabled the author to explore and reflect on assumption underpinning the SLSM, through discussions with both communities and those associated with the mining sector. The research focusing on Serbia for reasons indicated earlier. In addition to those factors, discussions with partners to the INFACT EU Horizon 2020 project, who were looking at barriers to mining with Europe, identified Serbia as critical to the future development of mining in that region. As well as a long history of mining, Serbia was recognised as having rich mineral deposits potentially critical to the future economy of Europe (Proctor and MacCallum 2019). Though INFACT the author was able to secure the support of an esteemed professor of geology at Belgrade university. His support and endorsement made aspects of the formal research possible, notably with the State and mining sectors.

### **6.2 Selecting Stakeholders or Model Components.**

A stakeholder analysis was undertaken to identify research participants. This was in a sense teleological with regards to the SLSM with different stakeholders identified as belonging to Community, State and Mine presenting an inherent critique of traditional stakeholder analysis. The traditional notion of a ‘stakeholder analysis’ runs counter to the SLSM model in that within most frameworks for analysing there are assumptions made as to the nature of the relationships, power and influence that are used to justify inclusion or exclusion. With SLSM the framework it is the model, and the level of power and influence

cannot be predetermined. The challenge is in determining where individual actants sit- notably for example with quasi-state bodies.

To briefly demonstrate this research approach as divergent from traditional stakeholder analysis, concerning whom should be included and the preselection of whom is powerful and less powerful, the author has drawn on the works of Phillips (1997, 2003). Working on what was even in 2003, an ageing, or established broad body of work on stakeholder analysis, Phillips developed the dual categories of *normative* and *derivative* stakeholders. *Normative* stakeholders are distinct from *derivative* stakeholders in that Phillip's utilising John Rawls' *Theory of Justice*, to define them as entities which organisations have a moral obligation to consider within a scheme of works. *Derivative* stakeholders were on the other hand to be considered due to their potential to affect the business or organisation and potentially, its *normative* stakeholders. This notion of stakeholders falls in the trap of engaging with a binary perspective within which the analyst has already assumed and allocated what the level of influence will be before analysis as well as concepts of justice and fairness. We could label *normative* stakeholders as secondary, value-driven in their inclusion, whereas *derivative* stakeholders are viewed as primary and directly powerful concerning the project.

The request for participant contacts was for 50 people to interview and courtesy of Belgrade University, 10 were initially identified, mostly in the categories of State and Mine. Further participants were identified from the time in the field and interviewed over the period. In total, five formal interviews were undertaken with people from the State a total of nine people were interviewed. With the community a series of formal interviews took place with 20 participants. Interviews were also undertaken with 15 people from the mining sector. Despite efforts, it was not possible to include representatives from the Serbian INGO sector. In total 15 interviews took place with a total of 44 participants. The length of time spent in the

field talking to a range of people with strong views who refused to participate formally in the research, made the interviews more targeted and ultimately more fruitful.

### **6.3 Research Tools.**

Initially, when considering the application of a semi-structured interview process it was envisaged that there would be two components. The first was to be an ArcGIS based survey tool a computer tablet series of questions where respondents could answer, and their responses would be both geotagged and sent back for analysis to a central server in a manner predetermined. The second was to be a semi-structured interview. Like most good battle plans, this did not survive the first engagement. Asking people to think about questions without engaging them in dialogue, was not fruitful and trails indicated participants did not want to have that further conversation, to clarify and unpack answers. Building trust quickly on a topic that was certainly contentious, had implications for the research, not least that the author was asked numerous times if statements would be attributed to them.

Culturally the author would consider Serbia a “high context culture”, which is supported by research by Podrug, Filipovic and Stančić (2014). Their research uses a definition for the term attributed to Hall, who said, “Context is the information that surrounds an event; it is inextricably bound up with the meaning of that event. A high context communication or message is one in which most of the information is already in the person, while very little is in the coded, explicit, transmitted part of the message. A low context communication is just the opposite, i.e., the mass of the information is vested in the explicit code” (1976:91).

Treating Serbia as a high context culture where there is less explicit coding for the message, it was, therefore, necessary to engage effectively with participants to understand their views. Given the short introductory period, this presented a challenge. Having a conversation

in the context of a semi-structured interview made it easier to unpack statements, than asking a participant to answer questions and give assertions or values. Although the consent form (Appendix 1) details a multiple-choice type of survey and then a semi-structured interview, the former was abandoned as a data collection method. It was anticipated that anonymity would be an important tool for enabling discussions, given that the issues were likely to relate to people's livelihoods. Semi-structured interviews were carried out with individuals and with small groups, the latter being recorded as one interview with a consensus. This was not ideal in terms of the research methodology but given the time and resource constraints it was necessary to be adaptable in the field. This type of field research is also one which the author has considerable experience of, through delivering participatory research in high context cultures over many years on several continents. The five questions asked are detailed in

Table 6-1.

Table 6-1 Research Questions

No	Question
Q1	What do you think of the European Union?
Q2	What do you think are the biggest national challenges facing the mining sector in the next 5- 10 years?
Q3	Is Serbia a good place to do mining and do people benefit from the mining sector?
Q4	Will moving closer to the EU change the relationships between the mining company, the local people, the state and International NGO?
Q5	If you know what the issues were in Romania for mining companies as it joined the EU, do you think it will be different in Serbia?



## **6.4 Field Research Limitations and Considerations.**

Working in a country not previously visited by the author offers a range of logistical as well as epistemological challenges for the field research. Language issues are commonly a limitation in social science fieldwork as outlined by Bogusia Temple and Young (2004) and have implications for the ontological integrity of social science research. Mitigating against this methodological stumbling block were several factors. Initially, for the interviews arranged by Belgrade university, many of the interviewees spoke good English and the said professor assisted in translation. Techniques such as seeking clarification, rewording, and ensuring a third-person stance was taken by those interpreting, as well as recognising the limitation and focusing less on the meaning of individual words and more on broader concepts that were clarified and reiterated, all supported data capture which had meaning. After the research organised by the University of Belgrade, an interpreter was secured. Initially, through the British government website supporting business activities (BritGov1), the author made contact with a range of translators and eventually located a suitable candidate, with research field experience and a social science background. He accompanied the author on numerous extended field trips across Serbia. In selecting a suitable candidate, some factors were critical; that they could cope with the rigours of travel, did they have the flexibility to travel and did they had the necessary English language skills and an understanding of social science. In addition to that, as community members were a target category, the interpreter could not be seen to be an authority figure. The gravitas brought to the government and industry discussions by the esteemed professor might dissuade some from engaging in a community context. The interpreter was a casually dressed, Serbian man in his late twenties who was quite widely travelled across central Europe and interested in the research.

For the research, it was important to access communities that lived adjacent to mine sites, given that with changing regulatory regimes, they would likely become more equipped to have their voices heard. Two Roma communities were visited as they live effectively on the edge of or in, the Bor gold mine. There was some unfounded trepidation on behalf of the interpreter as relationships between the Roma and the rest of society in Serbia are very poor. Fortunately, the author had worked with Roma communities on projects in Slovakia and Bulgaria and valuable interviews were undertaken with large groups of Roma families.

It would have been useful to have interviewed substantially more people and a range of approaches was made to people in communities. Whilst they were happy to talk and discuss the matter, they were reluctant to take part in formal research and producing a consent form became an almost guaranteed way to end a conversation. This was particularly the case in communities in both areas under investigation, where mining was still equated to the interests of the powerful (oligarchs). The author was also given a sense from informal discussions in the community, that making too much of a splash or a noise with the research, in the community, might lead to some unwanted attention for those particular interests. It must be said that during the time spent in Serbia the author never encountered any hostility nor anything but exceptional hospitality.

## **6.5 Research Findings and analysis.**

### ***6.5.1 Aggregated voices of the government institutions.***

This section detail's themes and perceptions that became apparent through the semi-structured interviews. Transcripts were analysed relating to the main themes in each of the questions and the responses were sifted into three categories, firstly institutions, secondly marginalised and/or those people who are likely to be affected by mining in the area due to

their proximity and lastly voices from those in the mining industry. Given that there was little divergence in views within each category towards the themes their collective “voices” are detailed below. Where there was divergence, this has been highlighted.

***Q1 What do you think of the European Union?***

Aggregated response. There was a positive general view of the European Union and a general belief that moving closer to the EU would be beneficial to Serbia in terms of raising the general standard of living. Respondents viewed the EU as very bureaucratic and recognised that there were going to have to be changes made in terms of capabilities within government departments, particularly with concerning environmental stewardship and mining.

***Q2 What do you think are the biggest national challenges facing the mining sector in the next 5- 10 years?***

Aggregated response: Moving into the EU would bring change and some respondents were unsure if Serbia would be able to meet the demands that would be placed on it regarding environmental stewardship. The wider political matters appeared to be given more concern than government or departmental capacity. It was generally expressed that given the resources the government could meet any new demands but that wider political matters and the involvement of *outsiders* might cause problems for the mining sector. The increasingly internationalising of what was once a State sector industry might lead to new challenges although it would also bring good mining practices. Dealing with a legacy from the past without sufficient resources to invest in environmental remediation would be a challenge. Meeting the new regulations with current capacity would necessitate working collaboratively with existing EU countries to understand the processes and access the necessary resources. What was missing from all respondents was an understanding of a rolling consultation process

and the level of transparency and challenges likely to arrive before joining the EU. This was raised at each interview by the author and there was a very simplistic view of the practicalities and purpose of consultation.

***Q3 Is Serbia a good place to do mining and do people benefit from the mining sector?***

Aggregated response: Serbia was seen, with its relatively new mining code as having very good mining regulations although there was a recognition that systems can always be improved. It was stated numerous times that there was significant expertise in Serbia, across the geological and mining sector. Also detailed were *rules*, which had dictated financial benefits to local people adjacent mine sites but that those *agreements* had somehow gotten debased over recent years. These types of approaches as well as a legacy of the high-quality training many of the older experts had received in former Yugoslavia, were seen as a solid platform regulatory for the mining sector. New mining investment was a mechanism for generating the resources to enable the cleaning up of environmental legacy issues and creating jobs thus benefiting people.

***Q4 Will moving closer to the EU, change the relationships between the mining company, the local people, the state and International NGO?***

Aggregated response: Some officials returned a straight No as an answer. Generally, there was very much a view of the primacy of the state and a rather scathing view of the International NGOs. Everyone was aware of the high-profile attack on ERDB loan in support of the European Redevelopment Bank (ERDB), by CEE Bankwatch (2019). International NGOs were viewed as ideologically based, outsiders and there was a general view that they would try and make trouble. This was likely to get worse with the adoption of new regulations possible Natura 2000 (as discussed in an earlier chapter). There were no attempts to explore new mechanisms for including people in discussions around mining projects and there was a general

sentiment that consultation should be carried out by the mining company in the locality they are mining. One official mentioned *oligarchs* as the tool used to get modulate community views in *some* areas. Some would indicate that certain regions or areas were less robustly represented by oligarchs or significant people not necessarily politicians.

***Q5 If you know what the issues were in Romania for mining companies as it joined the EU, do you think it will be different in Serbia?***

Aggregated response: All were aware of problems in Romania and Bulgaria but there was no clear view of the causes of the problems faced by mines. Some indicated that it could possibly be due to local political or regulatory failures in those countries. Some did envisage similar types of issues facing new particularly mine development in Serbia, in terms of the local populations being used by “oligarchs” and possibly International NGO taking advantage of policy instruments like Natural 2000.

#### ***6.5.2 Aggregated voices from marginalised and affected communities.***

**Q1. What do you think of the European Union?**

Aggregated response: Overall there was a consensus that it would be a good thing if Serbia joined the EU in terms of the possible economic benefits. Some thought that Serbia would not be able to join due to the legacy of the Yugoslav war and Kosovo. Although not a data set collected, it was evident that there was more enthusiasm for joining the EU from both Roma people and younger ethnically Serb respondents.

**Q2 What do you think are the biggest national challenges facing the mining sector in the next 5- 10 years?**

Aggregated response: There were a couple of slightly divergent views characterised by the Roma and non-Roma people. The former were very clear that the biggest national challenge facing not just the mining sector but the whole of Serbia was corruption. The Roma people all recounted how they had their votes bought and objected to being paid 50% less than non-Roma locals for their vote. Wider attitudes to Roma are very harsh but maybe no worse than in other EU neighbouring EU countries. All self-identifying Roma people interviewed agreed, that for the mining sector there might be new rules, and all agreed that it was unlikely to benefit them or their communities in any way. Non- Roma respondents expressed a sense of resource nationalism, a recognition that the resource if it were to be exploited, would likely be by some foreign corporation that would pay people in Belgrade and take the profit out of the country.

**Q3. Is Serbia a good place to do mining and do people benefit from the mining sector?**

Aggregated response: Interviewing people in the shadow of mine sites meant that all participants recognised that there was a long history of mining in Serbia. Around the lignite mines, there was a recognition of the strategic importance of mining to Serbia and it was only those in this area that thought there was still some tangible benefit. Here again, resource nationalism was evident but that the lignite mines were a critical energy resource in terms of electricity generation, was also important. Participants did not know if Serbia was better or worse than anywhere else in terms of mining but there was a consensus that local people are going to get little or no benefits from the mining industry.

**Q4 Will moving closer to the EU, change the relationships between the mining company, the local people, the state and International NGO?**

Aggregated response: Participants felt it was unlikely International NGOs would get involved in their area and did not know what the effects of joining the EU would be. The State was

viewed as an interest to largely service the wealthy and powerful and rural areas would not be able to have their voices heard. Some cited examples of the State bringing mine companies to explain what was going to happen in their area where helicopters were being used to carry scanning devices. They did not believe either the mine companies or the State representative that this would not harm them nor their livestock. Levels of trust and a sense that the State and mining corporations were colluding was underpinned by an all-pervasive smell of corruption.

