From ultimate rent seeker to positive-sum stakeholder? The ethical evolution of the modern diamond industry

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From Ultimate Rent Seeker to Positive-Sum Stakeholder? The Ethical Evolution of the Modern Diamond Industry

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Abstract

This thesis considers the moral development of the modern diamond industry from its birth in the final third of the nineteenth century up to the present day. The discussion is framed within a tripartite theoretical grid, with each of the theory's three elements styled as an 'arrow'. The first and second arrows are the theories of rent seeking and collective action, respectively, which finely explicate the logic of the specific behaviours and strategies adopted by the diamond industry's leadership through time. The third arrow is the moral systems theory, which allows for an impartial moral assessment of key industry practices at each phase in its evolution.

The study illustrates that the ultimate goal of the industry's most prominent leaders was to extract optimised rents through the creation and maintenance of comprehensive market distortions. These goals, and the behaviours associated with them, were in practical terms perpetual, being passed down from one generation of industry leadership—embodied in the Chairmanship of the industry's dominant firm, De Beers—to the next. These actions inflicted aggregate harm on society. The business strategies of De Beers' leadership consistently breached moral rules—violations that are classifiable as unjustified, and thus immoral. Assessing the moral rule violations witnessed during the respective tenures of De Beers' most prominent leaders forms the basis of the analysis of the industry's moral development through time.

The conclusion is that the diamond industry's moral status deteriorated in the transition from Cecil Rhodes' leadership to that of Ernest Oppenheimer; and again in the leadership transition from Ernest Oppenheimer to his son Harry. Only in the Julian Ogilvy-Thompson and Nicky Oppenheimer era, and against the efforts of these men who remained intent on realising the ultimate goal of their predecessors, was the century-long trend towards industry-wide moral deterioration stemmed. From the late 1990s forward, a number of factors endogenous and exogenous to the industry worked directly and indirectly to improve its moral standing. However, this is a relative judgement, not an absolute one. More needs to be done if the diamond industry is to continue on its promising recent path towards a positive moral status.

Declaration of Originality

I hereby declare that this submission is my own work and to the best of my knowledge it contains no materials previously published or written by another person, or substantial proportions of material which have been accepted for the award of any other degree or diploma at UNSW or any other educational institution, except where due acknowledgement is made in the thesis. Any contribution made to the research by others, with whom I have worked at UNSW or elsewhere, is explicitly acknowledged in the thesis. I also declare that the intellectual content of this thesis is the product of my own work, except to the extent that assistance from others in the project's design and conception or in style, presentation and linguistic expression is acknowledged.

Signed.......................................

Date..

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I would like to sincerely thank the librarians at the Bodleian Library of Commonwealth and African Studies at Rhodes House for the excellent assistance they provided me in finding (and sometimes deciphering) the relevant contents of the Rhodes archives, particularly Cecil Rhodes' personal letters. It was a phenomenal experience to sit in Rhodes House and read the business correspondence of a man who held such incredible power in the diamond industry. My time at Rhodes House was more productive and enjoyable because of the work of its patient and knowledgeable librarians.

Sincere thanks also go to the countless men and women in the diamond industry who took the time to answer the questions and clarifications I sought about the fascinating world in which they operate. I learned something new with each discussion, whether over the phone, via email, or in person, and I hope that this thesis will also serve to expand their knowledge of the diamond industry and the people and events that have informed its development.

I would like to extend extra special thanks to my wonderful husband, Huw McKay, for his incredible support throughout the entire PhD process. Whether listening, at all hours, to my fleshing-out of a new idea, advising on the best economics books to read, or editing drafts, Huw was eternally patient and genuinely interested in my research, which made the process that much more gratifying. And finally, special thanks to one of the most talented women I know, Alison O'Connor, for taking the time to read the final draft and provide insightful feedback.

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List of Abbreviations

ARS	Almazy Rossii-Sakha
BDP	Botswana Democratic Party
CAST	Consolidated African Selection Trust
CDM	Consolidated Diamond Mines
CSO	Central Selling Organisation
DiPA	Diamond Producers’ Association
DPA	Diggers Protection Association
DPC	Diamond Pool Committee
DTC	Diamond Trading Company
EC	European Commission
GDO	Government Diamond Office
GE	General Electric
GIA	Gemological Institute of America
GSWA	German South West Africa
HDC	Hindustan Diamond Company
IADC	Indo-Argyle Diamond Council
IDB	Illegal diamond buying
IDM	Illicit diamond mining
IDS	Illegal diamond smuggling
IDSO	International Diamond Security Organisation
KPCS	Kimberley Process Certification Scheme
LDI	Lens Diamond Industries
MOM	Marketplace of Morality
NBER	National Bureau of Economic Research
RJC	Responsible Jewellers Council
RUF	Revolutionary United Front
SLST	Sierra Leone Selection Trust
SoC	Supplier of Choice
SWA	South West Africa
UHPUL	Ultra High Pressure Units Limited

Chapter 1: Introduction

Background and Context to this Study

The partiality exhibited by some members of the modern diamond industry towards engagement in controversial and unscrupulous conduct has been well documented (Global Witness 1998, Saunders 2000, Global Witness 2006, Donohoe 2008, Smillie 2010, de Morais 2012). The mystery that has historically surrounded the industry has fuelled intense interest in its internal machinations (Hahn 1956, Fleming 1960, Green 1981, Koskoff 1981, Schumach 1981, Epstein 1982, Bernstein 1992, Kanfer 1993, Hart 2002, Shield 2002, Campbell 2004, Farah 2004, Zoellner 2006, Roberts 2007, van Dijck 2008 , Siegel 2009) and inspired popular culture representations of its shady operators, unique customs and murky supply chains (Fleming 1956, Fleming 1959, Hamilton 1964, Hamilton 1971, Lumet 1992, Tamahori 2002, Zwick 2006, Radford 2007, Donaldson 2008, Dobbyn 2013). Despite the abundance of negative attention the diamond industry has received, a dearth of research remains into how and why it came to possess the poor moral status that sees it so regularly targeted, easily criticised and effectively caricatured. It would appear, *prima facie*, that the diamond industry was iniquitously conceived as already in possession of a corrupt moral nature, when that is not the case. Although researchers have examined the recent developments in the diamond industry that have partially amended its poor image (Bergenstock 2004, Bieri 2010), how this progress was possible in an industry that has historically been as inscrutable and circuitous as it is maligned has seldom been considered.

This thesis will address these gaps in the literature by determining both the genesis of the modern diamond industry’s moral status, and how and why that status changed throughout the history of the industry. It is often argued that the moral ‘tone at the top’ set by the management of organisations plays an influential role in shaping the culture and reputation thereof (Weaver et al. 1999, Treviño et al. 2000, Sims and Brinkmann 2003, Schwartz et al. 2005, Treviño et al. 2008). As Laczniak (1983:26) eloquently declared, the moral tone of organisations is ‘but a lengthened shadow of the morality of persons in charge’. In the case of the modern diamond industry, those ‘in charge’ have historically been the Chairmen of the industry’s dominant firm: the diamond mining, marketing and exploration company, De Beers (van Saldern 1992).

Throughout the history of the modern diamond industry, key Chairmen of De Beers have engaged in anticompetitive practices that afforded them near-absolute control over the world’s diamond supplies. The De Beers Consolidated Mining Company (hereafter De Beers) was established by Cecil Rhodes in the diamond fields of the Cape Colony in 1888. Rhodes steadily monopolised diamond producers within Kimberley and the Orange Free State until, by the mid-1890s, the De Beers monopoly controlled over 90 per cent of the world’s diamond production (Lenzen 1970:158). Rhodes’ most powerful successor, Ernest Oppenheimer, was Chairman of De Beers from 1929 to 1957. Unable to emulate Rhodes’ monopoly industry structure, Ernest Oppenheimer created the De Beers cartel by cultivating cooperation among the majority of the world’s diamond producers. He also vertically integrated the diamond industry so De Beers controlled not only diamond production, but also marketing. Ernest Oppenheimer’s successors at the helm of De Beers were Harry Oppenheimer (1957–1984), Julian Ogilvie-Thompson (1985–1997) and Nicky Oppenheimer (1997–2012). From the mid-1930s to the last decade of the twentieth century, De Beers controlled, in an almost unbroken stretch, in excess of 85 per cent of the world’s diamond supplies, making it one of the most successful cartels in history (Bergenstock 2004:15).

Scope, Methodology, and Definitions

This study examines how Cecil Rhodes and his key successors at De Beers constructed their control of the diamond industry, the unethical means by which they achieved their goals and what that meant for the ethical status and evolution of the modern diamond industry, defined as the period from 1869 to the time of writing. Diamonds have been known to man for millennia (see Lenzen 1970:Chapters IV,V and VI, Erlich and Hausel 2002). However, it was not until 1869 that the development of the modern diamond industry was initiated with the discovery of large-scale diamond deposits in the Cape Colony, which is now part of contemporary South Africa. This 144-year period of analysis is extensive. However, to fulfil the goals of this thesis the full period from 1869 must be considered.

The pervasive market control enjoyed by De Beers meant that for long periods of time it effectively *was* the diamond industry (Voss 1998:36). This control rendered Cecil Rhodes, Ernest Oppenheimer, Harry Oppenheimer, Julian Ogilvie-Thompson and Nicky Oppenheimer not only *de jure* leaders of the diamond industry's dominant firm, but also *de facto* leaders of the industry in general. De Beers' leaders' attainment and subsequent maintenance of this pervasive market control was a considerable feat. The creation of a monopolised industry and the successful realisation and maintenance of a cartel of De Beers' magnitude are only achievable if significant hurdles are overcome (Pindyck and Rubinfeld 1992:456, Spar 1994:41, Kempton and Levine 1995:84, Marshall and Marx 2012, Olson 1971). The financial success of prominent collectivised industry groups may compel some economists to predict the direct concentration of all other industries as firms attempt to emulate those inflated profits (Kindleberger and Aliber 2005:45), but this outcome is far from guaranteed.

The combined success and ubiquity of the Chairmen of De Beers in their leadership of both the firm and the greater industry means that, in these men, lays both the origins of the industry's moral status, and the means through which it was sustained and developed. In other words, understanding how and why De Beers' Chairmen sought, achieved and maintained their extensive market control, against the odds, is central to determining the genesis of the modern diamond industry's iniquity, and the moral evolution of the industry throughout its history. Tracking, comprehending and interpreting this process is a crucial goal of this study because it will clarify the characteristics of the diamond industry today, and inform which reforms need to take place into the future. This study will focus on two key features of De Beers' operational mandate: the 'ultimate goal' sought by De Beers' Chairmen; and the industry structures that were required to realise that goal, that is, the Chairmen's 'intermediate goals'. Fundamentally, the ultimate goal pursued by the leaders of a firm or an industry is the key determinant of the intermediate goals they will seek.

Previous leading research into the development of the modern diamond industry has typically focused on a narrow component thereof, such as key members of the cartel (Spar 1994, Kempton 1995, Kempton and du Preez 1997, Alfaro et al. 2005); the leadership of a particular Chairman (Gregory 1962, Hocking 1973, Rotberg 1988); or the growth or characteristics of a certain sphere of the industry, such as production, manufacturing or trading (Lenzen 1970, Yogev 1978, Worger 1982, Turrell 1987, Westwood 2000 , Siegel 2009, Small et al. 2013). Other research has employed an imperialist or colonialist approach to examining the motives and actions of De Beers' leaders in South and South West Africa (Lockhart and Woodhouse

1963, Galybin 1966, Tamarqîn 1996). While many works on the diamond industry provide a brief summary of the industry's modern history, research has predominately focused on established structures and business practices, rather than on the origins of the industry's form and function (Bernstein 1992, Hart 2002, Bergenstock 2004, Siegel 2009, Smillie 2010).

While such research is extremely valuable to informing our knowledge of De Beers and the greater diamond industry, it does not enable, either singularly or collectively, a holistic comprehension of the genesis and evolution of the industry's moral status. In contrast, the present study does not confine its inquiry to sole leaders or spheres of the diamond industry. Although this study will predominately focus on the production sphere of the diamond industry, all aspects of the supply chain must enter the discussion. Further, this study's approach tackles causes, not symptoms. It clarifies overriding motivations and subsequent actions. In doing so, this study will show that the common intermediate and ultimate goals perpetually pursued by De Beers' successive Chairmen, and the firm's long-term dominance over the greater diamond industry were enormously significant to determining the moral status of the diamond industry, and the trajectory of its moral evolution.

This applied analysis of the modern diamond industry employs a 'three arrows' framework. The three arrows principle is inspired by the Japanese fable of the samurai warrior Mori Motonari, a father who wanted his three sons to cooperate for the benefit of their family. To demonstrate the power of collaboration, Mori gave each of his sons a single arrow and asked them to snap it, which they all did with ease. Mori then gave, to each of his sons, three arrows and asked them to snap the arrows simultaneously. His sons were unable to snap all three arrows at once, which taught them that while one arrow can be fragile three together are indestructible. Similarly, in this study of the ethical evolution of the modern diamond industry, no single theory, or 'arrow', would adequately fulfil the goals of this thesis; rather, a tri-tiered theoretical framework is required.