**Q5 If you know what the issues were in Romania for mining companies as it joined the EU, do you think it will be different in Serbia?**

Aggregated response: Some participants confessed to knowing nothing about what was going on in neighbouring countries concerning mining. Some had heard of Rosa Montana, their view of events being people stopped a terrible mine project and a couple of individuals were very well informed as to events in Romania and Bulgaria regarding protests against mining projects. Those who had no knowledge could not see any possibility of similar events in Serbia, but some well-informed participants were sceptical it could happen in Serbia. On being challenged as to why they stated that they did not think the state and the oligarchs would let it happen and that any protests by the community would be crushed, being in the EU would not, in their view, make any difference to how the state would operate with a mining corporation.

***6.5.3 Voices of the mining industry in Serbia.***

**Q1. What do you think of the European Union?**

Aggregated response: Participants saw the EU as a very good thing from a regulatory perspective, driving environmental standards but also as a possible source of disruption. There was a recognition that the transition period likely to be troublesome for Serbia and they, as one might expect from high ranking professionals, viewed the lack of resources at the State's

disposal and a major challenge. Many felt it was important for Serbia to retake its place in Europe although recognising that there were *political* issues that must be resolved.

**Q2. What do you think are the biggest national challenges facing the mining sector in the next 5- 10 years?**

Aggregated response: Two main challenges were reoccurring. Firstly, there was specifically Natura 2000 and the regulatory burden that was going to come with EU alignment, possibly bringing with it, opportunities for International NGOs. Secondly, there was the need for the state to become more transparent when dealing with licences. They viewed the present system which makes industry lobbying illegal, a hamstring in being able to engage effectively with the state to identify potentially troublesome issues and provide a space to explore how they might be resolved by industry. Similarly, the State system was viewed as a black box that applications went into and despite set timeframes for decisions, they might not get a decision for an indeterminate period. This issue with the State, about to be compounded with the burden of EU regulation, was likely to make mining unattractive to external investors, apart from those that wanted to exploit the period in the very short term. This in itself was seen as bad, given that mining is a strategic industry with environmental legacies.

**Q3 Is Serbia a good place to do mining and do people benefit from the mining sector?**

Aggregated response: Geologically and in terms of the new mining code, Serbia was a good place for the mining industry. The uncertainty of moving towards the EU and the capacity issue with the state make it challenging. People have benefited from mining but there is a recognition that historically although consultation and awareness of livelihoods in rural areas were taught to geology students, the community had very little say under socialism. There were benefits for local people in terms of jobs but the processes for mining were *old fashioned*.



Currently, mining companies, particularly the majors (RioTinto) are seen to engage with communities and give CSR benefits back to the community. A recurring example of good practice was the Jadar mine in southern Serbia.

**Q4 Will moving closer to the EU, change the relationships between the mining company, the local people, the state and International NGO?**

Aggregated response: These well-travelled professionals all agreed that it would be foolish to think what had happened to the mining sector in Bulgaria and Romania would not happen in Serbia. They anticipated the increasing penetration of Serbia by International NGO and thought that these *outsiders* would stir up local people around mining or prospective mining projects. This would provide real challenges for the industry and although facilitated by Natura 2000 was not about environmental protection it was about money and ideology. There was a consensus that the state did not either have the capacity or see it as its role to facilitate any kind of capacity building with local people around mining or potential mining sites. CSR from mining corporations would be the only source of benefits and the State's role would be regulatory.

**Q5 If you know what the issues were in Romania for mining companies as it joined the EU, do you think it will be different in Serbia?**

Aggregated response: As said above it was reiterated, all agreed that it would be foolish to think what had happened to the mining sector in Bulgaria and Romania would not happen in Serbia. All interviewed viewed the challenge to the mining sector as relating to poor environmental or regulatory compliance, International NGO activity promoting anti-mining and an increased regulatory burden as the cause of the woes in neighbouring counties, along with attendant political corruption. Pressed as to the activities of local NGOs they saw local

NGOs as weak and used by larger International NGOs to legitimise their campaigns. Local NGOs were viewed as being involved only for what they can get financially.

## Chapter 7 Case Study Data Analysis.

### 7.1 Shared realisations.

From both the retrospective and field-based case study research there was a shared realisation across the government institutions and specialists in the mining sector that joining the EU would present a series of procedural and policy challenges regarding specifically environmental matters. There was also an awareness with research participants that there was, due to precedent set with neighbouring countries, a significant likelihood as Serbia moved closer to the EU, of disruption to mining sector projects promulgated by the intervention of International NGOs utilising the disruption and new policy weapons such as Natura 2000. The state and its relationship to governing mining projects had three distinct views from each group. Government Institutions whilst recognising some limitations appeared to see the major threat to mining projects to come from those *outside*, meaning International NGOs.

The responses from the communities appeared to represent two significant factors. Firstly, general powerlessness and acceptance of a wider political corruption, which to them would stop change from occurring with regards to mining. If there was change it would not benefit *normal* people. Secondly and this was notable with older interviewees, the change that has occurred in Serbia with a move towards a neoliberal regime with international companies was resented. For communities, the Serbia State was not transparent in any of its processes they voiced allegations of Clientism with regard to the mining sector.

The mining sector, however, although thinking Serbia a good place to mine for geological purposes felt the state operated as a "black box". Despite good legislation, the actual (as opposed to the written) processes and subsequent decisions concerning the approval of exploration Licences, were not easy to understand. Their inability to legal lobby inhibited both

transparency and their ability to augment applications with information that could support decisions.

What was missing from all the interviews was a mention of dialogue between State, communities, and the mining sector, generally or specifically in terms of finding solutions or preparing the ground for solutions. Civil society did not figure in the discussions and challenge for institutional and industry participants were seen as something likely to develop because of international NGOs, *outsiders*. None of the participants envisaged any change to either the political system or to civil society but rather the main impact would be on the regulatory systems. There was little understanding by institutional or industry participants of the need for their sector to preparing for wider forms of public engagement and the effects of joining the EU will have on existing regulatory systems.

The introduction of new formal frameworks for engagement around environmental matters, such as is occurring with the rolling out of European Union (EU) regulation in Serbia, will bring new actors/actants which can affect existing social licence settlement and shape the landscape for creating new ones. New opportunities for existing actors/actants and a range of new relationships will be possible and that is likely to benefit new as well as old elites, within the community. New elites will be those that can harness the technical requirements of the EU, probably mostly concerning the compliance with environmental and social regulations and articulate them in one of the official languages.

## **7.2 Linking theory and research findings.**

In political settlement terms, the grounds for settlement will change or in Actor Network Theory terms, new actants mean new translations. A lack of capacity with existing government systems concerning citizen consultation, environmental and social compliance within these

former controlled economies transitioning to citizen-focused European Union based systems, is likely to be highly problematic. Participants felt it was unlikely the existing mining and environmental framework were up to the job of enabling the ongoing production of community consent to mining operations, particularly around sensitive environmental or cultural landscapes.

As in Romania as well as neighbouring Bulgaria, these changes or disturbances to the social and political status quo, would it was felt by many, likely affect the perception of the wider political settlement in society. Non-governmental respondents were not surprisingly, more likely to discuss, an acceptance that politics was inherently corrupt, with an elite who would likely resist “change”. Numerous non-institutional participants identified “oligarchs” as a feature of the political landscape, key individuals in regions and localities who were not politicians but could muster votes and deliver power to those in politics. Whether the system is any more corrupt than its neighbouring EU member states is debatable, the critical factor was that all participants in discussing mining, consent, and EU membership, all gravitated towards the relationship between the political class and voters. This certainly fits with the research, Budak and Rajh (2014:38) detailing Transparency International’s report the same year as the field research stated, “[C]orruption in Serbia is present in all spheres of economy and society (Transparency International, 2018).”

All perceived factors driving political change and factors that might resist those changes were identified and it was acknowledged that some form of impact on mining was inevitable. Participants felt that the inevitable introduction of new environmental and social obligations would effectively destabilise the existing mining social Licences or the social acceptability of how mines currently operate and make creating new ones more challenging. Institutional participants saw the introduction of these new regulations and arrival of new actors, financed

directly or indirectly by the EU, as potentially driving new wider political realities that would affect mining licence. Numerous participants articulated that there may be a higher prevalence in Serbia of the external (not Serbian) anti-mining environmental lobby creating or at the least supporting community challenge to mining. The rolling attention given by BankWatch (Ref BW1), an international NGO representing a European network of anti-mining NGOs, to European Regional Development Bank loans to the Serbian state mine industry in the Kolubara basin lignite mines, was known about by everyone I spoke with, except the Roma. Some of the most marginalised participants to this research did not think that attention or criticism would bring change that they would recognise but if activities around mines became an embarrassment to the EU, it would threaten to cut off the supply of money to Serbia. Serbia, as part of its harmonisation process was funded by the EU through its Instrument for Pre-accession Assistance (IPA) between 2014-2020 to the tune of over €1.5B and reportedly through other channels nearly double that (FT1). Nearly €3B of EU monies buys influence and attracts interests from elites trying to access it.

Throughout there were peppered numerous responses, suggesting there were “oligarchs” who would use conflict around a mine to consolidate their power in an opportunity to extract forms of payment for aspects of community management or social licence management from external transnational mining corporations. These were termed by some participants as the “Green Mafia” although when challenged participants made the point that they would not necessarily be criminal, just using the new systems to extract payment and this was disapproved of, rather than being interpreted as a mechanism promoting transparency, better regulation, or involvement of citizens in regulatory discussions. The cynicism towards both the political and environmental NGO sector was universally expressed to a varying extent from all participants, underpinned by allegations of what one could describe as a corrupt form of political

transactionalism. External transnational corporations appear to be resented by local people as the sector continues to transition to a neoliberal model from a state ran model of mining. In the towns around the Kolubara basin area, the changes in management processes through rationalisation and introduction of private sector partners surrounding the lignite mining operation was linked to a more distant and less accessible management style. Decisions, it was felt, were taken in Belgrade and not locally. One participant made the point, no longer could one access a digger to help build one's house through the network of links to the mining operation. Some non-institutional participants thought local people would be less liable to overlook the annoyances such as dust from lorries, given the involvement of foreign companies who were making profits and taking them out of the country. This research in the area surrounding Bor, with the large gold and copper mine facility, took place before the Chinese Zijin investors bought and restarted operations at the facility in late 2018. The arrival of a sizable Chinese workforce to the small town was predicted by participants of the Serbian Mining conference in 2018 and it was anticipated that this might be likely to become a significant factor in shaping local social licence difficulties. Bor currently appears to be wrestling with high levels of air pollution, detected, and managed by a Serbian government environmental protection department being trained by Swedish colleagues through an EU funded programme (ref SW1). As well as an influx of people from outside the local community and loss of informal benefit-sharing from connections to mining there is another significant factor at work. Resource nationalism is that other factor, a potential driver of conflict and well documented as a prescient driver against the social licence in other European countries (Eerola 2017). The resulting translations of the SLSM in both Bor and are likely to challenge traditional hegemonies within the mining sector, state and in communities. Former certainties around the mine project are open to challenges, overturned and redefined, through the adoption of what ANT theorist may call coordination, new conventions, or codification.

Power, generated as a relational and distributed manner flows from the “ordering struggles” within networks and the construction and maintenance of network centres and peripheries, establishes hegemony. The introduction of these new processes, social and environmental accountability frameworks and attendant international NGOs ideologically conflicted with mining would create instability however one looked at the situation. Couple this to an increased propensity for activism in Serbia, linked to establishing the shared EU policy and legal framework, and disruptive to the assemblage that is social licence within the SLSM is inevitable. This disruption of the status quo around mining is confirmed as an assumption from most those interviewed.



## Chapter 8 A New Model Emerges.

### 8.1 An overview of the Social Licence Settlement model.

The theoretical and case study research undertaken has resulted in the theoretical underpinnings and temporal definitions of ‘space and time’ the model operates in, illustrated in **Error! Reference source not found.**. All of the icons in the model represent assemblages or social constructions, defining outwardly the operational positioning of the assemblages and how the parts are likely to be seen by those external.

Each icon represents the expression of the intense and complicated processes inside the assemblage that determine and define external relationships. The totality of the mine project and how it is actualised as an assemblage in the words of Latour “All projects are still born at the outset. Existence must be added to them continuously, so they can take on body, can impose their growing coherence on those who argue about them or oppose them. No project is born profitable, effective, or brilliant, any more than the Amazon at its source has the massive dimensions it takes on at its mouth” (Latour, 1996:79)

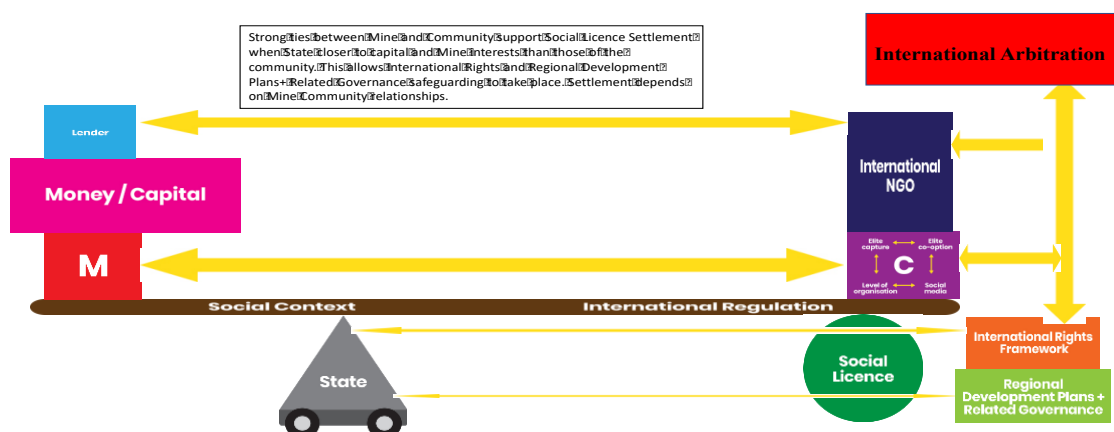


Figure 8-1 Proctor's Social Licence Settlement Model

## 8.2 The role of the Mine.

The ‘M’ icon represents not just the corporation that is involved in the physical process of exploring and extracting minerals but rather, captures all the relationships between that corporation and associated subcontractors, consultants, and operatives. The icon represents the mining project as an assemblage in ANT terms. For example, a mining company may subcontract security arrangements or any other operational activities to a secondary agency and they too would be captured by this icon. Viewed from a community perspective this conglomeration of interests is a whole, as all parts link to the activities of extracting the subterranean resource. The mine is represented as an assemblage of interests, extracting material to utilise its value. This icon seeks to compartmentalise the actions of all of those sometimes disparate, internal departments and outward-facing corporate processes, such as licensing, compliance, and public relations. The view of the community of *who the mine is* cannot be overstated. The case study research, as with the work of Zhang, Measham, Moffat



et al, demonstrated the criticality of trust and procedural fairness in building social acceptance, as a key component of social licence to operate. This relates to ‘a mining project’ not individual activities of those involved with

a mining project. Whoever or whichever subcontracting company operate they do so on behalf of the mining project locally, they work at the behest of governance controlled by the mine. This is certainly a critical point for the mine corporation to understand and has implication when the mine life is discussed. From *discovery*, through to *operations* and eventually, mine *closure*, can take many years. The local relationship developed over many years by many people, companies, corporations are critical to operations but never get assimilated onto the balance sheet. This came through strongly in the research in Serbia, the mine as a concept had changed from a national, community enriching entity to one owned by foreign corporations,

making profit. In terms of defining the rationale for what each icon "represents" within this model, this can only be determined including those not part (outside) of each of the assemblages. The community play a significant role in defining the mine. Similarly, the artefacts relating to the Mine and its operations and how the corporation views itself are encapsulated in this icon, within this model. The processes around the mine are, as Sage, Dainty and Brookes (2011) quoting Cicmil et al. (2009) define in terms of relationships and other products, illustrate that concerning a "project", the mechanisms for constructing knowledge can be best understood by looking at their products and this is critical to understanding how the "project" operates.

### 8.3 The Community perspective.



The 'C' icon represents internal processes inherent in what we defined by the term Community. Given the often extensive, spatial reach of

mining projects as well as their wider impacts on regions, defining *the* community, as discussed, can be difficult. Indeed, challenging the definition of what the community is and therefore who should legitimately represent that community, is a tool used by corporations, states, and others to challenge the voice of community protest globally. The case study research from Romania and in Serbia, detailed the community being defined by various external entities, the mine, the Hungarian state, the EU, bureaucrats, and others- legitimacy is usually accepted by those engaged with communities, so long as they are compliant. This process of challenging the legitimacy of challenging communities by those supporting a mining social licence is ultimately counter-productive to establishing a stable social licence. Even without external

influences, there is usually dissent within communities on whom should represent them and in mining it is normally more than one geographic community voicing concern.

Elite capture or the co-opting of the elites within communities represents a continuum and a range of shifting realities which is compounded within non-homogenous local populations. Kita's (2019) details pragmatic issues of dealing with elite capture and the co-opting of elites in delivering disaster aid and resettlement of communities in Malawi, illustrates the huge complexities of trying to unravel, engineer and deliver a "solution" that often fails to take cognisance of local culture. He bemoans that the role of the Chief has largely been ignored in terms of research supporting the delivery of climate change adaptations in rural communities. His paper diplomatically pushes back on approaches that have been developed, often in Europe or America without understanding the social context, the political and cultural aspects of where aid delivery will take place. This is echoed through the field research, the complicated internal nature of communities is further destabilised and exaggerated through the movement from existing governance mechanism to new ones. As such this imposition of prepackaged solutions to local communities is analogous to the mining sector designing community solutions or rather solutions *to* the problems being caused by host communities. Kita (2019) in his abstract summing up the finding from his research, "[t]he findings require that states focus on the cultural and political dimensions of rural life when designing climate change adaptation and disaster risk reduction programmes". I would go further and suggest that institutional local people around local livelihoods and decision making is critical to assuring balance within a social licence settlement system. From the Romanian case study, initial concerns from local communities were, I would argue, were not adequately dealt with by GR to lock out external agitators. Similarly, a failure to lock local communities into the mine process meant that their

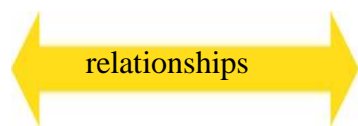
support could not be utilised as evidence at international tribunal. This was a similar mistake the Romanian government made to that same end.

Developing solutions either at a state or local level that are relevant to the local population required knowledge and skill. Garzon (2018:25) in her handbook aimed at supporting local communities to engage with and advocate for their interests regarding Chinese mining and investment projects, defined seven international standards that apply to mining. All these standards have some form of definition of the community as a *critical stakeholder* in most of them, include definitions of both *directly* and *indirectly* affected communities. The author chose Garzon's work to illustrate the point, for two reasons; firstly, Chinese international mining projects are often seen as the least regulated of all within the sector given their funding generally not from the heavily regulated global North banking sector. Secondly, legitimacy of grievance of community voice is linked to the spatial relationship to the mine project-arguments from communities directly affected have more moral weight than from those that are being or have been indirectly affected. This does not necessarily reflect directly affected or indirectly affected types of communities' ability to influence social licence provision, but it reflects an established view of environmental justice. Serbia has like the countries in case study 1, been subject to some very restrictive protocols regarding civilian dissent and moving towards a more liberalised model supported through the EU is likely to highlight the lack of Serbian state capacity in that area. This is not only the lack of practitioners who can bridge that state, privates sector community interface, there is also the notion of political capacity.

As with the mine icon, defining the community is defining the expression of the community as a single entity. For the communities influenced by a mine, which may be problematic for a variety of reasons. The defining of the community by the Mine and an understanding of the risks, not just to their mining project but to other stakeholders, is a central

process in delivering a social licence settlement. As Worden (2016: 386) put it, there is a need "[t]o move away from a self-referential perspective of social risk, mining companies need to understand the social, community and cultural context in which they operate. They need to consider how developing new projects might generate risk to others, how these risks may be understood and experienced by others, and how these risks should be addressed".


#### **8.4 Defining who is involved. Relationships.**



Relationships are defined within the model with yellow arrow icons. The model is generic, but it is clear to see that the relationships for example between Natura 2000 regulations, those using them as a device for a particular agenda and the state and society can be mapped in Romania and is anticipated to be replicated in Serbia. These arrows can pull or push or indeed represent a relationship that fulfils both those kinetic processes. Arrows, in representing relationships, illustrate a connection between those at either end. Whether an actual formal communications channel or the potentiality of a connection, push or pull or one that represents relationships been law and governance is not defined. They represent the ability to influence and to be influenced. The thicker the arrow the more powerful the relationship could be. Arrows can change in thickness and can be used to illustrate the potential for dynamism in the model. Arrows are where, as discusses earlier in the thesis, "tokens" representing legitimacy can be generated by for example communities local to mining conflicts and utilised by others if a relationship is established. There is a considerable utility in recognising the range of possible relationships between the various parts of the model in terms of ensuring the wider structure stays balanced. The model is however representative and a tool to define relationships and interconnectedness. Once relationships can be conceptualised, they can be mapped and ultimately in some way captured in a quantitative sense. Conceptualising the relationship enables an exploration of the component of that relationship.

Once you are aware that the relationship between communities and NGOs has an indirect effect on other relationships it can be modulated. Conceptualisation drives new relationships.

## 8.5 International Finance Institutions -The Lender.



The Lender is present in many, if not most, mining projects and there are several reasons for their presence. Their involvement facilitates those corporations undertaking mining activities, to borrow capital which enables the project to access the resources it needs to proceed. It spreads the financial risk for the corporations through offloading it on external institutions and the capital that has been accessed, can be used to amplify the corporation's capital investment, enabling it to take advantage of economies of scale. The sums of money lent by the Lenders are usually very significant (100's of millions of UK pounds). There could conceivably be numerous lenders on a single project, and this might change throughout the life of the mine, which might be twenty years or more. This thesis has outlined in chapter two the changing parameters for evaluating the relationship between those controlling access to capital (Lenders) for the mining industry and those who own the capital. The parameters of this new fruiting body of capitalism characterised as financialisation relies on the Lender being able to define risk so that it might become or be addressed by another financial product. Most institutionalised lenders such as the World Bank, European Investment Bank or European Regional Development Bank and those elsewhere in the world, subscribe to the Equator Principles, a World Bank concept. These Lenders are sometimes referred to as Equator Principles Financial Institutions (or EPFI) and represent financial institutions that have adopted the Equator Principles following the procedures produced by the International Finance Committee (IFC). IFC is an arm of the World Bank created guidance to screen potential investments and there is a considerable weight given to proposed and ongoing projects *environmental and social management* (referred to as E&S or ESM) operations. For example,

“The contractor's existing systems, its capacity to implement E&S [Environmental and Social] requirements, and the contractor-supplied information on past E&S performance should be among the key criteria used to evaluate contractors. Capacity may be judged by past performance, existing or projected management, technical ability, and resources” IFC (2017:130).

There is also a reputational aspect for Lender and Mine company with expectation with regards to social and environmental management. Corporations are required to utilise necessary expertise and the process needs to be adequately resourced, although in reality there is currently no globally accepted qualification criteria for those individuals contracted to undertake social assessments. The Lender icon contains all those involved in the mine project under considerations, that are defined by function (what lenders do). Lenders recognise the importance of relationships between mining projects, communities and others and have tried through the likes of IFC and others to institutionalise the conditions for those relationships, primarily to support social licence management and protect their investment.

## **8.6 Influence of Money/Capital.**



### **Money / Capital**

Money/ Capital is a separate icon, as capital is utilised by Lenders yet in itself, money/capital does not have coherent institutional capacity although it has a range of behaviours. As with all the icons, or containers developed herein, there is a range of conceptual positions concerning what money is and this thesis is not the place to unpack those various propositions. Here it is a collection of "things, electronic and physical" and beliefs of shareholders, rather than a collection of social processes with agreed guidelines. Lenders may facilitate Mine access to Money/Capital, yet Capital/Money can



theoretically come from a range of sources other than Lenders, an example being mine projects income generation. EY (2019:3) detail the critical nature of capital with regards to the social licence, "[I]license to operate has evolved beyond the narrow focus on social and environmental issues. There are now increasing expectations of truly shared value outcomes from mining projects. Any misstep can impact the ability to access capital or even result in a total loss of licence."

The ability to access capital is normally linked to how relationships with the community can be portrayed and the mine reputation defined through Lenders. Defensibility of reputation is normally critical for any mine operation within the web of relationships to both enable social licence and ensure access to money/capital to enable wider corporate operations. Problematic within the model is that the balance enabling a social licence settlement is dramatically upset if we remove or shrink this icon (see below). Is it possible to have a social licence to operate if the mining company has no capital? Within this model, capital is nearly as essential to the balance as the State. This is because to *operate*, even if consent is given, money/capital is required. One example of how Capital can exert pressure on a mine corporation Similarly the model can be used to underline that legality or state permission alone is no guarantee of have a social licence to operate. Recent event at Pilbara in Australia where the London based mining company Rio Tinto, on the 25<sup>th</sup> of June 2020 knowingly and legally blew up a range of caves which contained archaeological evidence of some of the oldest habitation in western Australia are still at the time of writing resonating. RioTinto had necessary permits to undertake the demolition, had been in discussions with the indigenous people and their representatives and went ahead with the demolition in the face of protests (Source Guardian1). RioTinto are currently encountering major reputational damage, being aligned with the Taliban for their destruction of ancient artefacts and have come under massive pressure from a range of globally

important investment funds (Source Conversation 2). Some heads have rolled such as their CEO, but their activities will have the effect of driving reform both of the legal protections offered to indigenous peoples' cultural artefacts and landscapes in Western Australia and their internal systems (Source: Conversation 1). If an assessment of their projected activities, blowing up the caves to access \$100m of high-quality iron ore had have been viewed within the SLSM Rio Tinto may have not proceeded. The SLSM moves, by operating in Third space, away from the narrow geographical and business focus. Significantly the pressure on Rio Tinto appears to be coming not from lenders or communities but from what has been defined separately in the model as Capital. There was for no sustained loss in Rio Tinto's company value on the stock market from the Pilbara episode. 17 Australian cents per share were lost and then recovered from the share price in a matter of days. Rio Tinto's share price appears then to have then steadily climbed. If they are looking at short/medium term management of their financial performance, they would be correct to say it is better to ask forgiveness than to seek permission.



*Figure 8-2 Rio Tinto share values*

Nevertheless, major shareholders and investment entities have signalled both their unhappiness and their willingness to demonstrate their own values through applying direct pressure (Source: Guardian 3). Capital as an entity has responded to forces within the SLISM and exerted significant effect on Rio Tinto who initially appeared to want to apologise and move on (Source: *ibid*).