One theoretical arrow must be employed to examine the ultimate goal that motivated De Beers' Chairmen in their governance of the firm, while a second theoretical arrow must be used to explore the intermediate goals they consequently instituted and maintained within the diamond industry. A third theoretical arrow is then required to determine the moral dimensions of the goals De Beers' successive Chairmen pursued and achieved, and the methods they employed in the process. This approach not only informs the ultimate moral status of each of De Beers' successive leaders' time in power, but also enables the effective calibration of the ethical evolution of the modern diamond industry throughout its history. The first and second arrows in this study's tripartite framework are Gordon Tullock's theory of rent seeking (1967) and Mancur Olson's logic of collective action (1971), which will be examined in Chapter Two. The third arrow is Bernard Gert's moral systems theory (2005), which will be examined in Chapter Three. Together, the three arrows framework is a bespoke construct that lays bare the motivations and challenge-response mechanisms of the diamond industry through time, and gauges its moral status and concurrent evolution.

This study will demonstrate that Rhodes, Ernest Oppenheimer, Harry Oppenheimer, Ogilvie-Thompson and Nicky Oppenheimer, in their respective leaderships of De Beers, all pursued a common ultimate goal: the extraction of 'perpetual rents'. The theory of rent seeking, as pioneered by Tullock (1967), is fundamental to understanding this ultimate goal, and what motivated De Beers' leaders' pursuit thereof. In economic terms, 'rents' are excessive, 'unearned' returns upon investment; in other words, inflated profits that are disproportionate to the opportunity costs borne by the producer (Tullock 1967:229). Rent seeking is an appealing undertaking because it can acquire for the protagonist valuable advantages. Rent seekers will thus dedicate significant resources to securing these returns (Tullock 1967:232), until their marginal costs are equal to their marginal gains (Tullock 1993:9). This study defines 'perpetual rents' as *optimised* inflated profits that are sought for the *long term*. The ability to optimise rents is hampered by the presence of competition in an industry (Olson 1971:28), and the capacity to secure rents for the long term requires constant 'rent protection' (Tullock 1993:70). Thus, if one's ultimate goal within a competitive market is to extract maximum rents in perpetuity, the intermediate goal must be the establishment, and maintenance, of an industry structure that eliminates competition.

Cecil Rhodes acquired near-absolute monopoly control over the world's diamond production as Chairman of De Beers. His successors established and maintained the De Beers cartel, which emulated the degree of market control enjoyed by the firm's founder. Cartelisation is the collusive action of multiple firms, designed to manipulate prices and/or production levels for a particular good or service (Pindyck and Rubinfeld 1992:454). Cartelisation either eliminates or minimises competition to maximise profits via the pricing of goods above competitive levels, thus transferring surpluses (rents) from buyer to seller (Pindyck and

Rubinfeld 1992:457). Monopolisation is not a form of collective action; it is the dominance over an industry of an individual firm (Lee et al. 1968:2), whose goals (typically) coincide with those of a cartel: they both serve to eliminate competition (Olson 1982:45), except in certain cases.[1] Thus, the creation of monopoly and cartel industry structures is the necessary intermediate goal of actors pursuing the ultimate goal of extracting perpetual rents. However, the possible degree of rent extraction and the manner in which rent seeking can be performed are dictated by the environment in which the rent seeker operates (Tollison and Congleton 1995:xii). Thus, the fundamental characteristics of the rent seeker's industry structure, and his or her capacity to influence its configuration, are vital to comprehending his or her actions and the eventual outcomes.

The logic of collective action, as pioneered by Olson (1971), explains which characteristics of groups foster cooperative individual behaviours therein, and which do not. The logic of collective action also illustrates the incentives that can be wielded by powerful parties with a clear strategic understanding of what must be done to further group interests, and the 'personal' gains that will come with success. Olson's (1971:51) theory identifies the characteristics and incentives (positive and negative, economic and social) that enable collective action to thrive or remain latent in groups. The application of Olson's theory to the achievement of monopolies and cartels in markets is very powerful. The theory shows that the active pursuit, full realisation and ongoing maintenance of these anticompetitive distortions are by no means assured solely because they are desired by some portion of a group's membership. Just as rent seeking is constrained by the characteristics of the environment in which the rent seeker operates, the nature of an industry determines the manner in which intermediate goals are sought and how they can be successfully established and maintained. Thus, the rational framework of the logic of collective action is a vital tool of analysis in the attempt to illuminate the characteristics of the diamond industry that aided or hindered De Beers' leaders' successful collectivisation of the production and marketing spheres. It also reveals the lengths to which those leaders were prepared to go in encouraging and compelling pro-group behaviours among industry players, particularly in relation to the application of negative incentives.

[1] These cases include innovation, which creates a short-term monopoly for the innovator if restrictions (such as patents) are not present. The goal is not the elimination of competition, as it does not exist in the newly formed industry.

To reiterate, the ultimate goal pursued within an industry is the key determinant of the intermediate goals to be accomplished on the road to 'success'. The characteristics of the industry determine the manner in which those intermediate goals can be established and maintained successfully; that is, the lengths that must be gone to for those goals to be achieved.

To conduct an ethical analysis of the diamond industry, the moral dimensions of the intermediate and ultimate goals pursued (and achieved) within the industry must be examined. Further, the techniques used to pursue and achieve those goals must have their moral dimensions investigated. The means and the ends both matter, morally speaking. The final element of the tri-tiered framework is thus an explicit, positivist model of the morality that governs society: Bernard Gert's moral systems theory (2005), or 'common morality' (2004). The pragmatism of Gert's moral system has been demonstrated by its successful employment in multiple ethical analyses of tangible moral concerns (Hennessey and Gert 1985, Elliott 1991, Elliott and Culver 1992, Gert et al. 1996, Gert et al. 1997, Gert 1999), including within the disparate fields of business, journalism, medicine and computing, making it a proven instrument for the moral assessment of real-world issues.

The moral system will be used in this study to perform two functions: firstly, to ascertain the moral dimensions of De Beers' leaders' pursuit and attainment of their intermediate and ultimate goals; and secondly, to assess each leader's associated moral status. Any action performed by a moral agent, whom Gert (2005:22) defines as any rational person who can comprehend what morality is and what it expects of them, has the capacity to violate a moral rule. Whether the violation would be classified as 'justified' by rational, impartial moral agents determines the action's moral status. Using the moral system, this study will show that in the pursuit, realisation and maintenance of their intermediate and ultimate goals, De Beers' leaders, from the fourth quarter of the nineteenth century to the early twenty-first century, systematically violated moral rules in ways that rational, impartial moral agents would classify as unjustified. Thus, the associated actions can be classified as immoral. However, reaching this 'immoral' categorisation alone is not enough to fulfil the goals of this thesis.

This study will further demonstrate that the virtual uniformity of the intermediate and ultimate goals pursued by successive leaders of De Beers (and the common methods via which they were sought) ensured the institutionalisation of immoral business practices within the diamond industry. While perpetual rents were being pursued, the protection of De Beers' near-absolute market control was imperative. The time horizon is critical. The **perpetuity** of the ultimate goal being pursued by De Beers' leaders demanded **perpetual** market distortions, and **perpetual** adoption of the supplementary methods that the ultimate goal demanded. This, therefore, required **perpetual** violations of moral rules (Kyngdon-McKay in press); violations that it will be argued are classifiable as 'unjustified'.

As mentioned above, De Beers' leaders' intermediate and ultimate goals, and the methods they employed to realise them, are the key foci of this study. The respective Chairmanships of De Beers will be considered through the lens of personal liability; that is, as the undisputed leaders of the firm, De Beers' Chairmen, as individuals, will be deemed ultimately responsible for the moral rule violations carried out in the name of De Beers, the corporation. To justify this burden of responsibility, this study will prove that each man was a key driver behind De Beers' operational mandate during his time in power, and was thus firmly committed to the structural and moral path taken by both De Beers and the industry it bestrode.

This Study's Key Contributions

This study illuminates the moral status of the goals and business practices of De Beers' successive Chairmen. Doing so is valuable for several reasons. First, it has the capacity to influence how actors within the diamond industry perceive the morality of these business practices. This external moral prompting is required; successive Chairmen of De Beers have denied the motivations behind and the harm caused by their market distortions and associated business practices (see Gregory 1962:229, De Beers 1988:19), and have openly boasted about De Beers' anticompetitive behaviours and the company's deliberate violations of competition laws (Oppenheimer 1999). As previously argued, for several decades, De Beers effectively *was* the diamond industry, and thus the influence of its leaders' 'moral tone' extended far beyond the company's proverbial four walls.

The lack of acknowledgement of wrongdoing, or even contrition, among De Beers' leaders has helped to foster an attitude of moral indifference, not only within the firm, but also within much of the diamond industry, towards the way in which business has been historically conducted therein. The promotion of these permissive attitudes towards immoral, harmful market conduct is irresponsible, and indisputably influential. In the twenty-first century diamond industry, there are solemn calls by some leading participants for a return to the anticompetitive days of the cartel era (Russia Today 2012, Morsel 2011). Top industry figures have considered it acceptable to crudely mock the reality that diamond consumers have been consistently overcharged (Even-Zohar 2007:748) on account of De Beers' leaders' ability to sustain structures that enabled the extraction of rents. Similarly, heads of major diamond producers have shamelessly spoken of their ongoing promotion of artificially high diamond prices, and thus their continuing extraction of rents from overpaying diamond consumers (see The New York Times 2009). Other key players have called for a retrograde rejection of the newly embraced competitive, transparent diamond sales (Ganz 2011) that now systematically take place in today's slowly reforming industry (see Cramton et al. 2013).

While some within the industry lament the obstinate immoral nostalgia of their peers and criticise the intense hostility to external demands for further improvements in the trade,[2] these critics acknowledge that they are outliers in desiring transparency and reform (Bates 2013, Wyndham 2011). It is this study's contention that the failure of members of the diamond industry to recognise and unreservedly condemn immoral business practices, which have become 'normalised', is underpinned by a failure, both within the industry and without, to adequately recognise and advertise the immoral nature of the industry's historical business practices.

This situation has been compounded by the inability of legislative bodies to recognise and publically communicate the immorality of certain market conduct. By handing down paltry financial punishments, not only is the threshold for rational deterrence not met (see Winter 2008:8), these punishments do not compel De Beers' leaders to openly acknowledge what will be shown in this study to be the wrongness of their historical market conduct.

This study's belief in the moral failure of legal and regulatory agencies is not unique; scholars have long advocated for an increased emphasis on the moral aspects of white collar crimes and regulatory violations as an additional tool of deterrence (Braithwaite 1989, Paternoster and Simpson 1996, Skeel 2001). None, however, has demonstrated a reliable, proven moral mechanism via which the failings in the system can be addressed. As this study will show, the

[2] This includes the need to address the issue of conflict and blood diamonds (diamonds that have funded civil conflict and/or oppressive regimes), improve supply chain transparency and governance and submit to further regulation.

value of Gert's moral system lies in its *proven* ability to isolate violations in human behaviours effectively, and assess and classify the ultimate morality thereof (Hennessey and Gert 1985, Elliott and Culver 1992, Gert et al. 1996, Gert et al. 1997, Gert 1999, Triplett 2002). The common *mala prohibita* classification of crimes and regulatory violations, which contends that such acts are wrong only because they are explicitly prohibited, has enabled the routinely accepted claim that such transgressions are not immoral, they are merely illegal (Castle and Writer 2002:10–11).[3] It is this study's contention that jettisoning the immorality of illegal conduct or regulatory violations is only legitimate when the act in question does not possess a moral dimension; in other words, it does not violate a moral rule.[4] The moral system is thus eminently suitable for analysing and classifying the morality of white-collar offences, even those that the law, either rightly or wrongly, has deemed 'amoral'.

The value of this study does not lie solely in demonstrating the efficacy of the moral system in explicating the moral dimensions of white-collar criminal and regulatory transgressions. This study's framework also demonstrates how such knowledge can be used to incentivise moral conduct, not only within the future diamond industry, but also within the broader business sphere. Olson (1971:60–1) contends that social incentives can be used as powerful motivators of pro-group behaviours. If efforts are taken to highlight explicitly the immoral nature of an action, the social incentives important to promoting pro-group behaviours are effectively isolated. At a societal level, if there is a clear *illustration* and *communication* of the moral dimensions of white-collar offences, business leaders may more readily eschew violations thereof for fear of being negatively judged or shunned by people within their community. These are powerful social incentives to do the right thing. Taken together, the promotion of the moral dimensions of white-collar crimes and regulatory violations may lead to fewer people unjustifiably extracting rents via these means, and encourage them instead to contribute to the growth of society's wealth, rather than its inequitable distribution. This would reduce the associated welfare costs of deterring and prosecuting such acts (see Tullock 1967:230–1)—a net gain for society, and a boost to the overall moral tone of the business sphere.

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[3] The emphasis on what practices are legally acceptable in business has also not resolved debates about those which are morally acceptable (see Schneyer 1984, Fieser 1996, Posner 2002).

[4] This is excluding the moral rule 'Obey the law' within Gert's moral system, as the argument is concerned with the morality of the law specifically.

Chapter Overview

Chapters Two and Three contain an examination of the three-arrow theoretical framework used in this study. Chapter Two assesses the first and second theoretical arrows, Tullock's theory of rent seeking and Olson's logic of collective action. It commences with an analysis of the traditional rent-seeking literature, before examining Tullock's pioneering contribution to the field with his contention that the practice is not zero-sum but is in fact negative sum. An examination of Olson's logic of collective action follows, commencing with an overview of the pre-Olsonian classical political economy hypothesis that individuals will mobilise to further the interests of their group. Olson's ground-breaking insight, that collective action is often irrational for individuals due to the public goods nature of the common interest that defines groups, is then detailed. Chapter Three examines the third arrow of this study's tripartite framework, Bernard Gert's moral systems theory. This chapter begins with an examination of the moral system's location in the field of moral philosophy and its classification as 'qualified universalism', before the components of the moral system, and the accompanying theory, are explicated.