## 8.7 Regional Development Plans and Related Governance.

### Regional Development Plans + Related Governance

The 'Regional Development Plans + Related Governance' icon, links environmental impacts and structures and systems that have been developed to engage the local community and this being used effectively within the model to develop trade-offs, remedies and "shared value" across the model. An implicit aspect of this "icon" is that the regional development plans of all types are underpinned with effective community engagement, the community need to be significantly engaged in their governance for them to exist here. Herein are the mechanisms for supporting communities to accommodate both the projected and actual impacts experienced by communities through a range of deliberative dialogues (Sen 1999). Could there be Regional Development Plans and Community Development which are imposed on communities from the outside or developed outside the community? The answer is no as the model builds on the work of Proctor and MacCallum (2019) and Sen (1999) which represents the process of designing and modulating such plans in and through public discourse, as fundamental to dealing with conflict. The strength of arrows between Mine and Community and between State and Community defines how this critical aspect of the balancing act plays out. We know from the research that two factors: *time* (Zhang, Meacham, and Moffatt, (2018), Frederickson (2018, 2019)), Jijelava and Vanclay (2017) and others) and the *impact on land use* (Kemp, Worden and Owen (2016),

Worden (2016) are critical to mine and community engagement and outcomes in terms of social licence. *Regional Development Plans and Related Governance* as an assemblage in the model, define the critical forces that land-based livelihoods, community engagement and formal development processes of dialogue can potentially generate and are necessary for a social licence settlement. Gauging the quality (community engagement, creativeness, time, appropriateness) of the content of this icon is perhaps one mechanism for accessing the level of stability of the whole social licence settlement. MacCallum, Proctor and Kelly (2020) propose just such an approach with the creation of an Index attempting to qualify through a range of measures livelihood stresses and opportunities for actuation of community voices, the level of stress within this political settlement system. This paper was the result of research undertaken as part of the INFAC Horizon 2020 program, examining barriers to mining within Europe. Evidence from the field and academia would suggest that more stress running through the factors contained in this icon or assemblage, the more strain on the social licence settlement. The assemblage represented by the icon is where the opaquest aspects of social licence reside and where upstream investment by those seeking the minerals to be extracted, need to concentrate. There is a wider debate here, already touched on in this thesis but too expansive for substantial engagement in this thesis. The debate is around whether the existing business model for mining needs to change, given that large upstream investment in communities developing plans and capacity with a return expected over many years, does not sit with the short-term return model of capitalism. This icon is an attempt to encapsulate the relationships and processes that are necessary to mitigate the negative impacts of a mining project on communities. The impacts of mining projects on local communities' livelihoods, through what is often classified as "Environmental Impacts" or "community engagement" are critical to understanding the dynamic and potentially fluid situation that is a social licence settlement. If realistic assumptions about the robustness of any social licence situation are to be developed,

the totality of relationships at play, communities' ability to engage with and mobilise power and to potentially collapse an existing social licence situation must be studied. Containerising or labelling an assemblage as *Regional Development Plans and Related Governance*, is an attempt to identify more concrete aspects for a model than relying on normative concepts such as "trust" for example. Shifting from a fluid normative, time-sensitive process such as *trust* to creating formal social institutions supporting planning, shifts from the intangible to concrete relationships. Within the model the "arrows" representing "the ability to influence and be influenced". This thesis has detailed the attempt to move away from amorphous concepts such as "trust" which is detailed as critical to SLO. Edwards, Fleming, Lacey, Lester, Pinkard, Ruckstuhl and Williams (2019:3),

"Trust has been posited as a critical component of SLO; Thomson and Boutilier (2011) propose that trust is key to the highest level of social acceptance (underpinned by credibility and legitimacy<sup>10</sup>), while Moffat and Zhang (2014) propose that, acceptance of industrial activities is mediated by trust in the industry. Trust is cemented in social relationships; founded on ways people experience their relationships with each other and the institutions or organisations they interact with."

The formalisations of institutions as outlined as within this icon, promote a transparent approach or a mechanism for precipitating amorphous concepts like trust and concretising them as well as detailing their more formalised state. To resolve or mitigating potential and actualised conflict without the investment by the State, Mine and Community in the creation of such institutions risk those at work being a hostage to fortune. The notion of "trust" is relationship based but if one were to take out a domestic bank loan one would want to know that there were institutions behind the conditions behind the loan. Institution building and trust

may seem, unusually bedfellow, until one realises this process of engaging with a corporation is not personal but corporate.

It is questionable whether trust can be understood without understanding what influences peoples and communities' values and how they respond to external influencers, such as mining projects (MacCallum 2014). Amartya Sen, a Nobel Prize-winning welfare economist's work on capabilities and development over the last 40 years, has focused on the importance of human freedom and capability to lead the kind of lives that people have reason to value (Sen.1999:56). Sen identified the importance of public discussion and social interaction when he stated, "The exercise of freedom is mediated by values, but the values in turn are influenced by public discussions and social interactions, which are themselves influenced by participatory freedoms".

Understanding what communities' value about what they have access to or not, is surely a requirement for understanding how and if they can trust a mining project even before they interact. The impact of mining projects on local communities' livelihoods, through what is often classified as "Environmental Impacts" or "community engagement", is critical to understanding the dynamic and potentially fluid situation that is a social licence. Without social forums to unpack this and without data to understand what effect the Mine might or actually have on people's livelihoods, it is doubtful any meaningful engagement between aspects of the social licence settlement can take place. The totality of relationships at play and communities' ability to engage with and mobilise power, to potentially collapse an existing social licence situation, is what must be studied if realistic assumptions about the robustness of any social licence situation are to be developed. This icon then represents not just written plans and organisations but the mechanism for assessing and dealing with environmental and livelihood impacts of land use.

Therefore, knowing and understanding what people value and why, is essential. Proctor and MacCallum's (2019) *Canary in a Cage* paper, points to how the extraction industry should be engaging with conflict and potential conflict, enabling dissenting voices at an early stage of project development, rather than trying to quell them. It is through the co-production of aspect contained in this item that this can be achieved.

Aspects of this doctoral research focus on how changes in civil society mobilisation and the factors shaping local agency, during and following European Union ascension process in Bulgaria and Romania, are due to be replicated in Serbia. These changes, brought about largely through the introduction of EU transnational environmental governance regimes, for which the existing government administrations were unprepared for, shifted the dynamics underpinning existing and developing social licence settlements. Subsequently, Bulgaria and Romania became problematic countries for mining project development. Given the attitudes and capacities in Serbia detailed in field research in the next chapter, it is probable this situation is due to be repeated if, as expected, Serbia moves forwards with EU ascension in 2024.

As outlined for Community and Lender, there is a range of international protocols and regulations concerning environmental impacts and their subsequent social impact but protocols about mechanism relating this to community participation in shared decision making are lacking. This icon also then represents those environmental impacts that the Mine creates or are envisaged to create, directly or indirectly and acts as an important nexus within the balance of social licence settlement. The relationships environmental impacts have to social licence are well documented. Sandy Worden (2016:375) linked the building tide of social licence failure in the last decade, to the conflict between those objecting to actual or perceived environmental impacts by the mining industry. She states that the "origins of this hostility are

diverse, ranging from the philosophical arguments of environmental activists to conflict over multiple land use and concerns about social and environmental impacts of mining.”

In Ian Thompson’s (2017:6) paper *The Rise in Conflict Associated with Mining Operations: What Lies Beneath?* In which he asserts: “The significant increase in conflicts associated with mining operations since about 2000 has occurred in the context of a general rise in large-scale protests globally, particularly associated with land and environmental issues, and an unprecedented increase in global exploration and mining activity during this period.”

The establishment of well-defined and policed international environmental regulations and safeguards, ahead of robust social safeguard regulations, one might surmise, are contributing factors to increased levels of failure of the industry. An industry that is not equipped to move beyond their preoccupations for quantitative data systems. The mining sector is predominated over, at an operational and strategic level, by those trained as earth scientists and engineers. They engage in a process of what Çalışkan and Callon (2009:369) characterised as *economisation*, that is the process of assembling and qualifying of actions, devices, and the analytical/practical descriptions of the mine as *economic*. Modelling SLO failure within this social licence settlement model, it is apparent that understanding the totality of relationships and their interrelatedness is critical. This is a shift from existing models of SLO. Developing a social licence settlement through understanding and engaging with a range of relationships to create forms of shared spatial and resource governance, is an alternative approach to remediation of social licence issues supported by environmental monitoring mechanisms or indeed striking agreements with unorganised communities although both these activities will always be necessary.



## 8.8 International NGO.



The perceived increase of socio-political risk over the last decade and the rise in social licence failure, has been linked to the activities of NGOs. The “*International NGO*” icon as so very often with mining projects includes local and international NGOs or community based organisations. These local NGOs are often seen as an “unrepresentative” or “non-democratic” pressure group and their leaders are viewed as mavericks. Often local NGOs are ignored or attempts to are made to capture them are part of a community pacification strategy by the mine. More fully this icon could be labelled international and non-local, large national NGOs. Significantly international NGO’s (INGO) as the icon encapsulates, usually bolster their legitimacy engaging with a cause, which is often for them ideological, by supporting local protestors who are often concerned about pragmatic social and environmental issues. Alexandrescu (2012a:35) details at length the lack of convergence between local and international NGOs. In a study Chimalapas, Mexico, Doane (2007: 460) identifies “some serious ideological disjunctures between the “local” and the “global” elements of transnational environmental movements”.

In the context of rural Malagasy society, Simsik (2002) criticizes the “conventional wisdom” of international environmental NGOs, which are out of touch with local realities and ultimately fail to prevent continued environmental degradation. Similarly, in their study of mining in New Caledonia, Ali, and Grewal (2006), discover that environmentalists and indigenous groups do not always regard the impacts of a given project in the same way. INGOs have the facility to bring not just financial resources to local actants but new forms of knowledge. This can enable the wider “Community” to activate, ignored or dormant regulatory and rights systems which can shift the balance within a social licence settlement. The more aligned the interests of the Community are to that of the INGO, the more effective the latter

can be at supporting the shifting the balance within the social licence settlement. The closer the ties between the Community and INGO the more legitimacy is inferred on the later. The co-production of knowledge challenging the corporation is the idealised position for INGO as it can counter the argument from the mine that the challenge is purely ideological. This is well represented in a paper by Leah, Bene, and Alier (2015:25) entitled “Mapping the frontiers and frontlines of global environmental justice: the EJAtlas”. The above refers to Casa-Cortes et al (2008) using the term "knowledge practices" to illustrate how the co-production of knowledge can be critical to reshaping the knowledge paradigm. INGOs in mining can bring specialisms that can challenge, for example, aspects of a corporations social and environmental management plan. Leah, Bene, and Alier 2015:25 quote Porto (2012) in detailing the aspiration of the environmental justice campaigner as, “activists aim to make issues of risk and the uncertainties of knowledge explicit, and in the process to remove the legitimacy of specialists in defining, in isolation, the parameters of the problem and the arguments most relevant to decision-making.”

Mining arguably has been very guilty of manufacturing environmental and social knowledge within a narrow quantitative, neoliberal economic framework for the justification of its own, already fully formed plans for a mine. Understandably, a construct such as a company will try to deliver brokered deals with communities and the state within a framework that synchronises with its system. The raft of “obligations” adopted by the company in relation to the community and their environments, through *community management plan*, *resettlement action plans* and many such other similar vehicles of intent would logically be the means of addressing concerns that might be mobilised by an INGO. The creation of and the crystallising of these obligations are undertaken with respect to various abstract, legal, and good practice guidelines and reports created early in or before the operational phase of a mine, often a

precursor by the state to a mining permit. The implementation of these plans that relate to how the community will be resourced, supported, and enabled and how the actions of the mining corporations have been viewed in the delivery of the obligations, occurs throughout the life of the mine. The plans are technical and very much embedded in the process of deliver. Oversight and review of mine corporation compliance towards the agreed obligations by outside agents, usually by the lender, sometimes the state is augmented by INGOs. This demonstrates that the community, INGO, lenders, state, and mine corporations are connected and that there are opportunities for specialist knowledge held within an INGO to support communities in understanding their rights and potentially their opportunities. Leah, Bene, and Alier (215:25) describe a process which might represent an idea coalesce between INGO and Community. Conde (2014) used the term "Activism Mobilizing Science" (AMS) to denote the process whereby activists and scientists co-produce new and alternative knowledge that gives local organizations visibility and legitimacy and empowers them to challenge the manufactured uncertainty produced by the state or companies.

INGO's can, through bringing alternative ontologies as well as resources into play, support the development of the conflict between communities and the mine. Arguably, the further the Mine moves from established frameworks of social and environmental protections, the more opportunity exists for INGOs and communities to find a shared alternative interpretation of reality. It is difficult looking at the disparity of perspectives of reality in mining areas between mine and local communities, to argue with the assertion of Bruno Latour (2005:118) in a footnote in *Reassembling the Social An Introduction to Actor-Network-Theory*. He wrote, "I maintain the plural for ontologies to remind the reader that this unity is not the result of what the world is like at first encounter, but what the world might become provided it's collected and assembled."

Ontological “performativity”, is a contested notion yet between INGO and Community there has within this model, to be at least a sharing articulation of a rational, normative coalescence around change. The importance of language and a shared sense of the grievance between community and INGO are usually easily found around poor environmental performance by mine sites. Sage Dainty and Brooks (2014:289) detailed that “across diverse academic projects, the concept of ‘performance’ has oscillated between philosophical ruminations (Anderson & Harrison, 2010; Butler, 1990; Lorrimer, 2005; Schechner, 2003; Thrift, 2008) and the strict rationalist-normative maxims of management, sometimes even in the hands of critically minded authors.”

Environmental issues are likely the most “concrete” communicable area for INGO to coalesce around with communities, the application of accepted models of knowledge creation by all technically equipped participants within the model gives a safe platform for INGO to work on the co-production of knowledge with Community. Social knowledge is more contestable within a techno-scientific dominated forum. In the same paper (ibid:289) they draw the nature of different perspectives to a head using Law (2006: 31).

“It is not possible to separate out (a) the making of particular realities, (b) the making of particular statements about those realities, and (c) the creation of instrumental, technical and human configurations and practices, the inscription devices that produce these realities and statements. Instead, all are produced together. Without inscription devices, and the inscriptions and statements that these produce, there are no realities”.

INGOs, through their connection with internationalised communities, can mobilise huge forces within the social licence settlement model and support a process of inscription. They can exert forces within the model on other and through other actants, forces that have not been contained within the Regional Development Plan and Related Governance.

## 8.9 International Rights Framework.



This icon represents the range of rights, national and transnational that people have, and which can be engaged by mining operations.