From Chapters Four to Seven, the three-arrow framework is employed to analyse the development and ethical evolution of the modern diamond industry. Chapters Four, Five and Six each examine the diamond industry during the reign of a single Chairman of De Beers, while Chapter Seven examines the successive Chairmanships of Ogilvie-Thompson and Nicky Oppenheimer. Each chapter initially employs the first two theoretical arrows, the theory of rent seeking and the logic of collective action, to examine the structural development of the diamond industry during the specific period analysed. This is then followed by an application of the third arrow, the moral system, to the goals and business practices of the Chairman in question during his leadership of the firm.

Chapter Four explores the emergence of the modern diamond industry from 1869 up to the death of the founder of De Beers, Cecil Rhodes, in 1902. This chapter performs three actions: firstly, it characterises the fledgling diamond industry that informed Rhodes' determination of the intermediate and ultimate goals he wanted to pursue therein; that is, monopoly, cartel and perpetual rents. Secondly, it illustrates the tactics he employed to achieve those goals. Thirdly, it illuminates the moral template that Rhodes established in the industry, which would come to inform its moral trajectory for over a century. The content of the moral template emerges by analysing the moral dimensions of Rhodes' goals, the methods he used to achieve them and the ultimate justifiability of his associated moral rule violations. For the first time, it is established that the rent-extracting industry structures pursued by De Beers in pursuit of the ultimate goal of rents broke moral rules in a way that would be declared unjustified by rational, impartial moral agents, signifying that they were immoral.

Chapter Five examines the development of the diamond industry from the death of Rhodes in 1902 to the death of his most powerful successor at De Beers, Ernest Oppenheimer, in 1957. This chapter will demonstrate how Oppenheimer resented the re-emergence of competition in the diamond industry in the post-Rhodes era, which was a result of Rhodes' immediate successors eschewing his intermediate and ultimate goals. It will be shown that Oppenheimer proactively sought to reinstall De Beers' former market control and perpetual rents in a rapidly changing diamond industry. New discoveries substantially broadened the physical spread of diamond deposits and de-concentrated ownership across multiple jurisdictions. This forced Oppenheimer to adapt Rhodes' intermediate goals from monopolisation to cartelisation, which, as will be shown, corresponded to the further moral decline of the diamond industry between Rhodes death in 1902 and Ernest Oppenheimer's in 1957.

Chapter Six examines the development of the diamond industry during the leadership of Ernest Oppenheimer's son and successor, Harry Oppenheimer, from 1957 to his retirement in 1984. This chapter will demonstrate how Harry Oppenheimer also adopted the intermediate and ultimate goals of his predecessor, which required him to preserve the industry structures he had inherited as Chairman of De Beers. It will be shown how Harry Oppenheimer worked to ensure that new large-scale diamond producers saw no other option but to join the De Beers cartel, thus ensuring De Beers' pervasive market control. Harry Oppenheimer's extension of De Beers' vertical integration will also be examined to demonstrate how the firm's resultant pervasive upstream control guaranteed that members of the diamond supply chain became even more dependent on De Beers than heretofore. The moral analysis will illustrate how the unparalleled market control achieved by Harry Oppenheimer made more people vulnerable to his associated moral rule violations, and contributed to the further moral decline of the diamond industry.

Chapter Seven assesses the changes that occurred in the diamond industry during the successive Chairmanships of Julian Ogilvie-Thompson and Nicky Oppenheimer, who respectively served as Chairmen of De Beers from 1985 to 1997, and 1997 to 2012. This period has been the most tumultuous in the history of the modern diamond industry. Although Ogilvie-Thompson adopted the intermediate and ultimate goals of his predecessor, it will be shown that the centrifugal forces that emerged in the industry after 1985 rendered him unable to maintain, let alone increase, De Beers' market control. Competition re-emerged in the diamond industry, and cooperation with the cartel became less attractive for diamond producers. De Beers' declining degree of market control eventually forced Nicky Oppenheimer, after he assumed the Chairmanship of the firm in 1997, to downscale the intermediate and ultimate goals of his predecessors, thus institutionalising, for the first time in De Beers' history, a decline in the firm's market power.

Chapter Seven also illustrates how Nicky Oppenheimer continued to maintain a modified De Beers cartel and pursue unoptimised rents well into the first decade of the twenty-first century, until legal constraints applied to De Beers' operations eventually forced him to terminate the cartel in 2009. The moral analysis in this chapter will demonstrate that De Beers' declining market share, and the emergence of competition in the diamond industry, reduced the number of people who were affected by De Beers' moral rule violations, and thus initiated a reversal in the perpetual moral decline that had been witnessed in the industry since Ernest Oppenheimer's ascent to power. The role played by new producers with competing intermediate and ultimate goals will be shown to have successfully challenged the prevailing immoral orthodoxy of De Beers' moral-rule-violating business practices.

Chapter Eight synthesises the findings of Chapters Four through Seven to enable a comprehensive understanding of the impact of past practices employed in the diamond industry on its moral status and ethical evolution. Lessons for the preferred trajectory of the diamond industry moving forward will then be considered. Several key policy recommendations for enabling the successful illustration of the immorality of such business practices will then be explicated. Finally, the limitations of the study will be assessed, alongside further avenues for research into the ethics of the modern diamond industry.

Conclusion

This study employs a bespoke three-arrow theoretical framework to analyse the structural and ethical development of the modern diamond industry after 1869. In doing so, it seeks to answer two questions: what are the origins of the modern diamond industry's poor moral status, and how and why has that status evolved throughout the industry's history? After ascertaining the intermediate and ultimate goals of De Beers' Chairmen, it will be determined how they sought to achieve their common goals within a perpetually dynamic industry. The moral dimensions of their goals, and the methods via which they were achieved, will then be considered to determine the origin of the diamond industry's poor moral status, and explain how it enjoyed perpetuity throughout the leadership of successive Chairmen. The reasons for its ethical evolution from the end of the twentieth century to the time of writing will also be considered, prior to an assessment of the future moral direction of the industry using the findings of this study.

Chapter 2: The Theory of Rent Seeking and the Logic of Collective Action

Introduction

This chapter details the first and second arrows of the tripartite theoretical framework that will drive this examination of the development of the modern diamond industry from its inception in 1869 to today. The third arrow, Bernard Gert's moral systems theory (2005), will be the focus of the following chapter. The first and second arrows are Gordon Tullock's theory of rent seeking (1967) and Mancur Olson's logic of collective action (1971). These two theories will be used to examine and explicate how and why successive leaders of the diamond industry elected and enacted the particular commercial, and thus structural, path that the industry took from the fourth quarter of the 1800s into the twenty-first century. It is the objective of this chapter to introduce and explore the complementary theoretical fields of rent seeking and collective action, with an eye to their application to the diamond industry in later chapters.

This chapter is structured as follows: the theory of rent seeking will be surveyed to illustrate why rents are attractive, and why their extraction, which demands exploitation and market inefficiency, results in welfare losses for society. The logic of collective action will also be explored to illustrate under which conditions rent-seeking behaviour might be expected, and when it might succeed.

Arrow Number One: The Theory of Rent Seeking

The term 'rent seeking' was coined by economist Anne Krueger (1974:291) to describe the competition surrounding access to favourable government-orchestrated international trade restrictions. However, the fundamental assumptions behind Krueger's theoretical argument had been previously presented by Tullock (1967) in his seminal work 'The Welfare Costs of Tariffs, Monopolies and Theft'.[5] Tullock (1967:228) defined what would come to be termed 'rent seeking' as the practice of directing scarce economic resources towards acquiring

[5] Tullock (1989:vii) went on to (apathetically) adopt Krueger's term 'rent-seeking'.

artificially created ‘income transfers’ (rents), or inflated profits. These inflated profits are not the result of wealth creation, but of wealth redistribution. Tullock (1967:225–232) posited that the pursuit and extraction of transfers requires resources from numerous actors involved in either enabling or hindering the process, creating multiple sources of waste (including those generated by competition for rents) and causing significant welfare losses in society.

Adam Smith (1776) was the first ‘modern’ philosopher to document and critique the practice of rent seeking. He counselled against the ill-considered instatement of mercantile laws that favoured the wellbeing of the petitioning merchants over greater society, on account of the conflicting interests of the two groups and the exploitative behaviour of the former (Smith 2005:213–4). Naturally, rent seeking and anticompetitive market structures existed before the Scottish Enlightenment. Systematic granting of monopoly privileges were a major source of imperial revenue in the ancient world, as documented by Finley (1973:165–66), while the mercantile and craft guilds of medieval Europe were rent seekers *par excellence* (Jones 2003:98–99). Heading eastward across Eurasia, the history of rent seeking is no less rich (Elvin 1973, Jones 2003: Chapter 8). Rent seeking in the market that is devoid of direct political involvement, such as that which motivates monopoly and cartel formation, has arguably existed since humans began to trade, and well before political institutions became the central forces of economic interaction that they are today (see Baumol 1990).

In contemporary society, rent-seeking opportunities have increased due to institutional developments that allow political allocations of income via unrequited transfers and other means becoming standard practice since the early twentieth century (Buchanan 1980:3–4). As Krueger (1974:291) noted, government restrictions are primary sources of rent-seeking opportunities. For example, a lobbyist representing a nation’s dairy industry may dedicate resources to seeking rents for its members via lobbying for the creation of a government-enforced non-tariff trade barrier on foreign milk—a practice that Tullock (1989) termed special privilege seeking. This non-tariff trade barrier would prevent foreign milk from being imported into the country, thus protecting domestic farmers from foreign competition. With this non-tariff trade barrier in place, domestic farmers can produce the same amount of milk but price it in a less competitive environment. Domestic consumers subsequently fund the farmer’s rent extraction by paying more for milk, a product with a relatively inelastic demand curve (Edwards 2003:79).

The competing arguments about the harms of rent seeking have focused on measuring the costs associated with the practice, and the waste (the losses associated with the misallocation of scarce resources to low-demand sectors) it can be assumed to generate. In the original literature on rent seeking that preceded Tullock's contribution, the income transfers, or 'rents', received by dairy farmers in the form of uncompetitive prices paid by consumers would have been considered the only social costs of rent seeking. These arguments typically posited that because collective groups and monopolies were members of society, their receipt of transfers was merely a redirection of wealth back to society. In short, examples like the abovementioned were viewed as narrow 'distributional' matters. Thus, the market inefficiencies monopolies and tariffs were argued to be only nominally injurious (see Scitovsky 1951, Harberger 1954, Johnson 1958, Schwartzman 1960, Wemelsfelder 1960).

This zero-sum position was most famously quantified by Harberger (1954) in an analysis of the American manufacturing industry from 1924 to 1928. Harberger (1954:87) calculated that resource allocation under monopoly conditions did not notably affect income distribution within general society during this period. In calculating the above-average profits (rents) of 73 manufacturing industries in the United States as a percentage of sales, Harberger (see 1954:80) estimated that the associated welfare costs would be equal to the minuscule sum of one-tenth of 1 per cent of Unites States (US) gross national product. The intersection of demand, quantity and price on Harberger's key graph, which denoted the expected minimal welfare losses of monopoly (see Harberger 1954:78), became known as the 'Harberger Triangle'.

Tullock's (1967) landmark contribution to the literature on rent seeking challenged the previous 'zero-sum' arguments by demonstrating that rent seeking wastes scarce economic resources beyond transfer costs alone and is consequently markedly negative sum. Using Tullock's (1989:55) definition, the term rent seeking applies only to cases deemed to have 'a negative social impact', a concept that will receive further attention shortly. Tullock's (1967:225) criticism of the Harberger Triangle, and those who subscribed to this methodology, was that such calculations failed to account for all of the welfare losses associated with monopolies. Namely, Harberger's calculations were limited to the percentage of goods that were overpriced as a result of monopolisation (see Harberger 1954:80 Table 1). Although Leibenstein (1966) had hypothesised prior to Tullock that traditional zero-sum theories of the costs of transfers were incorrect, his subsequent analysis was focused on the inefficiencies resulting from a lack of competitive pressure in monopolised industries and the resultant waste of resources within affected firms. Tullock greatly expanded on Leibenstein's analysis of supplementary welfare losses to include extra-firm costs.

In the aforementioned dairy farmer example, Tullock would have pinpointed at least four additional sources of welfare costs that earlier theorists ignored. Firstly, the pursuit of the non-tariff trade barrier consumed resources but did not generate output. Thus, there were 'opportunity costs' in the form of lost productivity, later known as 'Tullock costs', associated with the pursuit of those rents (see Tullock 1967:229). The milk consumers, as a disorganised majority, would have had little ability to promote their interests (that is, competitive milk prices) over those of the farmers in the organised minority (that is, anticompetitive rent-extracting prices) (Olson 1982:34). However, if consumers had managed to collectivise, they could have committed resources to preventing the introduction of the non-tariff trade barrier (Tullock 1993:9), thus creating a second source of welfare costs.[6] The third source of costs would have arisen from the government's use of resources to negotiate the trade barrier's introduction and implement its establishment (Tullock 1967:228). The total resources directed towards this activity were not wealth generating, and thus produced nothing of worth to society.[7] The fourth source of social costs would have arisen from the example set by the dairy farmers' lobby, which would have encouraged others to seek favourable government policies (Tullock 1967:231–2). The additional welfare costs indicated in the 'Tullock rectangle' (Tullock 1993:10) will be explored in-depth below.

[6] Tullock's (1993:9) argument that consumers lobbying against the creation of a monopoly or the awarding of a tariff would employ resources until their marginal costs equalled their marginal gains appears to assume that the affected consumers would successfully collectivise to pursue this end. This is because the individual losses that would stem from the creation of such market distortions would be small for each individual consumer, and thus their marginal costs would only have to be equal to those small losses for their marginal gains to be met. This suggests that collective action is assumed among consumers. However, if this is the case, Tullock has failed to recognise the challenges associated with collectivising typically latent consumer groups. As argued by Olson (1982:34), consumer groups almost never collectivise: the individual's share of the collective good would rarely be large enough to motivate collective action. The additional welfare losses arising from consumer action have been considered an automatic addition to Tullock's revised Harberger Triangle, when, in reality, the challenges associated with collectivising such a latent group would only rarely be overcome, rendering the associated welfare losses an exception, not the norm.

[7] Tullock used an example of theft to illustrate the flaws in Harberger's model. If a thief steals an item, the fact that the thief gains what the previous owner has lost does not equate to a pure income transfer. The thief has dedicated his resources to stealing, which produces nothing of value to society, and thus results in opportunity losses. Further, certain actors dedicate resources to preventing the thief from stealing, such as law enforcement agencies who attempt to deter, investigate and punish theft, and homeowners who install locks on their doors and bars on their windows. It is these very real indirect costs of transfers for which Harberger's Triangle failed to account (see Tullock 1967:228–9).

Rent seeking is an attractive endeavour because it can secure the protagonist valuable advantages, such as monopoly control over a market, a monopoly right to a resource (see Buchanan 1980:7–8) or a protective tariff (Tullock 1967:228). It is therefore likely that rent seekers will dedicate substantial resources to pursuing rents (Tullock 1967:232), up to the point that their marginal costs are equal to their marginal gains (Tullock 1993:9). The rationality that dictates the assumption of these costs by rent seekers in a group will be explored in this chapter's analysis of the logic of collective action (Olson 1971). To reiterate, according to Tullock, the resources dedicated to rent-seeking activities do not result in wealth creation, but are instead directed towards the extraction of pre-existing wealth; thus, the welfare costs that *directly* arise from rent-seeking activities are the opportunity costs that the resultant lack of productive output causes. This wasteful use of resources is unavoidable if the acquisition of rents is the ultimate aim—rents do not arise out of costless 'divine favours' (Tullock 1990:198). However, as will be argued later in this chapter, the *prima facie* wasteful use of resources does not automatically equate to negative-sum rent seeking.

The Costs of Rent Seeking

The costs of rent seeking beyond direct opportunity costs can vary depending on the rent seeker's methods and ultimate goals, and the source of potential rents. For example, the aforementioned dairy lobby group engaged in an act of 'bureaucratic rent seeking', which is defined as the pursuit of favourable policies from those in power (Congleton 1980:154). Although Tollison (1982:575) argued that it was a term applicable only to acts of bureaucratic rent seeking in which artificial rents (that is, those that did not arise out of natural shifts in the market) were *competitively* pursued, thus generating waste, waste is generated in bureaucratic rent seeking irrespective of the presence of competition (see Posner 1975). For example, bureaucratic rent seeking expands the bureaucracy by requiring the establishment of laws and agencies that assess and interact with rent seekers (see Bhagwati and Feenstra 1982). Bureaucratic rent seeking thus has the capacity to create both once-off and ongoing welfare costs emanating from governments, depending on the success of the rent-seeking endeavour and the periodical assessment of trade restrictions, such as monopoly awards (Rogerson 1982).

It is also probable that competition will emerge after the rent seeker obtains the government favour as other groups seek to usurp the rent seeker to extract the same rents (Tullock 1971, Tullock 1975, Tullock 1980:97, Rogerson 1982). There will also be actors engaged in 'rent avoiding' activities (Appelbaum and Katz 1986), as those opposed to the political favour utilise resources to lobby *against* its introduction (Tullock 1967:232), assuming they are organised. Further, once a favourable monopoly or tariff has been attained, the rent seeker will have to maintain some portion of the bureaucratic rent-seeking apparatus that enabled the initial rent extraction, lest he or she lose the good graces of those in power—a practice known as 'rent protection' (Tullock 1993:70). The costs associated with bureaucratic rent seeking thus have multiple origins beyond the central protagonist's opportunity costs.

Rents can be either created or pursued by the rent seeker. 'Rent creation' may refer to the rents that arise from the establishment of a new industry by an individual entity. As the firm is the pioneering force behind the industry and its products, it will enjoy a monopoly status therein, gaining the capacity to extract rents. This is also known as productive profit seeking (Buchanan 1980:4). The firm will enjoy the associated rents until new entrants create a reasonable substitute and undermine its monopoly position. The attractiveness of possessing a monopoly status may indeed be what initially compelled the expenditure on research and development that enabled the firm's innovation (Buchanan 1980:6).

These rents are not considered a source of negative costs to society; the firm's economic rents are positive rents (see Buchanan 1980:5–7). This logic is acknowledged by the patent system, which grants 'exclusive' use of innovations for prescribed periods. Tullock (see 1989:Chapter 5) recognised the need to separate positive rents from negative rents to account for socially beneficial outcomes generated by activities like innovation. In contrast to Buchanan and Tullock, Hindmoor (1999:441) argued that a utilitarian focus on outcomes cannot be the sole determinant of positive versus negative rents, as the rent seeker's intentions must be considered. The limitations associated with Tullock's definition of negative-sum transfers as 'rent seeking' and the impact on moral assessments of the practice will be explored later in this chapter.

As explained above, the positive or quasi-rents that result from innovation are typically short-term gains. As the (former) monopolist firm's capacity to extract rents is steadily reduced, consumers are given access to competitive pricing and greater choice. The founding firm's status will change from (positive) rent creator to (negative) rent seeker if it tries to protect its rents by preventing the emergence of competition within its industry (Buchanan 1980:6–7). The attractiveness of the rents that can be obtained in an uncompetitive industry means it is likely that firms will direct considerable resources towards pursuing or protecting a monopoly status therein (Tullock 1967:232), or collectivising members thereof to stifle competition.

Monopoly and Cartel Rent Seekers

Monopolies and cartels both result in the same market outcome: reduced supply and higher prices relative to a more competitive baseline, and thus a source of rents via income transfers from consumers (Tullock 1967:231). A firm may attempt to gain monopoly control over an industry by buying competitors or engaging in anticompetitive practices, such as dumping, to harm competitors and drive them from the industry. A firm may also seek rents or attempt to prevent the dissipation of rents by bringing its competitors into an agreement regarding pricing and output, thus forming a cartel, or 'distributional coalition' (Olson 1982:44). However, the takeover of competitor firms, whether hostile or otherwise, is often complex and time-consuming, as are attempts to engage firms in collective action and to enforce agreements and monitor compliance through time (see Marshall and Marx 2012:Chapter 2, Olson 1971). Negotiations between interested parties require resources; each party, as rational actors, will seek to maximise their own potential gains, and will possibly mislead one another to do so (Tullock 1971:633–4), activities that are negative sum.

Once market control has been successfully obtained by the rent seeker, there are ongoing costs associated with its protection. Tullock (1967:231–2) argued that previous studies of rent seeking had grossly underestimated the corresponding losses by failing to account for the costs of seeking *and* retaining rents via monopoly power. Congleton (1980:155) contends that markets that are devoid of competition do not waste the costs associated with inter-firm rivalry, as monopoly '*ends* competition'. However, monopoly or cartel positions are not static and they are often threatened by the competing interests of intra and extra-industry actors (see Marshall and Marx 2012:Chapter 2). Such market distortions must therefore be constantly 'defended' (Tullock 1967:232), a fundamentally competitive activity for the distribution of resources, which comes with unavoidable costs. Further, as argued by Leibenstein (1966), the lack of competitive pressure in monopolised markets causes costs that arise from the monopolist's nonchalant approach to technology and innovation. This, in turn, limits the development of the industry (or state) to the detriment of its members (or citizens) (Olson 1982). The costs associated with non-political rent seeking in the market thus arise from a multitude of different sources, some of which exist for the duration of the market distortion itself.

The mere potential for transfers to occur in society is also a source of social costs. These costs arise from two potential avenues: from those who witness profitable acts of rent seeking and attempt to replicate those outcomes but fail, and from the pre-emptive measures that must be taken to prevent actors from exploiting rent-seeking opportunities. Demonstrations of the successful extraction of rents show others the potential of acquiring inflated profits that outweigh opportunity costs. While not all rent seekers may achieve this end, all rent-seeking endeavours, successful or otherwise, consume resources. Therefore, the welfare costs of monopolisation and bureaucratic rent seeking are not limited to successful attempts, but must also include those that have failed (Tullock 1967:231–2).

When opportunities to engage in rent seeking emerge, if it is the government's desire to disincentivise the practice to any degree (if the costs of not disincentivising it are perceived to be greater than doing so), measures must be taken to reduce its incidence. For example, the risk-reward calculus that leads firms to eschew any attempt at collective action is not costless to society: the disincentive to seek rents when the opportunity to do so is recognised exists only because of resources that have been dedicated to pursuing that outcome, primarily by governments in relation to competition law and its enforcement. There is essentially a tug-of-war between those seeking transfers, and those attempting to prevent or dissuade those transfers from occurring (see Tullock 1967:230–1). These conflicting aims waste resources that could have otherwise been directed towards productive ends.

The Morality of Rent Seeking

The welfare costs of rent-seeking activities, both public and private, have been widely researched (and denounced) by social scientists since Tullock first challenged the zero-sum arguments of the traditional theorists (see Cowling and Mueller 1978, Bhagwati 1982, Rogerson 1982, Connolly et al. 1986, Laband and Sophocleus 1992, Murphy et al. 1993, Scharfstein and Stein 2000, Lambsdorff 2002). Despite the extensive, critical coverage this practice has received across several decades of academic inquiry, the morality of rent seeking has excited only a nominal amount of interest. Buchanan (1980) and Tullock (1989) are the two leading public choice theorists that have explored this concept, albeit to a very limited degree.

Buchanan argued that profit maximisation attempts can transform from ‘good’ to ‘bad’ because of institutional changes that are outside the control of the affected individual. Thus, according to Buchanan (1980:47), the ethicality of these activities has nothing to do with the ‘proper’ calibration of the rent seeker’s own moral compass. Buchanan (1980:56) used an example of contrived scarcities in the taxicab licensing market, which create avenues for rent seeking where productive profit seeking (via driver competition) had previously existed. The instatement of these licenses by a bureaucratic agency is itself potentially classifiable as a rent-seeking exercise (Appelbaum and Katz 1987). Nonetheless, Buchanan’s argument that morality resides solely in the creation of rent-seeking opportunities, and not in the willing exploitation thereof, gives actors (moral) *carte blanche* to take advantage of whatever rent-seeking opportunities they perceive within society, including those that have been unintentionally created.

Tullock (1989:44) takes a somewhat conciliatory position on the morality of rent seeking. Although he contends it is not a laudable practice, he refrains from calling it immoral, instead arguing that it is unlikely actors would eschew rents on account of their being considered immoral. Tullock (1989:6–7) also states that the public’s perception of the morality of rent seeking is difficult to ascertain. However, Tullock’s (1989:20) apparent expectation that society would indicate its perspective of the morality of rent seeking to help to illuminate its true nature is tested by his own argument that rent seeking is often deliberately hidden from the public’s view, particularly in private markets:

> When we look at the history of such [private] monopolies … we note that almost never do the monopoly organisers openly avow raising prices and increasing their profits as their motive. They are concerned with stabilising the price, improving the quality, guaranteeing a reserve of production for possible use in war, and so on.

Tullock (1989:20) argues that rent seekers must hide their activities, or shroud them in language that camouflages their true intent, to cultivate misinformation within society about the realities of their conduct: ‘Public misunderstanding of the actual situation is almost a logical necessity for the average rent-seeking activity’. The multi-branding strategies pursued by multinational pharmaceutical and food processing corporations that create the illusion of a multitude of sellers are an excellent example of this phenomenon. Tullock (1989:21) argues that misinformation is easy to propagate, as the majority of lay people do not understand how markets operate, and do not seek this knowledge. This ‘rational ignorance’, in turn, enables rent-seeking activities.

The ‘logical’ need for secrecy and misinformation arises from the fact that rent seeking is almost exclusively the domain of the organised minority. In a standard market scenario, it can be assumed that to make a profit, one has to make an investment in advance of an uncertain level of sales, thus bearing a risk (Tullock 2005:93). Each individual’s capacity to engage in trade is therefore governed solely by his opportunity set: the assets he has will be the ultimate determinant of the assets he can acquire. In such a scenario, the rules of the game are clear cut and players are cognisant of the powers they possess (Congleton 1980:153–4). However, the self-enriching tools that are available to organised groups, such as political lobbying and the market distortions of monopoly and cartel, alter the rules of standard profit seeking by introducing non-economic dimensions into the market that undermine the efficient, Pareto optimal allocation of resources (Buchanan 1980:47). The groups that are most capable of organising, and thus employing the abovementioned tools, have small memberships (Olson 1971), as will be examined in the next section of this chapter. Therefore, in rent-seeking scenarios, it is the majority that funds the enrichment of the minority: ‘…the number of people who gain is much smaller than the number who lose’ (Tullock 1989:20).