Many countries such as the UK, where many mining companies have their headquarters, see the application of these rights as legal obligations by such companies, wherever they operate in the world. For example, the “Business and Human Rights Toolkit - How UK overseas missions can promote good conduct by UK” (HM. 2011) point to the rights frameworks.

“The International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities” (Source OHCHR1).

Similarly, “ILO Conventions 29, 87, 98, 100, 105, 111, 138 and 182 (performality)”. The “core labour standards” are a set of four internationally recognised basic rights and principles at work, covering freedom of association and the right to collective bargaining, the elimination of forced labour and child labour and the elimination of discrimination” (Ibid:4).

Lest we get too enamoured with the UK, especially given that there is a range of state entities to report bad behaviour to and legislation banning bribery overseas, it is worth recognising that there are numerous caveats with regards to how these rights frameworks might be actioned or ignored. The same page as the above, quotes;

“The UK takes a more nuanced view than John Ruggie about the State’s duty to ensure that companies act compatibly with the States’ human rights obligations. The UK’s view is

that this is not a blanket obligation but depends on the wording of the treaty obligation in question. To the extent that there is a legal duty to protect, it only applies in respect of a state's inhabitants. The UK does not owe legal obligations to ensure that UK companies comply with UK human rights standards overseas" (Ibid:4).

The UK is only one nation which offers potential legal recourse for members of overseas communities poorly treated by corporations and many countries offer more accessible in-country rights frameworks, particular for recognised indigenous peoples. Canada, Australia, Philippines, New Zealand, Chile, and Finland might be particularly good examples on States that assure national rights for indigenous people within a legal remittance. Within an international context, the World Bank's International Finance Institute Performance Standard 7, obligates mining companies to undertake a range of prescriptive engagement processes with indigenous people likely to be affected by future operations, with the prerequisite of obtaining Free and Informed Prior Consent (FPIC) for the project. Although powerful for communities and costly for the mine, historically it has not guaranteed local social licence. Free and Informed Continuous Consent (FICC) arguably is what a social licence settlement is and there is no obligation to undertake such a rolling process. FPIC then represents a carte blanche to be obtained at the beginning of a mining process and social licence settlement is a vital relationship. A really good example of how this interpretation may be subject to creep is outlined below concerning the *International Arbitration* icon, and referenced earlier, the case of Bear Creek PLC versus the Government of Peru. National and international rights frameworks do convey communities with the theoretical ability to assert their "Rights" and this is critical within a Social Licence Settlement Model (SLSM). Given resources-both financial and knowledge-based are needed to enforce FPIC or any other legally based rights, poor rural communities are ill-equipped to develop such challenges. INGO's can play a significant role

in developing the capacity of communities to action their legal rights. Hence once again the relationship between icons is what is significant not just what they contain.

### 8.10 The State.



The role of the State with this Social Licence Settlement model is pivotal and represented as a mobile fulcrum icon. The State can change its position and alter the relationship between the two other primary actants, communities and the mine, hence it is on wheels.

The argument in this thesis is that without the participation of the State, there can be no social licence to operate a mine. This icon is an attempt to embrace all of State governance processes including government and is emblematic of legislation, practice, and policy. There are actions or roles that the State can pursue which will support or hinder social licence but more fundamentally without the issuing of consents, permits or Licences, there can be no mining activity, no operation, even if the community supports the principle.

Olsen (2017) examines the role of the State from a stakeholder theory perspective in determining who should be involved in delivering microfinance support. This is, for Olsen, a way to challenge that there is an implicit logic rather than a political dimension to who is engaged in this form of social development. This thesis argues that there are similarities with the process of mining investment within a locality. Olsen says:

“[t]his approach challenges the predominant perception that the “firm’s management... determines which stakeholders are salient and therefore will receive management attention” [emphasis original] (Mitchell, Agle, & Wood, 1997: 871) and instead points to, “the important role the state plays in determining stakeholder legitimacy” (Olsen 2017:72). Olsen defines the regulatory framework utilised by the government through a range of standard processes,

“Democratic states have many tools at their disposal—regulation, allocation of resources, taxation, monitoring, enforcement and, when combined, the creation of new industries” (Olsen 2017:72).

The reality of how the State works is influenced by numerous sub-systems ranging from political, legal, cultural, and economic and there are issues about how representative the State is with regards to particular groups within society. Within the model, the closer (physically) the State icon is represented to the community, the more representative it is. Conversely the closer the State is to the mine and the associated Capital/Money and Lender icons, the less representative it is of Community. Yet there is no implicit criticism of the State in being located there at either position, the model is neutral. The model cannot assume the reasons for the State’s location towards location at either end of the Lever as to do so would be a political statement rather than an attempt to represent reality. There may be very good reasons, fiscal, social, economic, cultural and political in a variety of settings, for the State to be both where it is and for it to reposition itself. This is one of the central dynamic functions of the model.

Olsen, utilising Buchholz and Rosenthal (2004:149), made the point that the State is, in an ideal model, this thesis would argue, ideally placed to articulate a way forward across all interests. “[T]he implementation of stakeholder principles depends upon government as it is the only entity that [can] speak for society as a whole and can thus change the way corporations are governed and managed” (Buchholz & Rosenthal, 2004:149 in Olsen 2017:72).

It may be ideally situated but only if the State is not contested, as it is in some conflict and post-conflict zones with mining projects and this does not necessarily mean, the State can “speak for society”.



Conde and Le Billon (2017:683) identify in their paper why some communities resist mining projects and others do not as well as a range of aggravating activities that the State can undertake, which can lead galvanising and driving mining conflict. The State creating pro-industrial policies, inadequate planning, corruption, repression, and criminalisation of protests all have the capacity. Conde and Le Billon (2017:684) quoting Owen and Kemp (2015: 486), determine State capacity issues as being at the heart of some of the conflict around mining, “Rather than represent and assist affected communities, the state often delegates all responsibilities to the company, including for design and enforcement purposes, an attitude aggravated by an “internal capacity gap” in mining companies that have to deal with “complex issues relating to legacy, traditional forms of land ownership, multiple resettlements, and changed ownership” (Owen and Kemp, 2015: 486)”.

This ability for the State to function is something we examine further on in this thesis when looking at State capacity and the introduction of new transnational environmental management systems. The geography of mining and the presence or absence of the State from regions where mining is due to or is currently taking place can have a significant effect on the role the State can or cannot play. State hegemony, that is domination authority of social, cultural, political, and economic life within a nation state can in practical terms be challenging in remote regions, their authority waning with distance, and this can affect the social licence settlement. Conde and Le Billon (2017:685) investigating remoteness and resistance to mining by communities determined that, “resistance is more likely to emerge in remote areas precisely because of lack of effective state presence. Ballard and Banks (2003) argue that when the state's capacity to deliver services is limited, communities have less regard to “the authority and claims of the state” (see also Scott, 2014).”

Furthermore, their research illustrates that mining projects are located within a historical context. This thesis contends that this historical relationship between the community and the State is an often ignored aspect on behalf of the mine developer investigating the potential to avoid conflict and “[m]oreover, relations between remote communities and the state, as well as a sense of ‘citizenship’ (both on the part of indigenous communities and the state vis à vis these communities), are frequently embedded in historical relations of marginalisation, racism and various forms of violence including outright genocide (Martinez Alier, 2003; Ballard and Banks, 2003; Muradian et al. , 2003 in Conde and Le Billon (2017:685))”.

The essential brokerage role of the State in a potential Social Licence Settlement is one which requires the communities affected by said Mine to trust the State in that role. Conde and Le Billon (2017:688) determine that, “[d]istrust has emerged as one of the main factors that generate opposition. There is frequent distrust towards the mining company, but also towards the state as guarantor of environmental standards and appropriate revenue distribution, with local elites ‘capturing’ opportunities and instrumenting conflicts for their benefits, as well as external expertise and hard to understand science-based findings (Bebbington and Bury, 2009; Le Billon, 2014; Conde, 2014))”.

This is highly significant and emphasises the importance of the quality of engagement between the State and both Environmental Impacts and International Rights Frameworks in the model. It also illustrates within the academic literature that current models are reliant of constructs such as “trust” which are amorphous, normative terms that are context and culturally specific.

## 8.11 The Lever.

### Social Context

### International Regulation

The lever provides the basis for all the relationships between actants. *Social Context and International Regulations* are two aspects of the assemblage of a social licence situation that have not been captured elsewhere in the model and both are outside the complete control of the other actants. Social context is often characterised in mining project documents and conflict of various types is often central to the relationship matrix. As Owen and Kemp (2014:98) point out “conflict is and will continue to be a constant force, both in the existing social context and between company and community, and should be characterized and accounted for from the outset of mining activities”.

Conflict, however one might define it, may be a part of the social context but there are also the myriad aspects of culture, history, recent and remembered experience with analogous mining type related activities that create social context. Social context is the result of complex assemblages interacting over time and some of the responses from communities need to be understood outside the rational. Some communities’ responses to conflict type situation are likely, if not understood, to be seen as guttural and brutal. Unless these responses can be understood they are difficult to predict and mitigated. Similarly, the term *International Regulations* defines not specific legislation alone but what Raufflet et al (2014) describe as those contained within a “regulatory scripts” framework. “Regulatory scripts” were described as the practices shared by a group of organizations in an industry in response to international frameworks and standards (termed institutional expectations). Moran, Lodhia, Kunz and Huisingh (2014:5).

This thesis argues that just as corporations have a range of regulatory scripts driven by shared practice, so do lenders and governments. These may be based on shared understanding

between or assemblages or aspects of this model but also the international frameworks subscribed to by actants. In an increasingly accountable and transparent global marketplace there is likely to be an increased sharing of regulatory scripts that are defensible both within a legal context and to consumers and shareholders.

### **8.12 International Arbitration.**



#### **International Arbitration**

The ‘International Arbitration’ icon represents the range of international rules and processes that can be brought to bear on States, Lenders and

Mine companies. Barnes in her 2019 paper on international investment tribunals that regulate how States which have signed up to international trade agreement operate noted that:

“that arbitrators may have to consider the social licence to operate as part of the applicable law, which could have significant effects for international dispute settlement in general” (ibid:1).

Barnes’ (2019) analysis of research undertaken by the Organisation for Economic Co-operation and Development (OECD) into the language used in bilateral investment treaties (BIT) identified a proliferation of phrases supporting sustainable business practices and aspects of sustainable development in recent years. Barnes (ibid) states that, “[t]his indicates that investment tribunals are starting to recognize the ‘potential interactions’ between international investment law and other matter such as sustainable development, responsible business practices and human rights in general.”

She drives her argument home, citing the findings of an investment tribunal arbitrating in the 2017 case of Bear Creek Mining Corporation v Republic of Peru (Bear Creek Mining Corporation v Republic of Peru ((ICSID Case No ARB/14/21). The former was a Canadian

investment vehicle seeking damages of USD522 million and were subsequently awarded USD18 million. The central issue in the reduced damages was indicated to be the failure of the claimant to develop aspects of their SLO. Although there appears to be no definition of SLO used in this finding, it does appear to have been conflated by the BIT with Free and Public Informed Consent (FPIC). This later term refers to a requirement under a range of international conventions specifically supporting the rights of indigenous peoples. FPIC is about ensuring consent at a particular point in time, and one could argue, SLO requires a continuous surety of consent, Free and Informed Continuous Consent may be more accurate. However, the utilisation of FPIC by international bodies that have the potential to impact financially significantly on both State and Mine illustrate the utility of this icon.

Working towards a single temporal hurdle as defined by FPIC requires a different strategy and approach to developing a relationship capable of sustaining consent over the life span of a mine site. FPIC is also something that must be negotiated before physical operations commencing. During the production phase, the community will have a fuller understanding of the real issues likely to diverge corporation and community interests. This international aspect related to how Lenders, Mines and States may all come under pressure to legitimise their mining activities.

The evidence emerging from the latest BIT processes also sends a stark message to both corporations and international pressure groups and NGOs. This relates to Gabriel Resources' allegations of breach of the BIT arise concerning a proposed open-pit mining development in Roşia Montană, Romania which was not implemented and which this thesis looks at in detail in a chapter. An "order" was issued from a BIT tribunal (7th December 2018) currently presiding over Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. vs Romania (ICSID Case No. ARB/15/31) excluding the amicus curiae submissions from three

international NGOs is significant. Amicus curiae submissions are covered by the World Trade Organisation (WTO<sup>1</sup>) and are a theoretical means for experts or interested people to be introduced as a “friend of the court”. WTO describes recognises them as, “[a] controversial issue [which] has been whether panels and the Appellate Body may accept and consider unsolicited submissions they receive from entities, not a party or third party to the dispute. These submissions are commonly referred to as amicus curiae submissions”.

There is space for this type of evidence to be more closely bound or excluded from the processes altogether as, “[a]micus curiae means “friend of the court”. These submissions often come from non-governmental organisations, including industry associations, or university professors. Neither the Dispute Settlement Understanding (DSU)[ The Dispute Settlement Understanding is a legal text containing the rules for dispute settlement in the WTO] [SS38]nor the associated Working Procedures for Appellate Review specifically address this issue. ”

The scope of these forms of evidence/brief appears to be defined by this recent tribunal order. A briefing to the tribunal from three international NGOs, representing the local protest group in Romania, was excluded from the legal process on the basis that the three international NGOs were acting as a conduit for evidence from a local (to the conflict) organisation, rather than being local themselves. On a practical level, this driving the need for the operator (mining company) to drive a wedge between external (non-local) environmental actors and for those international environmental actors to legitimise their activities through closer affiliation (work through, rather than with local entities), if they are not to be automatically ruled out from briefing future BIT disputes. This again points to the relationships in the Social Licence Settlement model in terms of all assemblages ensuring their interests are preserved by being cognisant of International Arbitration and those bodies that can be engaged. Similarly, World

Trade Organisations (WTO) participating governments who consider that they may end up in a dispute with companies over issues such as social licence, need to integrate local organisations into their original argument if they wish their views to be considered. WTO's position on this is, "Amicus curiae submissions have frequently been filed in Appellate Body proceedings. When these briefs are attached to the submission of a participant (appellant or appellee), for instance as exhibits, the Appellate Body considers such material to be an integral part of the submission of that participant who also assumes responsibility for its content". This is rational given the tribunals need to weigh a final settlement decision based on a binary decision, responsibility for controlling the veracity of briefings will fall to one of the two partners and they will be held accountable for it accurately.