If greater society were made aware of the rent-seeking activities of such minority groups, and what rent seekers were costing members thereof in both direct transfers and associated waste, there would likely be wide-scale public outrage at the practice. Deception is therefore a key tool of the rent seeker who is attempting to avoid a public backlash resulting from his self-enriching activities (Tullock 1989:21).

Despite the numerous negative aspects of rent seeking, this study is aware of only two studies outside the field of public choice that have examined the morality of rent seeking: DeBow (1992–1993) and Boatright (2009). DeBow (1992–1993) undertook his research with the aim of exploring the practice of bureaucratic rent seeking by business and labour groups, to determine whether the practice violated moral norms. However, DeBow (1992–1993:10) failed to elucidate the moral norms on which he was purportedly basing his analysis. He also made only one partial judgement about the morality of rent seeking, by stating that the government's involvement in rent seeking is morally questionable because this powerful institution has the capacity to 'coerce' consumers into paying more for products in affected markets. Thus, DeBow's overall contribution to the analysis of the morality of rent seeking is limited.

Boatright's (2009:549) examination of the morality of rent seeking was underpinned by his recognition that rent seeking has not been classified as ill-advised conduct for socially responsible corporations, despite the extensive criticism the practice has received. Boatright argues that Tullock's widely adopted definition of only negative-sum transfers as 'rent seeking' affords an unhelpful 'definitional fiat' to the moral classification of these activities, insofar as it inherently requires knowledge of outcomes. He posits that this has immobilised ethical judgements of failed rent-seeking attempts, and those rent-seeking activities whose associated waste cannot be ascertained or quantified (Boatright 2009:543–4). However, he does not contend that rent seeking should become a term applicable to the pursuit of both positive and negative rents. He instead argues that rent seeking and productive profit seeking need to be separated via the application of a common standard against which the two practices can be morally differentiated (Boatright 2009:547). To determine what is considered a socially responsible (moral) practice in the market, Boatright uses Thomas Dunfee's (1998) concept of the Marketplace of Morality (MOM), in which the morality of markets is conveyed by the preferences and social activism of the actors who operate therein, primarily consumers.

Boatright's analysis of rent seeking using a common moral standard was largely unsuccessful, for two reasons. First, Dunfee's MOM theory is not common; it is an obscure and underdeveloped moral standard, and thus gives little insight into how society perceives the morality of rent seeking. Second, its assumptions regarding the knowledge and activism of consumers render it an inappropriate theory for the analysis of a practice that is as complex and shrouded in secrecy as rent seeking, a fact that Boatright (2009:549) somewhat oddly explicitly acknowledges. However, Boatright's (2009:546) general postulations about rent seeking did illuminate two important issues in the determination of the morality of rent seeking: that a rent-seeking exercise must be 'legitimate' if it is to be condoned, and that Tullock's definition of rent seeking as negative-sum presents a problem when attempting to ascertain the morality of the practice.

This Study's Definition of Rent Seeking

This study classifies all activities that attempt or succeed at extracting rents as rent seeking, inclusive of those that fulfil the criteria of positive-sum innovation. Tullock's definition has thus been modified to remove the definition's unnecessary focus on the outcomes originally illuminated by Hindmoor (1999), and to account for this study's contention that it is the legitimacy of the *extraction* of rents that is morally significant, and not whether the waste it generates is negative-sum. It is this study's contention that previous attempts to ascertain the morality of rent seeking, whether within the field of public choice or without, have been in part hampered by a focus on economic waste rather than the ultimate goal of the rent seeker, which is to obtain inflated profits.[8] Focusing on the generation of waste is problematic for two reasons. Firstly, the waste associated with rent seeking is assumed, whereas the extraction of rents is an incontestable goal of all rent seekers. Secondly, measuring the waste associated with each act of rent seeking and subsequently determining the act's negative-sum versus positive-sum status is almost impossible due to the secrecy shrouding the act and the difficulty of quantifying all associated costs.

The legitimacy of a rent-seeking exercise is contingent upon the legitimacy of the extraction of rents, potential or actual, by the rent seeker. As detailed in Chapter One, this study uses Gert's moral system to examine the morality of rent seeking. To wit, if the extraction of rents, potential or actual, possesses a moral dimension; that is, if it violates a moral rule, the moral status of rent seeking is not uniformly decided, but is instead determined by the justifiability of *each individual rent-seeking activity's* violation of that moral rule. If the violation can be classified as 'justified', that individual rent-seeking practice is moral. The Gertian approach of this study is justified in that it is illogical to classify a rent-seeking activity's generation of waste as immoral if the moral rule violation caused by the extraction of rents, potential or actual, is justified. Conversely, one cannot generate morally acceptable waste in the pursuit of what would be classified as an unjustified extraction of rents.

This study will utilise the theory of rent seeking to explain the motivations behind De Beers' leaders' market behaviours. De Beers' leaders employed market-distorting industry structures

[8] The pursuit of rents by an innovator is assumed even if producing a new product is their primary goal, as it is impossible to argue that innovation is embarked upon without consideration of at least the short-term rents that can be captured in a non-competitive market.

that were designed to eliminate competition from the diamond industry and thus enable their extraction of perpetual rents. The logic of collective action, considered below, explains the market characteristics that either impede or promote the pursuit and extraction of rents in an industry, and the measures that can be taken by entities desiring perpetual rents to compel or encourage pro-group actions among industry members.

Arrow Number Two: The Logic of Collective Action:

In the following analysis of the logic of collective action, the term ‘group’ refers to the united efforts of two or more actors to court a common goal (Truman 1967:33–5). This study looks at collective entities that can be categorised as economic groups: groups that exist primarily, although not necessarily exclusively, for economic reasons (Bentley 1949:212). The pre-Olsonian assumption was that groups would act in the best interests of their members, working to further the common interest that defined that group’s existence, and bearing any personal costs. This concept is often associated with Bernand Mandeville’s *The Fable of the Bees* (1989), the logical import of which was enthusiastically embraced by social science in the eighteenth and nineteenth centuries and in the first half of the twentieth century. In the field of classical political economy, theorists have argued that individuals who perceive an advantage to act in the interests of the group to which they belong will mobilise accordingly. These theorists assumed that the preservation of the group’s interests is ultimately in the individual’s own self-interest, and was thus enough to compel cooperation, or realise group gains (Smith 2005, Ricardo 1955, Marx 1972, Mill 1911).

This assumption was fundamental to the political economy argument that markets were self-regulating, and thus did not require external interference to operate effectively. This line of reasoning was borne out of Adam Smith’s (2005:364) hypothesis that an ‘invisible hand’ ensured that individual conduct in the market benefitted all, and was sustained by several generations of classical political economy theorists thereafter. For example, Ricardo (1955:81) argued that a country pursuing its own best interests within a global economy is estimably beneficial to all. Similarly, Mill (1911:28) believed the individual possessed a ‘public spirit’ that compelled him or her to consider the interests of the group above his or her own, to reach a mutually beneficial equilibrium. The assumption that individuals will cooperate to pursue common goals was central to Marx’s joint thesis regarding the mobilisation of what he and

Engels considered the rationally ‘unified’ proletariat in its class struggle against the bourgeoisie (Marx and Engels 1967).

In contrast with this notion that self-interest is sufficient to motivate pro-group behaviours, Olson’s (1971) seminal work, *The Logic of Collective Action*, first released in 1965, argues that it is often irrational for self-interested individuals to act in the best interests of the groups to which they nominally belong. This is because rational, self-interested individuals will engage in a cost-benefit analysis to determine whether it is in their own interests to do so, with the features of the group in question determining whether it would pay to personally act in the collective interest (Olson 1971:1–2). Olson’s taxonomy of groups enables an understanding of the different characteristics and motivations that may compel or hinder individuals’ pro-group behaviours, particularly within a commercial setting. In differentiating between the groups that exist in society, Olson classifies large groups as ‘latent’, as their sheer size renders achieving collective action extremely difficult, and therefore improbable, even with the use of incentives. Conversely, small groups are ‘privileged’ insofar as their characteristics of size and complex inter-relationships mean that organisation is easier to accomplish (Olson 1971:48–52). Thus, privileged groups are far more likely than latent groups to achieve what he refers to as the ‘collective good’.

In economic terms, common interests are referred to as collective or ‘public’ goods. While the latter term has come to dominate the discourse, the terms will be used interchangeably here in deference to Olson’s original usage. Samuelson (1954) was the first to make the formal distinction between exclusive and inclusive goods. He defined ‘private consumption goods’ as those goods that can be distributed to specific persons, while ‘collective consumption goods’, or ‘public goods’, can be consumed by all without subtracting from their general availability (Samuelson 1954:387). The fact that one entity enjoys access to these goods means that they must be made available to all (Olson 1971:14–5); they cannot be feasibly withheld from some but not others. Further, a collective good is non-rival; that is, it does not favour one actor over any other (Samuelson 1954:387). In other words, consumption by one group member does not detract from that of another.

Latent or Large Groups

The logic of collective action hypothesises that latent groups are unlikely to supply collective goods to their memberships successfully. The large number of members in a latent group means that the percentage share of the collective good enjoyed by any individual member will be small. This reduces the incentive for any group member to bear the costs of actively engaging in collective action and thus collective good supply. This decreases the likelihood that the collective good would be supplied at all, and if it were, it would be unlikely to be supplied at the optimal quantity. In short, the larger the group, the larger the costs of seeking collective goods and the more diffuse the individual gains from doing so (Olson 1971:48). In such an environment, the marginal costs of engaging in collective action are unlikely to be outweighed by the marginal advantages.

Privileged or Small Groups

Privileged groups are characterised as being in an advantageous *ex-ante* position to pursue and supply collective goods. In privileged groups, it is rational for an individual to supply the group with the collective good provided 'the total benefit to the group is a larger multiple of the cost of that good than the gains to the group are of the gains to the individual in question' (Olson 1971:25). Thus, in small groups, the collective good can be presumed to be pursued and achieved based solely on individual self-interest (Olson 1971:34). The question of optimal provision of the collective good is another matter. This depends on the nature of individual marginal costs and the advantage curves of group members. This point will be considered below.

The primary difference between latent and privileged groups is the presence of inducements to encourage collective action. For example, in a latent group such as a standard competitive industry, in which firms are numerous with non-consequential market shares, free access exists and a homogenous product is manufactured and sold, the standard collective good is higher prices (Pindyck and Rubinfeld 1997:22). The realisation of these higher prices could be achieved through the collusive reduction of output by producers (agreed to formally or informally). However, in the market, both common and individual interests can be found; while producers may want higher prices, the motivation also exists for individual producers to sell as much product as possible. The incentive to maximise individual output (or income) cancels out achieving the collective good, thus trumping individual interests over those of the group. As Olson (1971:9) explains, ‘In short, while all firms have a common interest in a higher price, they have antagonistic interests where output is concerned’. Thus, a perfectly competitive industry has the characteristics of a latent group: it is in a member’s interests that other producers bear the costs of reducing output to achieve the collective good (Olson 1971:10). There is no incentive for individuals to do it themselves, as there are small stakes in its provision and large perceived costs. As Olson (1971:36) summarises: ‘the larger the group, the less [the collective good] will further its common interests’.

When each actor in a group is pursuing their own best interests, the collective good of the group may be negatively impacted (Olson 1971:10). In the eighteenth century, Hume (1978:538) lamented the inability of 1000 farmers sharing a communal pasture to cooperate for the common good of the land. This example also illustrates the disparate levels of efficiency that exist between latent and privileged groups regarding the provision of a collective good; the larger the group, the less effective the actions of an individual will be (Olson 1971:36). Hardin’s (1968:1244) scientific illustration of the tragedy of the commons similarly recognised that although communal pasture overstocking may eventually cause the collective good to become unviable for all farmers, this reality is essentially redundant in the face of immediate, tangible individual gains.

Realising a Collective Good

The distribution of gains from collective good provision within groups materially affects the likelihood and level of collective good realisation. If an individual exists with a large share of the group’s interests (for example, a firm with a dominant market share), there is a greater likelihood that the collective good will be provided by that member. The dominant member’s marginal costs may well be less than their marginal gains, and thus their provision of the collective good is rational. In contrast, in groups with a more even distribution of interests, it is less likely that the collective good will be achieved (Olson 1971:34–5). However, it does not follow that an *optimum* group outcome will result from an individual’s provision of the group’s collective good. In a group in which an individual is attempting to provide the collective good, an optimum level thereof would not be obtained. The large costs borne by the individual in attempting to provide an optimised collective good would not only typically be economically impossible, but would also result in their not being compensated by their relative gains (Olson 1971:35).

The optimisation of a collective good thus requires that all members of the group contribute their fair share to its realisation. Free riding, which is defined as a party's enjoyment of a collective good to which they have not contributed, is detrimental to the group because it prevents optimisation (Buchanan 1965:9). The free rider's failure to contribute reduces the overall potential provision of the collective good (Olson 1971:28). In small groups there is therefore 'a surprising tendency for the "exploitation" of the great by the small' (Olson 1971:35). One example is the benefits accruing to the world economy from US efforts to keep global shipping lanes free and open in its own interests. Free and open shipping is a public good desired and consumed by all nations; however, it is the largest nation that bears the costs of provision, while others rationally free ride. Free riding can be curtailed by collusion. To erase free riding fully, complete cooperation is logically required. Otherwise, free riders will access the benefits provided by the collusive firms, while also adding to the costs of supplying the collective good. If free riders increase their own output unchecked, the members of the collusive group must limit the damage to prices by limiting their own output, which is far from optimal from the group's perspective. For this reason, firms in an industry wishing to attain an optimised level of the collective good would want as few members as possible in the collusive group, and would want full participation among members (Olson 1971:40–1).

Intermediate or Oligopolistic Groups

The logic of collective action illustrates the different inducements to cooperate that exist within latent and privileged groups. However, the spectrum of groups is not exclusively bi-polar; groups also dwell in the middle range, termed 'intermediate' or 'oligopolistic' (Olson 1971:43).[9] The definition of an oligopoly is the dominance of a limited number of actors over a supply, whose individual actions are able to affect the viability of their competitors within a specific market (Friedman 1983:1–2). An oligopolistic industry is different to an atomistic (latent) industry, in which competitors are so numerous that the actions of an individual do not materially affect the viability of other producers (Olson 1971:49). However, oligopolies are not on the same level as small groups. The size of oligopolies does not necessarily make it

[9] This study will use the term 'oligopolistic' instead of Olson's preferred 'intermediate' when referring to such groups.

rational for individuals therein to provide some or all of the collective good, yet they are not so large as to render the independent actions of their members insignificant to the attainment and protection of the collective good (Olson 1971:43).

The diamond industry is an excellent case study for illustrating the differences between privileged and latent groups. Chapter Four will demonstrate how the logical import of Olson's theory explains the measures Rhodes needed to take to establish an ultimate privileged group within the diamond-production sphere (that is, a production monopoly), and his motives for doing so. In Chapters Five to Seven, the logic of collective action will illuminate the challenges faced by De Beers' leaders as the diamond industry gained more intermediate, or oligopolistic, characteristics in the post-Rhodes era, and the tools they had to employ to counter those developments.

It is logical that oligopolies realise the collective good more often than do their latent counterparts, but less often than do small, privileged groups. This is a function of several factors. Firstly, the associated costs of organisations are less than for latent groups. Specifically, fewer resources need to be used to incentivise pro-group behaviours (Olson 1971:48). Oligopolies also demonstrate a high level of interdependence within their memberships; relationships between members of oligopolies are defined as 'mutually dependent' (Olson 1971:42). Secondly, due to the consanguinity exhibited within such groups, individual actions can influence the behaviours of other group members. For example, a member of an oligopoly may continue contributing to the collective good based on the fear that if they did not, all members would in turn withdraw their support, thus bringing an end to the group's enjoyment of the collective good (Olson 1971:43). Such a conceptualisation would never be a factor for a rational member of a latent group.

Irrespective of the size of the group, when the organisation of members is required, associated costs need to be factored into rational decision making. For example, formal agreements will be required for cooperation to occur in latent groups. In privileged groups and oligopolies, no formal agreement is required if an individual assumes the burden of providing the collective good. However, once multiple group members begin cooperating, either formal or informal agreements become necessary (Olson 1971:46) and compliance needs to be monitored. The costs of organisation within groups corresponds with the number of individuals included in the collective action (Olson 1971:47). The costs can include communication between members, concessions that may be agreed to, and the actual costs of initialising and maintaining the agreement. Although there are economies of scale to be considered in relation to start-up versus continuation costs, it is logical that the higher the initial costs of organisation, the less likely it is that collective action will take place (Olson 1971:47–8). As a result, collective action is more likely to occur within privileged and intermediate groups than in latent industries because of the comparatively lower costs of organisation in smaller groups.

Selective Incentives and the Optimisation of the Collective Good

Selective incentives can be used to encourage cooperation within groups when the collective good itself, and the individual's share thereof, does not rationalise individuals' engagement in collective action. Selective incentives may be economic or social in nature, and can be either positive or negative. Olson (1982:21) termed them 'selective' incentives because of their specific targeting of individuals: they must be exclusive insofar as they cannot profit non-compliant group members (that is, those who have not participated in the collective action), and they cannot cost those that do comply. The application of selective incentives can change cooperation from irrational to rational (Oliver 1980). This is of particular importance in groups in which rational pro-group behaviours typically do not exist: 'Only a *separate and "selective" incentive* will stimulate a rational individual in a latent group to act in group-orientated way' (Olson 1971:51). However, selective incentives can also be used to encourage free riders in privileged or oligopoly groups to contribute to the collective good when rationality otherwise encourages non-group behaviours, as will be explored shortly.

Negative incentives may penalise individuals who do not contribute to the collective good, whereas positive incentives may reward individuals' pro-group behaviours (Olson 1971:51). Economic incentives are financial rewards beyond the collective goods on offer, and will typically be used by the group when negotiating the terms of collective action, such as quota allocations in a supply cartel. In contrast, social incentives are less tangible, including such tactics as moral suasion (Hardin 1982:40), threats (Olson 1982:21) and social exclusion (Olson 1971:60–1). A positive social incentive could be a friendly request to 'do the right thing'; for example, supporting one's co-workers attempts to access better leave entitlements, even if one does not personally desire more leave.

Although both economic and social incentives are available to all types of groups, privileged groups and oligopolies are more able to pursue and achieve a collective good because they can more effectively employ economic and non-economic incentives (Olson 1982:34–5). It has been argued that the intermediate characteristics of oligopolies can obscure cheating, and thus complicate the application of negative incentives, or punishments (Osborne 1976). As this study will show, De Beers' leaders' capacity to punish cartel cheating was occasionally limited by the cartel's oligopoly group size. In contrast, within latent groups, the use of any selective incentive is extremely challenging. In relation to social incentives, the size of latent groups means that significant relationships between members are virtually non-existent. Therefore, privileged groups and oligopolies possess the 'political-sociological advantages' that large groups do not (Hardin 1982:40). Free riding in latent groups is effectively secret, while in small groups it is effectively public.

Latent groups also find the use of economic incentives extremely difficult. This is due to two key factors: the number of members requiring compensation within large groups would make economic incentives costly to fund; and the implementation of these incentives would present a considerable administrative burden. However, Olson (1971:51) argues that cooperation will not occur within latent groups without the use of selective incentives. Hardin's (1982:40) aforementioned statement that the belief that latent groups will not collectivise under any circumstances is an exaggeration holds for the perceived required use of selective incentives; it is arguable that some latent groups would be able to collectivise without the use of selective incentives. Nonetheless, latent groups are heavily dependent on incentives to realise the collective good, yet are the group least able to utilise them effectively. If, against the odds, a latent group has successfully used selective incentives to foster individual pro-group behaviours, Olson (1971:51) regards them as 'mobilised latent groups'.

The super-ordinate goal of incentive use within privileged groups and oligopolies is typically different to that of latent groups because the former may be able to provide themselves with the collective good without the use of coercion or remuneration beyond the collective good itself. Within privileged groups and oligopolies, incentives are required only to ensure that an *optimum* level of the collective good provision is attained (Olson 1971:34–5). In other words, unlike in large groups, incentives may not be required for the collective good to be achieved in the first instance, but rather for it to be optimised via the participation of all possible members.

As will be demonstrated in Chapters Four to Seven of this study, in an effort to obtain and protect their perpetual rents, De Beers' leaders regularly used both negative and positive selective incentives to encourage and enforce near total compliance with cartel agreements. The moral dimensions of the resultant market structures and the manner by which De Beers' leaders both achieved and protected them will be determined via applications of the moral system, as examined in Chapter Three.

The Morality of Collective Action

The moral dimensions of collective action have received only a small amount of attention from Olson, in a footnote no less. Olson argues that morality should be viewed as an additional selective incentive (external to economic and social incentives) insofar as it can either hinder or help collective action beyond self-interest alone. It is a selective incentive because, if morality influences an individual's actions, it is not an incentive arising from the collective good, as it has targeted that individual specifically (Olson 1971:61 FN 17). Olson (1971:61 FN 17) also argues that collective action could be disincentivised if *cooperating* individuals deem the activity to conflict with their own moral beliefs:

> If the sense of guilt, or the destruction of self-esteem, that occurs when a person feels he has forsaken his moral code, affected those who had contributed to the achievement of a group good, as well as those who had not, the moral code could not help to mobilize a latent group.

Surprisingly, Olson did not classify morality as a social incentive, even though immoral activity has the capacity to cause the 'social loss' in the form of social exclusion that Olson (1971:60) argued individuals would typically seek to avoid in group settings. Indeed, Olson deliberately excluded analysis of collective action motivated by morality for three reasons. Firstly, morality is not an empirical variable that can be measured; thus, basing a theory on its influence would be ill advised. Secondly, as morality is only one of many potential selective incentives, other variables can adequately explain instances of collective action. Thirdly, pressure groups (the primary focus of Olson's study) do not exist to aid other groups and thus cannot be attributed a moral mandate (Olson 1971:61 FN 17).

For the present research, considerations about whether morality is a motivating force in encouraging or discouraging collective action are not the first concern. Although it will later be considered how morality can be a positive influence in encouraging actors to eschew immoral market conduct, the first goal of this study is to determine the moral dimensions of collective action itself. Olson (1982:38) did make a minor contribution to this discussion when he hinted at the moral aspects of incentivising collective action, stating: ‘people do not like to be coerced’. That negative incentives are rarely favourably received is unsurprising, but this does not detail exactly what specific moral dimensions they do possess. As will be argued in the moral analysis component of Chapter Four, the leading extant examinations of the morality of collective action have largely focused on market distortions, with little practical success. However, the morality of the tools actors can use to compel and encourage collective action in groups, including positive or negative incentives, has been neglected in the literature to date. This is despite negative incentives often depriving an actor of the ability to eschew collective action—a practice that will be shown to possess a clear moral dimension.

Conclusion

The theory of rent seeking and the logic of collective action are the first and second arrows of this study’s tripartite theoretical framework. They will be used in concert to demonstrate that De Beers’ leaders’ intermediate goals of monopoly and cartel and ultimate goal of perpetual rent extraction were small-group ambitions; they could only be achieved by an organised minority employing selective incentives, both positive and negative, to compel and encourage cooperation. The theories of Tullock and Olson will be used to explain the path taken by De Beers’ leaders in their dominance of the diamond industry. However, as this chapter has shown, these theories cannot illuminate the moral dimensions of these men’s goals, or the means by which they achieved them. Therefore, the inclusion of Gert’s (2005) moral system—the third arrow—in this study’s theoretical framework is vital to determining the moral dimensions of De Beers’ leaders’ rent-seeking and -extraction activities, and whether they can be classified as moral. The following chapter will detail the moral systems theory, and explain why its proven success in the assessment of real-world issues renders it an appropriate moral framework for this study.

Chapter 3: Moral Systems Theory

Introduction

This study employs a three-arrow approach in its applied examination of the ethical evolution of the diamond industry. This chapter details the third arrow of this study's tripartite theoretical framework, Bernard Gert's moral systems theory (2005). As argued in Chapter One, the moral system is useful in this study of the ethical evolution of the diamond industry to determine the moral dimensions of the goals and business practices of De Beers' Chairmen, and the ultimate justifiability of their associated moral rule violations.

The immediate task of this chapter is to demonstrate the moral systems' location in the field of moral philosophy, and its proven practicability in the examination of real-world moral concerns. This is followed by brief overviews of the central components of the moral system, including the moral rules, the moral agent, the two-step procedure and the moral ideals, which, for all but the latter component, preface subsequent, more in-depth analyses later in the chapter. The moral rules are the first component of the moral system to be analysed in-depth. Their use in the following chapters of this study is also briefly introduced. This is followed by an explication of the central features of the moral theory, including rationality, impartiality and publicity, and how these relate to the definition of a moral agent. The two-step procedure is then explicated, prior to the chapter's conclusion.

The Moral System

Bernard Gert's 'moral system' is a profoundly important contribution to the discipline of moral philosophy (Wellman 1979:329, Bond 2000:427, Triplett 2002:79). It is a positivist exposition of universal morality. Moral agents, either knowingly or unknowingly, employ the moral system when evaluating issues that possess a moral dimension; that is, those actions in which a moral rule, or rules, have been violated (Gert 2004:19). Gert's moral system theory consists of two separate yet symbiotic features: the moral system that society uses to guide its actions and judge those of others, and the theory that justifies the moral system's form and function. As Gert's moral system is a formal reproduction of society's morality, this distinction was deliberate: '…[the] moral theory is an attempt to explain the moral system that we in fact use to make moral judgements' (Gert quoted in Magnell 1994:542). As an explicit account of the morality that exists in society, Gert's moral system is considered by some to be the definitive answer to the centuries-old question of what actually constitutes morality (Triplett 2007:370).

The moral systems' successful application to real-world moral issues, including those within the disparate fields of medicine, business, journalism and computing (Hennessey and Gert 1985, Elliott 1991, Elliott and Culver 1992, Berger 1996, Gert 1996, Moeschler 1996, Singer 1996, Gert et al. 1997, Gert 1999, Triplett 2002) has repeatedly demonstrated its practicability in the isolation of morally correct responses to moral issues—the primary basis of this study's belief in the accuracy and dependability of the moral system. The proven veracity of the moral system is an outcome predicted by Gert (2005:4); that is, the moral system is not promoting a mechanism that results in controversial moral judgements. The moral system is thus eminently suitable for this study's analysis of the modern diamond industry.