What the finding does suggest, is that if the local organisation have had presented its argument directly it may have been included. Local communities can then, represent a form of conflict capital within BIT but not if they are not direct contributors to the briefing and attached to one of the two sides directly.

It is significant that to date, only a few panels have made use of their discretionary right to accept and consider unsolicited briefs and "[o]n the basis of the Appellate Body's interpretation, panels have no obligation whatsoever to accept and consider these briefs. Accordingly, interested entities, which are neither parties nor third parties to the dispute, have no legal right to be heard by a panel" (WTO<sup>2</sup>). It would in practice have been politically more difficult to exclude evidence a briefing from a local protest group and one ponders as to why the Romanian government did not introduce the briefing as part of their evidence unless they had concerns about the quality of the evidence.

Other International Arbitration systems such as International human rights law could see mine corporations taken to court in their home jurisdiction for activities undertaken overseas.

One example would be a series of lawsuits of Acacia Mining Group in the UK by relatives of people killed through their activities in Tanzania (Source Telegraph <sup>1</sup>).

### 8.13 Enabling a Social Licence.



Social licence represents the ability of the corporation to carry on its mining operations without direct or indirect interference from a range of actors that could cause the community to withdraw their consent for those operations and force it to stop production.

### 8.14 The Social Licence Settlement Model.

The model “containerises” the Mine, the Community, the Lender, the State, and a range of another key, what he terms ‘actants’ or “assemblages”, within a loose ANT framework, to set the scenario up for building a visual model of social licence settlement. Pivotal to the Social licence is the State, without a legal licence and State consent, nothing can happen and hence no social licence is logically possible. The relationships between the State and those acting on the Communities’ side of his settlement model and local and regional development capacity with their associated governance systems operating in geographical communities are critical for creating the space for “shared value” or “shared benefit” and delivering balance within the local geopolitical system. “Shared” and “Benefits” are both contentious terms and the allocating of resources would as one might expect, often reflects the underlying power relations. The aim of the model to become a theoretical tool for both academics and practitioners forcing them to further unpack these *containers* in the empirical context. The *containers* have been kept broad, in an attempt to represent a range of locations/situations and recognition is given to the immense bodies of academic work that are dedicated to defining container term. *Containers* are located within a seesaw type model representing a social

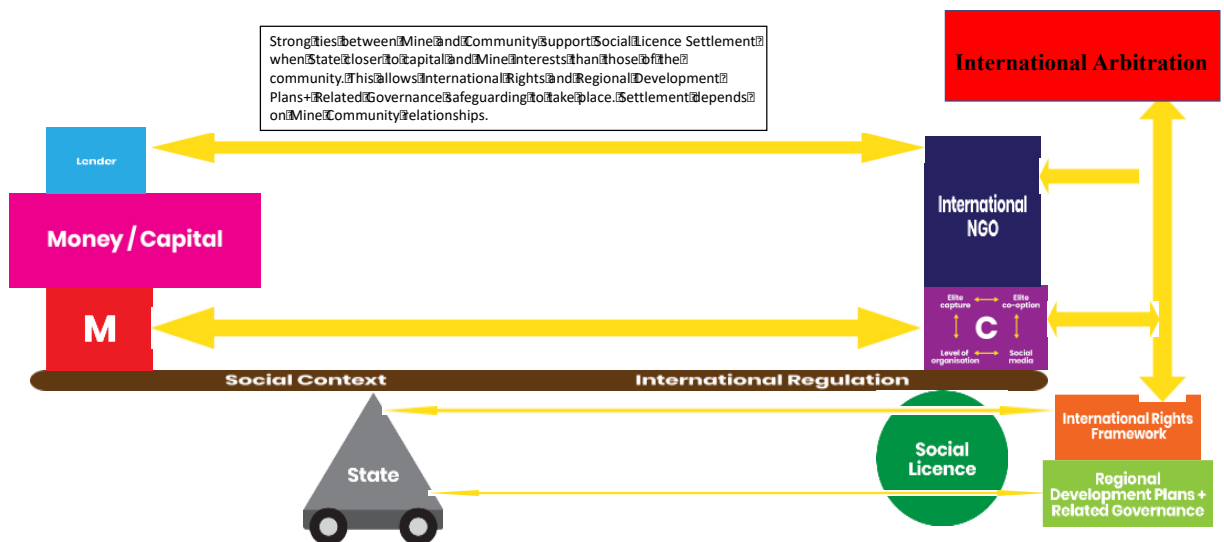


licence relationship and it roughly appears to obey Newtonian physics within a flat plane, to demonstrate their relationship within the whole social situation. If this model is to be used to try and understand social reality and deliver change to mine management perceptions as is envisaged, portraying the totality of relationships, and representing the pivotal position of the State on moderating those relationships is critical. The model has the potential to establish that State support is critical to social licence, and this could have significant implications for some international legal tribunals and is an attempt at conveying that social licence is not the product of a binary relationship between mine corporation and community. No apology is made for schematising the major components of society engaged in a mining project. That in a sense is the very point. Moving away from the binary into the totality of relationships provides an opportunity to experiment with “what ifs” from a management perspective.

## Chapter 9 Scenario Testing of The Social Licence Settlement Model.

This chapter presents five example or “ideal” types of social licence settlement (SLS) or failure of Social licence Settlement developed using these constructs. They do not represent all permutations of relationships but provide a range of examples to demonstrate the interrelatedness of actants/container and illustrates the dynamics at work.

### 9.1 A positive yet unstable example of social licence settlement.



*Figure 9-1 Positive unstable social licence settlement*

The example in Figure 9-1 represents a good SLS and the position of the State, which is closer to the mine corporation, for whatever reason, than its citizens. The location of the State paradoxically enables the community to exert more leverage than they might otherwise as they are not as strongly engaged by the State. There are quite strong checks and balances and a

good relationship between the mine and community yet weak regional development plans institutionalised systems and associated capital might indicate that this is an SLS in a country with a weak regulatory framework (smaller arrows) and scant regard for International Rights Framework. The issue here for the mine and the Lender is that without institutional systems and strong engagement with international systems anchoring the State there is certain volatility inherent in the model. In practical terms, the strong civil society influences could present a position where the mine and lenders are blamed for poor behaviour on behalf of the State. Or when conflict arises between mine and community which introduces volatility into the system, the State responds in a manner, not in alignment an international rights framework. This could represent a mine in a sub-Saharan African location with a ‘major’ or large firm, putting significant resources into relationships with the community yet not recognising the underlying risks that could collapse their SLS and leave them dealing with international lawsuits. This is illustrated in Figure 9-1.

## 9.2 Positive stable social licence settlement.

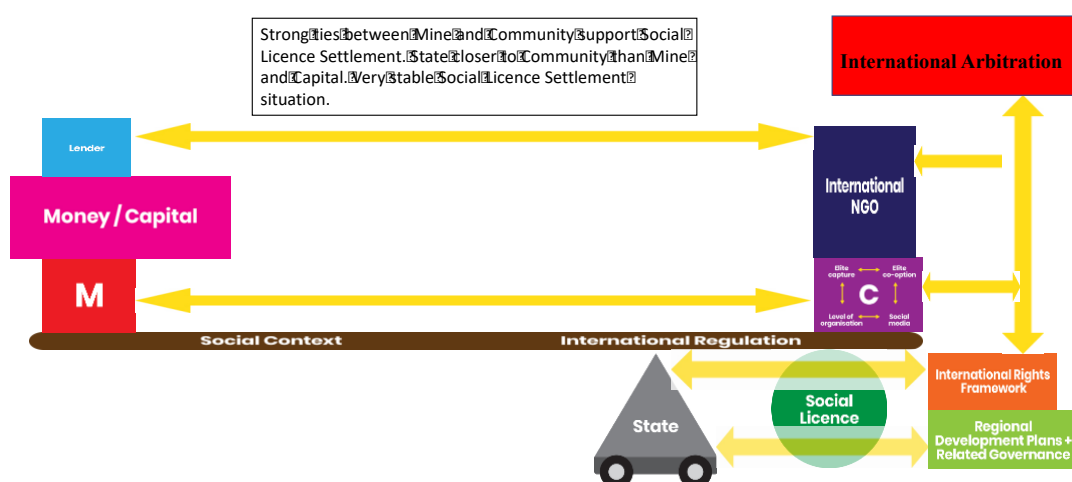


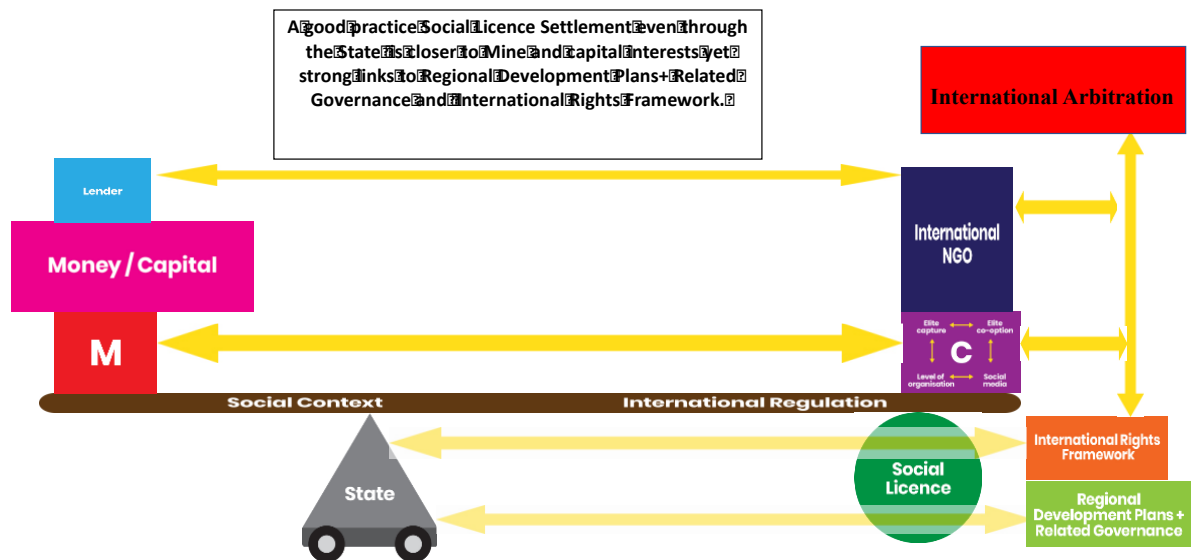
Figure 9-2 Positive stable social licence settlement

This is what the author would consider the ideal scenario- for all parties. There are good relationships, strong ties between State and International Rights Framework yet civil society systems that ensure accountability. Relationships between mine and community are there yet there is no need for this to be as strong as before because the range of checks and balances and the existence of strong regional development plans, indicated by the State's engagement with them, mean that there are institutional systems to deal with issues. A strategically planned approach to developing share "social goods" underpinned by compliance with international regulation and the State and community closely aligned, enable long term stability. There is through institutional systems no longer a reliance on "charitable" shared benefit, there are systems in place to ensure it and for dealing with conflict issues. This represents a mine site in a location where the State has a history of strong links to international rights frameworks, has developed regional development plans that communities have supported, and effected the creation of systems to create high levels of accountability between the State and the affected community. Creating an SLS in this format will take significant time. Unless the State, their institutional capacity in terms of plans and governance, and community capacity is already well developed this may be a situation which cannot be achieved within the existing mining business model, for reasons explained earlier.

We can see a similar iteration of this model in Figure 9-3. This time there are weaker links between the State and Community and the link between International Rights Framework, Regional Development Plans, and International Arbitration, represented by smaller arrows and the State. This is balanced by stronger ties between the Mine and the Community and a slightly weaker involvement of International NGO. Comparing

Figure 9-2 Positive stable social licence settlement

and Figure 9-3, the second is less stable and yet the mine is working harder to influence the community. The State has moved closer to the Mine, so the critical issue is the weak relationships moving the International NGO.



*Figure 9-3 Good practice social licence settlement*

This represents the situation many mid and junior tier mine corporations find themselves in. They have a growing concern, but they are inherently vulnerable to a collapse of the relationship between the mine and the community. The pressure on that relationship, for example, through a pollution incident, might lead to a temporary breakdown of the relationship and there are only, in this case, weak stretched relationships between the State and institutional systems. Brokering a resolution in this situation would be difficult and highly reliant on individual relationships within the mine and the community. Anticipating this type of SLS failure may be why mine corporations behave as they do with regards to developing champions in the community. The difficulty is that the mine corporations are then at the mercy of the internal processes within communities concerning elite capture and co-option and conflict

between the mine and community will intensify pressure within the community as to whom is representative. This in some jurisdictions can lead to cohesion and conflict within the community. An example of this type of mining situation as represented by Costanza (2016) in Guatemala and lead her to recognise that, “findings suggest that the local state, especially institutions designed to encourage citizen participation in local governance, can play a crucial role in determining whether and how mining firms can operate”.

The State plays a critical role, particularly as Costanza notes, in many developing countries where there is a devolved local or regionally orientated State apparatus. “Regional Development Plans and Related Governance” as a container indicate the mechanism for influencing the SLS. The strength of connection or level of engagement by both the State and the Community with that container is critical to an SLS as Costanza states, “the local state and invited participatory institutions warrant attention because it is through them that elites can frame debates over mining and development, mitigate opposition, and help secure an SLO”.