The moral system is a triumvirate of complementary components: moral rules, moral ideals and a two-step procedure that moral agents can use to examine moral rule violations, as shown by the vertices of the triangle in Figure 2.1 illustrate the three components of the system. These will be summarised below, preceding an in-depth explication of their features.

The first component of the moral system is the moral rules, of which there are 10:

1. Do not kill.
2. Do not cause pain.
3. Do not disable.
4. Do not deprive of freedom.
5. Do not deprive of pleasure.
6. Do not deceive.
7. Keep your promises.
8. Do not cheat.
9. Obey the law.
10. Do your duty.

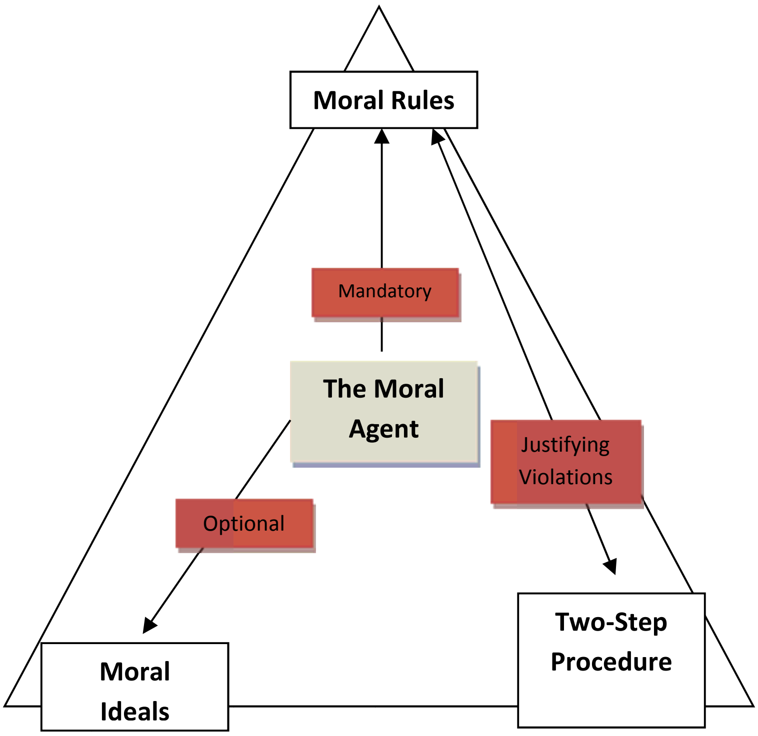

Figure 2.1: The Gertian moral system

Gert (2005:22) defines moral agents as rational actors (to be explored later in this chapter) who understand what morality is and what it expects of them. The moral rules are the foundation upon which moral agents base their behaviours and assess those of other moral agents (2005:159). The moral attitude is the approach taken by all moral agents to the moral rules. Gert (2005:222–3) defined it as follows:

> Everyone is always to obey the rule 'Do not...,' except when a fully informed, impartial rational person can publicly allow violating it. Anyone who violates the rule when a fully informed, impartial rational person cannot publicly allow such a violation may be punished.

The definitions of rationality and impartiality will be explored later in this chapter.

The second component of the moral system is a mechanism via which moral rule violations can be assessed and classified by moral agents: the two-step procedure. In the first step of the two-step procedure, the 'morally relevant features' of a violation, are highlighted. This information is required by moral agents to assess a moral rule violation (Gert 2005:226). The second step requires moral agents to categorise violations as 'justified', 'weakly justified', or 'unjustified'. For a 'justified' classification to be permissible, rational, impartial moral agents must unconditionally support society being informed of that violation's acceptability (Gert 2005:225). This does not mean that justifying a violation is only possible if all rational, impartial moral agents actually approve of it, but it must be possible that they *could* do so (Elliott 1991:5). The publicity that would theoretically arise out of this externality negates the influence of partiality in analyses of violations of the moral rules, by preventing people from making 'exceptions' for family and friends for violations that otherwise could not be publicly allowed (Gert 2005:153), a feature of the moral system that will be explored later in this chapter.

The third component of the moral system is the moral ideals, which embody activities that promote society's flourishing (Gert 1998:247). Examples of a moral ideal would be donating your time to charity, or helping a neighbour in need. In contrast to the moral rules, moral ideals cannot be classified as mandatory, because to make them so would result in violations of the moral rules. Kagan failed to recognise this fact when he criticised Gert's (2005:13) argument that morality demands only preventing evils and harm by countering that morality also *requires* doing good (Kagan 2002:127). Gert's rebuttal to Kagan's argument was to state that if moral ideals were morally required actions, akin to the moral rules, people who did not do good whenever possible would be liable to punishment (Gert 2002:289). The moral ideals do not play a role in the application of the moral system to the diamond industry in the following chapters; thus, they will not be examined in any further depth in the following explication of the moral system.

The Inclusivity of the Moral System

Normative moral theories, for example those of Kant (1991) and Rawls (1972), require actors to be well versed in the theories' specifics to follow their teachings.[10] Consequently, these and other moral theorists have very few practicing followers. As Gert (2004:4) explains: 'Few people read these philosophers, even fewer understand them, and almost no-one uses what they say as a guide to their own behaviour'. In contrast, Gert contends that a moral agent's claim not to have read on moral systems theory is neither an excuse nor a justification for behaving immorally. This is because the agent already holds the knowledge required to make moral decisions (Gert 2004:3). The moral system is akin to a grammar that dictates language,

[10] The content of these normative moral theories will be further considered in this chapter's analysis of the theoretical components of the moral system: rationality, impartiality and publicity.

insofar as grammar is naturally acquired by people (see Magnell 1994:542) and its content is deemed valid based on whether it generates grammatically accurate sentences (Gert 2004:16). Like grammar, morality is deemed accurate when it furnishes correct moral judgements the majority of the time, which the moral system has been shown to do in a multitude of analyses of real-world moral concerns (see Hennessey and Gert 1985, Elliott 1991, Elliott and Culver 1992, Berger 1996, Gert 1996, Moeschler 1996, Singer 1996, Gert et al. 1997, Gert 1999, Triplett 2002). As argued in Chapter One, this study views the actions of De Beers' leaders during their respective times in power through the lens of personal liability. That moral agents possess the knowledge to behave morally partially justifies this position; De Beers' leaders' personal determination of their intermediate and ultimate goals will be shown in the following chapters to complete the justification of their personal liability.

The Moral Rules

The First Group

Gert divides the 10 moral rules into two groups of five. The first group, which includes the moral rules 'Do not kill', 'Do not cause pain', 'Do not disable', 'Do not deprive of freedom' and 'Do not deprive of pleasure', accounts for all of the basic forms of human suffering. These five rules are comprehensive in representing human frailties, in two ways: 'First, nothing counts as punishment unless it involves the infliction of one of these harms' (Gert 2004:40), and secondly, '…nothing counts as a malady, that is, a disease or injury, unless it involves one or more of these basic harms' (Gert 2004:40). It is important to note that within the moral system, unjustified breaches of the moral rules that fail to achieve their intended result are classified the same as those actions that do achieve their intended result. In other words, in setting out to kill someone, but failing to do so, a moral rule is violated regardless.

The moral rules employed within this study are 'Do not deprive of freedom', 'Do not deprive of pleasure', 'Do not deceive', 'Do not cheat' and 'Obey the law'. Thus, these moral rules will receive the most attention in the following overviews.

'Do not Kill'

The first moral rule within the moral system, 'Do not kill', represents the protection of that which is most important to living creatures: life. This moral rule is present in all archetypal lists of moral rights and wrongs (Gert 2004:29). 'Do not kill' prohibits instances of killing that are not justified. There are two distinct groups of instances of justified violations of this rule: fully informed patients who decline medical treatment, resulting in their death (Gert 2004:30); and instances in which killing a person is justified, such as in a genuine act of self-defence.

'Do not Cause Pain'

The moral rule 'Do not cause pain' accounts for the fact that people do not want to experience pain, unless it is something to which they consent (Gert 2004:31); for example, the pain associated with (voluntarily) getting a tattoo. Gert uses the word 'pain' to cover physical and emotional pain, and other mental disturbances such as anger and anxiety. For someone to be held accountable for inflicting pain, he or she must intend to do so. Gert uses the example of a doctor delivering bad news to a patient: the news may cause emotional pain to the patient, but the doctor's intention is to inform the patient of his or her condition rather than to cause the patient pain. Thus, the doctor cannot be held responsible for the pain suffered (Gert 2004:32).

'Do not Disable'

The third moral rule in the moral system is 'Do not disable'. Gert (2004:34) defines this maxim as intentionally taking away from someone the ability to perform a particular task/action such that they can no longer do what they previously could. This rule is not to be confused with the deprivation of freedom; the disabling act must actually change the individual in question, causing physical, mental or other disability (Gert 2004:34). Gert (2004:34) contends that people may be held responsible for unintentional disabling, depending on how society interprets the rule. For example, if a narcoleptic suffers an episode of his illness while driving and causes a car accident that disables a fellow motorist, he may be deemed culpable, despite his lack of intention to disable.

'Do not Deprive of Freedom'

The moral rule 'Do not deprive of freedom' is defined by Gert (2004:35) as taking away someone's right to control what happens to their person, and taking away their abilities and resources: '…violations of this rule are actions that make a person unable to do something by altering his environment or situation…'. The actions that can be categorised as intentionally depriving of freedom are varied, and include: locking someone up, making threats against a person and discriminating against a person based on race, religion, gender and so on (Gert 2004:35–6). In contrast, examples of behaviours that result in a deprivation of freedom for others, but that are unintentional and thus not immoral, include borrowing a much sought-after book from a library, or renting the last copy of a particular movie at the video store. As will be first demonstrated in Chapter Four of this study, forcing competitors to cooperate in the establishment of a production monopoly violates this moral rule in a way that would be deemed unjustified by rational, impartial moral agents. The constraint placed on members of the diamond supply chain, most notably consumers, by this production monopoly will also be shown to be an unjustified violation of this rule.

'Do not Deprive of Pleasure'

The fifth rule in the moral system is 'Do not deprive of pleasure'. Gert (2004:38–9) defines breaches of this rule as preventing people from enjoying or experiencing what they otherwise would have; for example, by taking an ice cream cone away from a person who had prior to that been enjoying eating it. Conversely, if taking away pleasure is not the intention; for example, if the ice cream was taken from a diabetic child by its mother, this, and all other unintentional violations of the moral rules, requires a justification or a legitimate excuse to avoid being classified as immoral (Gert 2004:39). The role of legitimate excuses in the moral system will be considered in this chapter's analysis of the two-step procedure. Chapter Four will demonstrate how the constraint placed on diamond consumers in the monopolised diamond industry deprived them of the capacity to maximise the satisfaction they enjoyed from their purchasing decisions—a violation of this moral rule that will be shown to be classifiable as unjustified.

The Second Group

The second group of moral rules includes 'Do not deceive', 'Keep your promises', 'Do not cheat', 'Obey the law' and 'Do your duty'. Gert argues that the difference between these five rules and those of the first group is that these rules can sometimes be violated without harm being caused to anyone. However, if people were morally permitted to violate moral rules when they thought no-one would be harmed, the result would be a breakdown of the moral system, and an increase in overall harm suffered as people inevitably miscalculated the impact of their violations (Gert 2004:41–2).

'Do not Deceive'

The sixth rule, 'Do not deceive', is classified as a moral rule because the creation of false beliefs increases the likelihood that harm will be suffered (Gert 2004:41). This can be explained by the fact that when people make decisions based on false beliefs, they are not accessing the resources they require to sustain a rational decision-making process, thus potentially negatively affecting the benefit of their eventual action. The moral rule 'Do not deceive' is worded as such to avoid the pitfalls associated with other possible constructions of the rule. For example, changing the rule to 'Do not lie' does not cover the full spectrum of possible acts of deception (Elliott 1991:4–5, Gert 2004:40). Further, constructing the rule as 'Tell the truth' would mean that people would be expected to always furnish all knowledge, no matter what (Gert 2004:40). Thus, 'Do not deceive' properly circumscribes the different possible acts of deception without unduly impinging on personal privacy. To be considered to have violated this moral rule, the intention to deceive is required. Chapter Five of this study will show how Ernest Oppenheimer's creation and dissemination of the 'diamond myth', which promoted falsities regarding the value, rarity and history of diamonds, was an intentional and unjustifiable violation of this moral rule.

'Keep Your Promises'

The moral rule 'Keep your promises' is a positive rule because it is based on the assumption that an agreement of some sort has been made between two parties (Gert 2004:42). Gert argues that outside formal contracts, promises exist whenever another party is told of an intention to act that they can rely upon being realised (Gert 2004:42). The act of intentionally promising something that will not be delivered upon is a violation both of this rule and the rule 'Do not deceive', highlighting that acts may violate more than one of the moral rules. However, people who make a promise with the intention of keeping it, but are then unable to do so, are not guilty of violating the moral rule, provided their violation is justifiable (Gert 2004:43).