### 9.3 Social licence settlement failure.



*Figure 9-4 Loss of a social licence settlement*

As some of the patterns emerge in the use of my SLS model, it is possible to view the importance and influence of certain actants. We have focused on the previous example on the State, Community and Mine. Whilst they are critical assemblages it is important to recognise that their relationship and influences are moderated by a range of other critical assemblages.

In Figure 9-4, a situation has arisen for whatever reason, and the model is value-neutral, where SLS must lead to a collapse of the SLO. A weak relationship between the State and the Regional Development Plans and International Rights Framework, a State distant from the community and a good relationship between the community and access to international mechanisms has enabled the International NGO to support the collapse of the SLO, no SLS exists. International NGOs by their presence and it need not be a physical presence, through having access to international expert knowledge and organisational capacity, have exerted a considerable pull on the Lender. In a situation like this with potential reputational damage to the lender, for example, an international development bank, the Lender might leave, and an element of the capital might follow. This represents many mid and junior tier, high risk-taking mining operations without long term strategic investment building capacity in Regional Development Plans and Related Governance and with a crisis breaking down relationships with the community.

This inevitably forges stronger links with International NGOs who may be ideological driven by one or a range of concerns (environmental, climate change, Rights issues) and they will certainly be part of a network of such international advocates. Paradoxically in the case of a State signing up to transnational agreements on Regional Development Plans and Related Governance- for example, Natura 2000, an EU framework for spatial environmental governance, the further the State moves away from the community and these forms of

governance, the less power it possesses to influence this relationship as represented below. State capacity and their effective engagement in transnational environmental governance are critical to ensuring the forces contained within these new forms of governance are not used by International NGOs and the Community to remove mine development risks and stop all mines- rather than develop an SLS.

#### 9.4 The Critical Issue of the State.

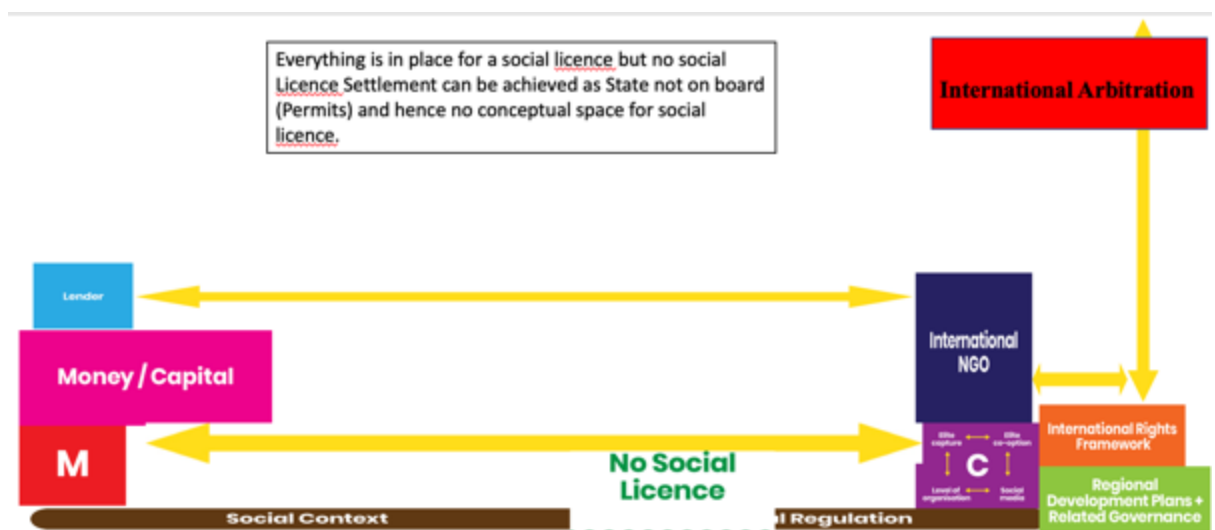


Figure 9-5 Critical issue of the State

As can be seen in Figure 9-5 there is no SLO within this SLS because there is no state involvement. All the relationships we would expect within a good social licence settlement are there, the mine has succeeded in getting the local community on board but for whatever reason, the State has refused permits and is not actively participating in Regional Development Plans and Related Governance. Arguably if we ignored the process of how the Rosa Montana mine in Romania arrived at this situation, for International NGO' played a significant role in bringing about the conditions, this SLS representation is largely correct. Critically the State not being part of the SLS means there can be no social licence. The State cannot grant a social



licence and failure to participate means there cannot be one. The common conflagration of social and community, in attempting to define SLO as social legitimacy within a binary relationship is what this demonstrates as flawed thinking.

## **9.5 The Social licence Settlement Model.**

The first part of this chapter has dealt with the construct of Political Settlement in the context of an SLO and demonstrated that there is precedence within the academic literature for using it to try and explain SLO. It details that a SLO settlement model is an attempt to represent an assemblage; a way to represent the dynamic change of continual social interaction in any given space, moving beyond tired theoretical binary propositions in representing social reality. Social licence arrangements, like the rest of social reality, are continuously evolving. That has implications both for the construction of the Social Licence Settlement Model (SLSM) and in the management approach needed to address real-world social licence situations if this model is to be used to try and understand social reality and deliver management. It then illustrates how ANT theory gives the author an opportunity through the fusion with a political settlement framework and beyond either a reductionist or binary approach in addressing social licence and represent this complex social reality. The fusion of ANT and an established political settlement concept, move the new model beyond most models, most obviously, in that the State plays a pivotal role. In scoping political settlement, the thesis refers to the seminal works of Mushtaq Khan on the definition of political settlement and the challenges to his ideas from Kelshall. The challenges by Kelshall on the scope of the political term demonstrate, that within both the academic literature and political practice, there is precedence for local-level actors being central to a sub-national settlement defined as a political settlement. That reflects the position taken herein. The position taken in this thesis, is that the new social licence settlement

model is set, as discussed earlier, at a meso level but that all actants have agency if heavily constrained in their choices.

It is impossible to perfectly represent social reality in a manner and beyond reproach or challenge, given the width of the theoretical net needed to catch the totality of social realities. Kita's (2019) work represents how communities, elites although critical to communities' agency can take on a range of different forms of relationship with the wider body and this is used to support the theoretical "containers" used in the model although they are, of course, contestable. Given that, the model serves to represent, through structured relationships between containers how social reality around social licence can be portrayed as a balancing act of many actors with the state as pivotal. This in turn provides an opportunity for these relationships to be challenged and explored. From a theoretical perspective within the social licence literature, this represents a new starting point and one which has the potential to offer a range of new areas of investigation. As a concept, social licence settlement model has also the potential to be taken out of its heavy theoretical heavy setting and applied by practitioners that offering utility to the mining industry.

## **Chapter 10 Conclusions And Next Steps.**

### **10.1 Introduction.**

Applying my SLSM) as an analytical tool to both the desk-based research and the field-based research highlighted the potential of the model to capture a change to civil society dynamism in relation to mining. Furthermore, the SLSM demonstrated the totality of relationships surrounding a social licence in a real-world setting. Interpreting social licence through the model can enable a new lexicon to develop, supporting non-social scientists within the industry to get to grips with the complexities of those relationships defining social licence. Asking questions of participants in Serbia, who clearly recognised some “non-mining industry” driven unstoppable process rolling towards that industry in Serbia from a neighbouring country, elicited both consternation and resignation from industry insiders.

### **10.2 Applying the SLSM model in a European context.**

Through my research I have contended that actors/actants need to develop and support the creation of new forms of a collective agency if they want to ensure outcomes from the network that support their interests. The SLSM has proven to be a mechanism for analysing social licence in this context.

Within the SLSM there are two nexuses between the INGO, the Community and the State where such agency could develop. There is the *International Rights Framework* assemblage, which represents the space for aspects of governance, detailing minimum standards for how the state treats citizens and protestors. This might serve as a space for dialogue to occur between INGO, Community and State but it is unlikely to provide a space for creating much more than adherence to minimum international industry standards. Secondly, there is *Regional Development Plans + Related Governance*, representing interlocking spatial environmental

and social governance and a crucible for state/community engagement. As an interface “space” between State and those who are most likely to want to challenge State awarded mining Licences, this “space” should be expanded, developed, and maintained if a balance that supports the space for the social licence is what is required. The State must not only be involved but is likely to be the source or conduit for resources to make it a reality. Resources are required to support this new or developing “institutional” capacity to prepare for movement within the current Social Licence Settlement Model. This space should inform the creation of new legislation or reform of existing mining laws and create devices or platforms for bringing together interlocutors on environmental, economic, and social issues which will have to be resolved to maximise community benefit from mining activity.

Specifically, in Serbia, given that the State has limited resources, there is a need to find ways to support their utilisation of available, EU assets such as the IPA and EU Leader+ funds to enable this type of activity. This would be one way to, in referencing the SLSM, anchor or support the space for social licence. To ensure the space for a social licence does not get crushed, it will be important that there are coherence and coordination between regional economic and social plans and that of the mining sector and most critically, that it engages with communities’ and supports their ability to engage. There is a need to construct and organise a social architecture to enable Serbian communities to be heard before they need to shout. This is something that requires not just economic resources alone, capacity within communities and the State but it also time and knowledge transfer from across the EU. The evidence of the need for social licence development or indeed political consent from a community requiring time runs through all of the literature on social governance, ESG documentation, social licence, community development and conflict. Given that, to ensure a more positive outcome than that predicted, it requires a range of well-resourced community and state development programmes

with external support. Finding such support may well entail the State and the mining sector engaging with some unusual bedfellows as the EU mining industry appears to have little internal capacity to understand the necessary practices and processes required. MIREU was an EU funded Horizon 2020 research project aimed at building a mining network across Europe. One of its objectives, as outlined in its website (MIREU), was to; "Develop EU level Social Licence to Operate (SLO) Guidelines and an accompanying Toolkit".

A "Joint civic statement on H2020 MIREU August 24, 2020" (JCS1. 2020) prepared by more than 30 NGO bodies with an interest in mining projects from across the Iberian Peninsula, Finland, UK, Slovakia, and Bosnia, criticised the MIREU project's pejorative use of language toward those objecting to mining and described MIREU's failure to engage in any meaningful way with those who had what might be described loosely as, anti-mining, totally discredited their approach to defining social licence or developing tools to support one. They felt their concerns had been dismissed and that the intellectual framework being constructed by MIREU, to move the sector forward on conceptualising and securing a social licence, was inherently biased against local communities. In the joint civic statement, they say, "We furthermore defend the right to comprehensively informed self-determination and decision power of local communities, confronted with the implementation of mining and metallurgy projects" (Ibid:6).

This statement details how an articulate coordinated group of European INGOs, support informed local self-determination and decision making, although as of yet, no such legal "right" universally exists within the EU. The type of rights demanded could only be delivered, in Serbia or elsewhere through activities that could be characterised as fitting into the *Regional Development Plans + Related Governance* component of the SLSM.

### 10.3 Demonstrable value of the SLSM.

Modelling potential SLO failure using the SLSM demonstrates that it is the totality of relationships and that their interrelatedness that is critical to understanding the forces in operational. This non- binary relationship model is a shift from existing models of SLO which offer little in terms of the dynamic nature of social licence which focus predominantly on a binary relationship between *Mine* and *Community* or relies on normative devices such as *Trust* to explain post-event social licence collapse. The SLSM is supporting an understanding of the range of relationships needed to create forms of shared spatial and resource governance. Identifying a critical role for the *State* and offering containers for actants involved in mining to be packaged into; *Mine, Community Regional Development Plans + Related Governance*, etc, SLSM offers an alternative approach to understanding what have traditionally been labelled stakeholders. A political settlement framework for understanding a societal issue is more encompassing than a business, stakeholder-based model. Business based stakeholder models only engage with relationships when they are regulatory or carry direct economic incentives or disincentives. SLSM moves social licence beyond an economic analysis of the critical relationships needed for an SLO. The political settlement-based model explains the interrelation aspect of power within a specific situation. Power is not always financialised or commodifiable. Once relationships are explicit, they can support analysis and a lexicon can develop around them. SLSM offers a visual framework for investigating changing power relations which is likely to be accessible to those not concerned with underpinning theoretical perspectives such as Turner's Synthetic Model of Conflict Processes (2013:41) or the uses of flat and tall ontologies.

#### **10.4 A new way to conceptualise social licence.**

Research finds that most business leaders suffer for lack of a way to make sense of the data they have, not necessarily for having too little data, attested to in K. Sutcliffe and K. Weber, "The High Cost of Accuracy," *Harvard Business Review* 81 (2003:74-82). The relationships between actants in the SLSM represent a totality that demonstrates that forces push and pull in an ongoing dynamic set of relationships. SLSM offers a lens for reflecting on data which can be linked to critical relationships. This research and the SLSM model are currently being used as the theoretical underpinning of a social licence to operate index (SLOi 2020) with a Horizon 2020 project.

The index, (ibid) currently out for consultation, utilises the basis of SLSM and further work by the author and industry collaborators, to construct a series of questions concerning numerous aspects which affect a social licence. These aspects relate to livelihoods, host communities economic and social relationship to the land, governance and conflict history and others, all that is represented with the SLSM. The SLSM through defining relationships coupled with research from industry and experience from the field has enabled the SLOi to generate a metric for social licence and draws attention to aspects or factors affecting relationships which might give cause for concern. SLSM provides the opportunity to look at relationships within the totality and provides a context for data. It enables the posing of queries for example, what are the scenarios for an SLO given? For example, "the State appears not to have any strategic processes for engaging local people around our mine site?" Likewise, "our Lender is sensitive to political upheaval and the community appear unhappy- should we deal with it before they are engaged in an EU network of anti-mining NGOs?" SLSM is not a predictive tool but rather an overarching framework to view the relationships inherent in a social licence. Hence it is being used to provide the theoretical context for underpinning an

approach to adding metrics to social licence. By recognising that it is the totality of relationship in a changing temporality that is critical to keeping a social licence it focuses the industry on continually reviewing relationships and investing in mechanisms to enable relationships. This is very different to mine developers focusing on a shared value notion with communities. The mine developer should logically, if we accept this framework, commit to supporting the flow of resources to enabling State and community capacity to engage in the wider conversation about spatial development and a range of benefits co-defined. Mine developers may not themselves have the capability or capacity to develop the architecture for the development of these new institutions. Yet through understanding what these institutions might look like and their capacity to deliver a social licence for their operations, mine developers can choose to support the pulling of the lever in support of such local development with national and supranational State. If no mining access to critical resources in Europe can be brought about by mine developers alone and if the resources are truly business-critical, new approaches will arise.

The SLSM does not represent one particular business model, it is a model of the relationships that exist around a potential or actual mine site. It may be to achieve the "balancing act" that is a social licence, new resources need to be added and new business models developed for the industry. Proctor and MacCallum's (2019) Canary in a Cage paper, points to how the extraction industry should be engaging with conflict and potential conflict, enabling dissenting voices at an early stage of project development, rather than trying to quell them. Through the co-production of aspects contained in the *Development Plans + Related Governance* icon, this can be achieved. The forces exerted from the icon can support the stability of the social licence settlement. Failure to coproduce aspects of this icon with the other actants means that the opportunity for a stable settlement is likely reduced. The research



in Serbia illuminated that there already is a recognition that operating a mine successfully, given the scale of impact on local communities, requires operations to be endorsed within a wider political sphere. As the political sphere is disrupted with new actors or systems, there will be associated impacts on relationships critical to social Licences for the mining sector, as shown from the Romanian example. This disruption process may appear to involve a local community and a mine operator but there are many other relationships that will have a bearing on the precariousness or otherwise of the social Licences. Failure to acknowledge the critical role of the state or lender or international rights framework in the shaping the relationships between the community and mine effectively disables one's ability to engage with finding methods of improving or securing a social licence. The research and the SLSM model are currently being used to underpin the creation of a Social Licence to Operate index (SLOi) and included for further development in a new EU Horizon Europe research funding application. The index, currently out for consultation utilises the basis of SLSM and further work by the author and industry collaborators to construct a series of questions concerning numerous aspects which are likely, based on academic evidence and field experience, to affect the relationships in a social licence. Interrogating indicators of agency, use of space, corporate governance, legal process and compliance, the basis for conflict and a range of other factors, the SLOi uses an algorithm to generate a metric for social licence and draws attention to aspects which might give cause for concern.

## **10.5 Academic contribution.**

This thesis builds on a rapidly expanding body of work relating to real work circumstance where mining companies meet objections from communities, that effectively stop their business activities. The core of the thesis is the construction of a theoretical model which carefully builds on the academic literature of what social licence is and is not, how to achieve

it and factors that mitigate against it. The thesis undertakes to demonstrate the financial forces the drive short-termism within companies and that has driven the failed conceptualisation of social licence. It also demonstrates that changes to civil society can not only cause public attitudes towards mining to change but can cause the consent to mine to be withdrawn. Moving aspects from other models of social licence to operate identified herein, specifically, those that deal with defining relationships, into a meso level political settlement framework, builds on solid academic foundations. Packaging up components of the new SLSM model using a variety of theories, for those concerned with social licence, draws attention to the need to observe the totality of relationships and not solely that between the Community and the Mine, or in MacCallum (2017) case, the State as well. Recognising that the relationships between the community and International NGOs are potentially as important to the social licence as the relationship between the mine and the state, is new within conceptual models of social licence, similarly, acknowledging explicitly a temporal aspect to social licence in the theoretical framework may be obvious but it is new.

That the model is ambitious in trying to contain and portray all aspects of the societal relationships and business influences that underlie a social licence and its failure, cannot be disputed. That through the utilisation of a range of theoretical approaches the author has managed to construct a model that is being used to support the development of metrics around social licence and mining in Europe, is also not disputable (INFACT SLOi). The theoretical aspects of the model are by necessity eclectic as they deal with a range of aspects critical to understanding what causes or ends a social licence for a mining company. Agency, space, corporate governance, legal process and compliance, conflict and a range of other factors have been considered. Understanding that any model for SLO that does not give provision for a range of relationships which are not solely spatially adjacent to the mine site, is likely to offer

very little in terms of support for the practitioner. This thesis defines a framework for the construction of a theoretical model for social licence to operate within the mining industry. The SLSM is predicated on political settlement theory and that social licence is always a settlement or temporary arrangement which balances the interests and power mediated through relationships. SLSM is underpinned by Turner's conflict theory and a range of other theories around the construction of knowledge, concepts of time and space. The model also reflects extensive field experience with both communities in conflict and the mining sector. The research undertaken in South-Eastern Europe demonstrates that changes to environmental governance can affect civil society which in turn can impact significantly on the processes needed to secure a social licence. Moving beyond existing models of social licence, recognising the term has become largely debated and used as a virtue-signalling device by industry, the new model recognises that the problems persist for the industry. The SLSM draws attention to the totality of relationships and offers a framework to support the interpretation of where stressors are likely to develop and what areas are needed to be investigated to anticipate problems.

The thesis argues that the construction of knowledge necessary to interpret the warning signs of a failing social licence at a mine and design successful mitigation approaches is unlikely to be resolved. This is due to structural factors within the industry which have largely developed social management strategies constrained by short term financial accountability and failing to recognise the legitimacy of local challenges until it is too late. As such the SLSM is being used to frame a range of metrics which can be applied to social licence to operate, which can support the reduction of conflict within the mining sector. Building a place for theoretical social science within the mining sector has not been without its challenges and SLSM has been

designed as a device for enabling those not conversant with social science, to conceptualise the manifold relationships at play.

## **10.6 Next Steps.**

The nature of agency, space, corporate governance, communities, mining legal processes and compliance, conflict and a range of other factors utilised herein, will continue to attract the attention of academics as rich and complex fields in their own right. Similarly, the use of a range of combined social science methodology to investigate industrial failure is a path that has attracted a range of interests, notably in this research proponent of Actor-Network Theory. Specifically, with regards to social licence and the SLSM, there are avenues to investigate the relative importance of that which happens within the container labelled *Development Plans + Related Governance*, to other relationships. The changing nature of the business model for mining companies operating or wanting to operate in the EU and how that will be driven by transnational environmental governance processes is an area which is likely to attract considerable academic attention, as the EU grapples with how to secure conflict-free essential minerals to support decarbonisation of its economy. The failure of the EU to design a taxonomy or framework to enshrine or monetarise social licence processes is hopefully a temporary one. I intend to continue my discussions within the industry and lobby the EC directly and indirectly to support them in understanding that a social licence is a political settlement and they have a major role to play within Europe in changing the mining business model to enable both mining and the communities right to say no to mining.

My involvement with the EU and those who seek to understand the challenges of accessing those Critical Raw Materials, has led to my inclusion in a number of fora, the latest being the European Forum for Earth Observation. A social licence model underpinning an

inclusive approach to solving the problem of social licence as a societal issue rather than a narrow business issue, open the door for numerous sectors to bring their expertise to the table. It raises the challenges of having to create metrics on social aspects related to, in this case various visual representation of the earth from data that has utilised a variety of visible and non-visible spectra. The very clever drawing representing the discussions at this conference over the two days, defines social licence and the problems around it, within the context of remote sensing deployed by geologist.



Figure 10-1 EFEA Conference reporting

## Appendix 1.



### *Research Participant Consent Form*

Title of Research Project: Exploring Social Risk in the Extraction Sector

Name of Researcher: Mark Proctor

**Participant Identification Number for this project:**

1. I confirm that I have read and understand the information sheet dated *[insert date]*

explaining the above research project and I have had the opportunity to ask questions

about the project and have had these answered satisfactorily.

2.I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason and without there being any negative consequences. In addition, should I not wish to answer any particular question or questions, I am free to decline.

☐

3.I understand that my responses will be kept anonymous but there may be a risk of being identified through my role. I give permission for members of the research team to have access to my anonymised responses. I understand that my name will not be linked with the research materials, and I will not, as far as possible, be identified or identifiable in the report or reports that result from the research.

☐

4. I agree for the data collected from me to be used in future research

☐

5.I agree to take part in the above research project.

☐

\_\_\_\_\_

Name of Participant      Date      Signature

(or legal representative)

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Lead Researcher      Date      Signature

To be signed and dated in presence of the participant

Copies: Once this has been signed by all parties the participant should receive a copy of the signed and dated participant consent form, the letter/pre-written script/information sheet and any other written information provided to the participants. A copy of the signed and dated consent form will be placed in the project's main record (e. g. a site file), which must be kept in a secure location.



Istraživanje socijalnog rizika u sektoru ekstrakcije

Deo jedan istraživačkog učesnika



Zdravo, moje ime je Mark Proctor i ja sam socijalni naučnik koji radi u Britaniji. Hvala vam što ste pristali da učestvujete u mom istraživanju.

Ono što ću vas pitati je istraživanje za doktorsku disertaciju. Pripremam se za doktorat. Istraživanja istražuju ono što ja zovem "socijalni rizik" oko projekata iskopavanja energije. Široko gledano, ispitujem rizik izazvane lokalnim ljudima koji su blizu projekata energetskog rudnika energije. Rudarski sektor ima standardni pogled na rizik i to ne funkcioniše baš najbolje i pokušavam da utvrdim koji drugi faktori uključuju ljude.

Pitanja koja ću vam postaviti će se sastojati od dva dela: prvi deo će zahtevati da odaberete odgovor sa liste opcija ili da oceniš odgovore sa skale od 0 -10 (gde je 0 najniža ocena i 10 je najviša). Drugi deo pitanja zahteva da objasnite svoje odgovore na prvi deo pitanja i ja ću snimiti vaš odgovor.

Zamoljuju vas da potpišete pristanak pre nego što počinemo-moram ovo da uradim da bih imao dosije da vas nisam prevario da priimate sa mnom. Daju ti kopiju ovoga da ti uzmem. Na pola intervjua ću vas ponovo upitati da li želite da nastavite i ako postoji nešto što želite da napravim anonimno ili da ih izvučem. Na kraju intervjua ponovo ću vas zamoliti da potpišete da ste zadovoljni odgovorima koje ste dali i možete ponovo detaljno da pogledate ono što ne želite da vam se pripisuje.

--

Naziv istraživačkog projekta: istraživanje društvenog rizika u sektoru ekstrakcije

Ime istraživača: Mark Proctor

**Identifikacioni broj učesnika za ovaj projekat:**

1. Potvrpujem da sam pročitao i razumeo informacioni list koji objašnjava gore navedeni istraživački projekat i imao sam priliku da postavljam pitanja ☐ i projekta i da li su ovi odgovori zadovoljavajući.

2. Razumem da je moje učešće dobrovoljno i da sam slobodan da se povučem

u bilo kom trenutku bez ikakvog razloga i bez ikakvog negativnog ☐

Posledice. Osim toga, ne želim da odgovorim ni na koju određenu

pitanje ili pitanje, slobodan sam da odbijem.

3. Razumem da će moji odgovori biti anonimni, ali možda postoji rizik da ☐

da me identifikuju kroz moju ulogu. Dajem dozvolu za članove istraživačkog tima

da imam pristup mojim anonimno odgovorima. Razumem da moje ime neće

biti povezana sa istraživačkim materijalom, a ja neću, što je dalje moguće, identifikovati

ili identifikovanjima u izveštaju ili izveštajima koji su rezultat istraživanja.

4. Razumem da će podaci prikupljeni od mene biti korišćeni u budućim istraživanjima.

Pročitao sam i razumeo uslove istraživanja i složio se sa intervjuima.

☐

5. Pročitao sam i razumeo uslove istraživanja i složio se sa intervjuima. Uz to, pristajem

na informacije koje sam dao da se koriste u ovom istraživanju.

☐

\_\_\_\_\_  
Ime učesnika (ili pravnog predstavnika) Datum Potpis  
učesnika

\_\_\_\_\_  
Vodječi istraživanja Datum  
Potpis učesnika

Biti potpisan i datiran u prisustvu učesnika

Kopira: Kada su ovo potpisale sve stranke učesnik bi trebalo da primi kopiju potpisanog i datirane saglasnosti učesnika, pismo/unapred pisane skripte/informacione listove i sve druge pisane informacije koje su ponuđene učesnicima. Kopija obrasca "potpisan i datiran pristanak" treba da bude postavljena u glavni zapis projekta (na primer, datoteka lokacije), koja mora da se čuva na sigurnoj lokaciji.

Istraživački formular za saglasnost učesnika

Naziv istraživačkog projekta: Istraživanje socijalnog rizika u sektoru ekstrakcije

Ime istraživača: Mark Proctor

Identifikacioni broj učesnika za ovaj projekat:

- Rado ću nastaviti sa istraživanjem, ali hoću da moj odgovor bude u pitanju x  
Uklonjena. ☐
- Potvrđujem da sam uz intervju srežan da dozvolim sve odgovore.

i izjava koja će biti korišćena za istraživanje



\_\_\_\_\_

Ime učesnika      Datum Potpis

(ili pravnog predstavnika)

\_\_\_\_\_

Vodeći istraživač      Datum Potpis

Biti potpisan i datiran u prisustvu učesnika

Formular za pristanak učesnika za ispitivanje

Naziv istraživačkog projekta: Istraživanje socijalnog rizika u sektoru ekstrakcije

Ime istraživača: Mark Proctor

Identifikacioni broj učesnika za ovaj projekat:

- Potvrpujem da sam na kraju intervjua srežan da dozvolim sve moje odgovore ☐  
i izjava koja će biti korišćena za istraživanje.

- Rado žu nastaviti sa istraživanjem, ali ћelim da moj odgovor bude u pitanju ☐

x Uklonjena.

\_\_\_\_\_

Ime učesnika      Datum Potpis

(or legal representative)

\_\_\_\_\_

Vodexi istraživani      Datum Potpis

Biti potpisan i datiran u prisustvu učesnika

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