'Do not Cheat'

The eighth moral rule within Gert's moral system is 'Do not cheat'. Gert (2004:44) acknowledges that cheating is similar to breaking promises and deceiving, but argues that it deserves its own rule because '…cheating is a distinct kind of behaviour'. In supporting this assertion, Gert (2004:44) argues that cheating is about gaining advantage over those engaged in the same activity as oneself: 'The paradigm of cheating is violating the rules of a game in order to gain some advantage over others participating in that game'. The person who cheats in an exam, for example, is gaining an advantage over his or her fellow students by accessing prohibited resources and is thus not abiding by the rules (Gert 2004:46). In contrast, breaking promises or deceiving does not necessarily have the aim of creating an advantage for the perpetrator of that behaviour. As will be shown in Chapter Four, the extraction of rents can be classified as an unjustified violation of the moral rule 'Do not cheat', based on the oftentimes unfair advantage gained by the (typically organised, privileged) protagonist at the expense of others in 'the game'.

'Obey the Law'

The ninth rule in the moral system is 'Obey the law'. Gert (2004:48) defines a law as follows:

> A law is a rule that is part of a system (the legal system). The existence of that system is known to all moral agents in the society to which it applies, and that system directly or indirectly significantly influences their behaviour. Some of the rules apply to members of that society independently of their wish to be subject to them, and some of them have explicit penalties for violation.

Thus, laws are rules that exist within their own sphere. All moral agents must be aware of the existence of the legal system. Although there is no expectation that moral agents know every law; at a minimum, they should be familiar with those that are relevant to their own behaviours (Gert 2004:48). The majority of laws enable society to function better than would otherwise be possible (Gert 2004:47).[11] Accordingly, harm is lessened if laws are obeyed (Gert 2004:49). In instances in which laws clearly have undue negative impacts on society, violations are acceptable (Gert 2004:47).[12]

Gert makes clear the distinction between the moral sphere and the legal sphere when exploring the moral rule ‘Obey the law’. The distinction between the two spheres is important, as violations of moral rules not covered by corresponding laws are sometimes met with less censure than they deserve. The absence of a formal admonishment within the legal sphere does not necessarily eliminate the presence of an informal admonishment within the moral sphere; one may not be breaking the law, but if a moral rule is unjustifiably being violated, that behaviour is still classified as immoral (Gert 2004:49). Chapter Four of this study will show that the moral–legal distinction is even more critical in the presence of bureaucratic rent seeking, where agency capture can lead to inequitable legal frameworks that accommodate rather than restrict immoral behaviour. Chapter Five will also demonstrate for the first time the intentional violation of this moral rule by Ernest Oppenheimer, and why it would be classified as unjustified by rational, impartial moral agents.

‘Do Your Duty’

The final rule within the moral system is ‘Do your duty’. Gert (2004:50) defines the term duty as an obligation that belongs to people who fulfil specific roles, such as doctors, and those who find themselves in a situation that affords them a duty to act in a certain way; for example, someone who witnesses a car accident. Duties arise from the fact that, where human interactions exist, there is an assumption that people will fulfil certain obligations, irrespective of whether they are employed to do so (Elliott 1991:4–5, Gert 2004:50). Gert (2004:51) argues that the term ‘duty’ is inherently related to moral acts, which prevents the justification of immoral ‘duties’, such as those given to prison guards in the Third Reich’s concentration camps. However, people who fulfil controversial duties are not necessarily guilty of immoral behaviour; the determinant is whether the associated violations can be considered justified.

[11] Laws that are immoral can be justifiably violated. An example would be the law in Saudi Arabia that prohibits women from driving purely because of their gender (see Gert, 2004:47).

[12] Despite the expectation that moral agents should be aware of the laws that relate to them, in instances that moral agents genuinely do not know that they are violating a law, and thus a related moral rule, they are not considered guilty in the *moral sphere*: ‘…no-one is held morally responsible for their actions if they are completely legitimately ignorant that they are violating a moral rule, including the rule prohibiting violating the law’ (Gert, 2004:48). However, ignorance rarely counts as an excuse in the legal sphere.

Rationality, Impartiality, Publicity

The basic components of the theory that underpins the moral systems are the concepts of rationality, impartiality and publicity. The two former components refer to attributes possessed by moral agents, while the latter refers to the environment in which the moral system operates. It is thus essential to explain these three components of the moral system prior to examining the two-step procedure moral agents use to assess moral issues. When examined in-depth, rationality, impartiality and publicity expose the contents of the moral system (Gert quoted in Magnell 1994:542), as the following overview will demonstrate. However, the moral system rather than the accompanying theory will be the focus of this study, as the system is the tool with which the diamond industry will be analysed in this applied study. As Gert (2005:8) argued: 'It is morality or the moral system, not the moral theory, that is applied to the moral problems that arise in business, law, medicine, science, and all other areas of ordinary life'.

Rationality

The definition of rationality within moral systems theory contrasts with the common interpretation within moral philosophy that equates rationality with reasoning (Baier 1958, Rawls 1972). Gert's (2005:29) definition of rationality instead encompasses the actions, decisions and beliefs that would be rational, or irrational, for moral agents to enact or possess. This includes rationally required beliefs, including personal, general and positive general rational beliefs, irrational beliefs and rationally allowed beliefs. To be classified as a moral agent, a person must be rational; that is, he or she must possess the rationally required beliefs and eschew the prohibited irrational beliefs. All moral agents, by definition, are rational (Gert 2005:32).

General rationally required beliefs require the mandatory disbelief in the prohibited irrational beliefs (to be explored shortly). Personal rationally required beliefs are based on people's requirement to recognise their own susceptibility to harm (Gert 1998:36); for example, '"I am mortal"; "I can suffer pain"; "I can be disabled"; "I can be deprived of freedom"; and "I can be deprived of pleasure"' (Gert 2005:37). People must also be aware of the limitations of their own knowledge and be cognisant that they are not infallible (Gert 2005:37). Positive general rationally required beliefs must also be possessed for someone to be classified as rational. They are based on observable, incontestable facts about humankind:

> *People are mortal, they can be killed by other persons and they do not generally want to be killed. One person can inflict pain on or disable another; and people do not generally want to have pain inflicted on them or be disabled. It is possible for some persons to deprive others of their freedom, and people generally do not want to be so deprived. People do not want to be deprived of pleasure, but they can be so deprived by the actions of other persons.* And finally, *people are infallible and have limited knowledge, they know some things, but they do not know everything* (Gert 2005:38 italics original).

Therefore, people must have rational beliefs about themselves and those around them to be classified as a moral agent.

Rationally required beliefs establish the foundation for the universality of the moral system because they validate the reasons behind its applicability to all moral agents. As Gert (2005:38) explains: 'Morality can be strongly justified—that is, it can be shown that all rational persons would favour adopting morality as the guide to conduct to be followed by everyone—only when rational persons use only rationally required beliefs'. Importantly, as moral agents possess the intelligence and knowledge that enables them to be classified as such, the rationally required and rationally prohibited beliefs can be comprehended fully by those to whom they apply (Gert 2005:39).

Prohibited irrational beliefs within the moral system include those beliefs that bestow Oracle-like abilities upon people (for example, being able to predict the future), and beliefs that reside within the field of thought typically termed scepticism, which question basic, well-known facts like the existence of humans on the other side of the world. Further, it is an irrational belief to consider any human being infallible (Gert 2005:36–7). Gert's (2005:35) formal definition of irrational beliefs is as follows:

> *A belief is irrational if and only if (1) it conflicts, either empirically or logically, with a great number of beliefs that the person knows to be true, and (2) almost all people with similar relevant beliefs, intelligence, and knowledge would not only hold the beliefs to be false but would regard the conflict between it and the beliefs of the other person as obvious* (italics original).

The final group of beliefs comprise those that rational people are rationally allowed to possess. This includes beliefs that are not required, nor disallowed, but can be held at the whim of the individual. Rationally allowed beliefs can include beliefs that are scientific or religious in nature (Gert 2005:38).

Gert (2005:47) also includes a list of five irrational desires, which cannot be acted upon by a moral agent without an adequate reason. They include the desire to die; the desire for pain and other unpleasant feelings; the desire to be disabled; the desire for a loss of freedom to act or from being acted upon; and the desire for loss of pleasure. According to Gert (2005:30), for an action to be considered 'irrational', no moral agent would advocate either their personal execution of the action, or its execution by anyone they care about. Gert (2005:30–1) summarises the objective irrationality test as follows:

> *A person correctly appraises an action as irrational when she correctly believes (1) it will cause, or significantly increase the probability of, the agent's suffering (avoidable) death, pain disability, loss of freedom or loss of pleasure, and (2) there is no objectively adequate reason for the action.* An *objectively adequate reason* is an objective reason, that is, a fact that can make the particular otherwise objectively irrational action rational (italics original).

All adequate reasons, whether personal reasons influenced by beliefs, or objective reasons influenced by fact, must possess a justifying force that is sufficient to make an irrational act rational (Gert 2005:56–7). Therefore, irrational actions are those that cause harm, or increase the likelihood of harm being experienced, without an adequate reason. A person must be rational to determine the objective rationality or irrationality of an action.

Impartiality

To understand what moral impartiality demands within the moral system is to understand to whom a moral agent must be impartial, and what it is they must be impartial about (Gert 2005:131). A moral agent must be impartial in their personal acquiescence towards the moral rules, and towards (at least) all other moral agents in obeying the moral rules: *'A is impartial in respect R with regard to group G if and only if A's actions in respect R are not influenced by which member(s) of group G benefit or are harmed by these actions'* (Gert 2005:132 italics original). In addition, impartiality demands that moral agents exhibit impartiality when publicly allowing or disallowing the violation of a moral rule within the two-step procedure. As impartiality extends to all moral agents, a moral agent's analysis of a moral rule violation necessarily considers the impact on all moral agents. This prevents partiality or bias being employed in the analysis of the harms or benefits caused by a rule violation.

Moral agents may hold differing beliefs regarding the people who are included in what Gert (2005:142) terms the ‘minimal group’. In the case of infants, children, embryos and fetuses, there are often differing opinions about what rights they possess. However, Gert (2005:143) argues that in advanced societies that live beyond a subsistence level, rational moral agents would wish infants and children to be included in the minimal group.[13] Impartiality also includes people who are not moral agents, such as those who are not in control of their actions due to a severe mental illness. Gert (2005:139) argues that this inclusion is rational, as moral agents would want to be protected from moral rule violations should they, for whatever reason, no longer fall into the category of a moral agent. The minimum group also includes future moral agents; that is, those who will be moral agents in the future and may thus be affected by a present violation, such as someone creating a bomb that will explode in 200 years (Gert 2005:141).

The requirement for individuals to be impartial in the moral sphere is most widely known in the works of Kant and Rawls. Kant (1991:51) developed the ‘categorical imperative’ to foster universal impartiality; the aim of which was to ensure impartiality by demanding that people only ‘[a]ct upon a maxim that can also hold as universal law’. Kant (1991:51) contended that the reversibility of the categorical imperative enables one to test whether the action one contemplates does actually lend itself to universal application, or ‘…the giving of universal law’. The categorical imperative, *prima facie*, does create impartiality, as forcing people to consider their own exposure to potential negative, amoral actions could potentially induce them into taking an impartial position, partly as an act of self-preservation. However, Gert (2004:149) argues that the categorical imperative also creates unanimity—an unwanted and unnecessary outcome of some interpretations of impartiality.

Rawls’ (1972:190) explanation of impartiality is based on how one would operate in what he terms the ‘original position’, which is a position of fairness:

> An impartial judgement, we can say, is one rendered in accordance with the principles which would be chosen in the original position. An impartial person is

[13] Although this point is not relevant to the goals of this thesis, it can be argued that all societies would wish infants and children to be included in the minimal group. The mother of a child in an impoverished subsistence community would no doubt feel at least the same level of moral outrage if someone killed her child as she would if someone killed her adult husband. This criticism of Gert is worthy of further development in a separate piece of research.

> one whose situation and character enables him to judge in accordance with these principles without bias or prejudice.

This absence of bias or prejudice is achieved through a blacking out of potentially corrupting information with what Rawls calls a 'veil of ignorance'. The veil of ignorance eliminates individuals' knowledge of which behaviours would be carried out in their best interests, but not necessarily in the best interests of society (Rawls 1972:136–7).

The veil of ignorance is designed to remove individuals' knowledge of their own situation, thus preventing them from manipulating events to benefit themselves. This requires the eradication of all personal knowledge that could pollute the decision related to a final action; for example, knowledge of personal social class, one's own wealth or the specifics of the society in which one lives (Rawls 1972:137). However, individuals are expected to possess general knowledge of the world in which they live; for example, '...general facts about human society' (Rawls 1972:137) and '...political affairs and the principles of economic theory; they know the basis of social organisation and the laws of human psychology' (Rawls 1972:137). In this situation, a person is operating from a position of general knowledge, but not personal knowledge. Rawls argues that this position is the only one in which impartiality can be obtained.

Rawls' veil of ignorance highlights the importance of impartiality for arriving at ethical decisions that have not been influenced by competing interests. Nonetheless, it is clear that the elimination of the individual's personal knowledge in turn creates a clone-like ideal of the human state. As Rawls (1972:141) states: 'We want to define the original position so that we get a desired solution'. Rawls' argument can thus be taken to mean that the only way to come to an acceptable solution to a problem is to create a uniform location from which it originates, and thus a uniform conclusion. As Gert (2004:120) argues, this uniformity in turn eliminates any potential basis for moral disagreement, thus making the veil of ignorance something of a self-fulfilling prophecy: if there is no point of differentiation from which varied moral arguments can emerge, then there can be no varied and thus competing moral arguments. The resultant unnecessary uniformity is similar to that emerging from Kant's categorical imperative. Moral theorists, like Kant and Rawls, have largely failed in their attempts to explain impartiality because they have not recognised that impartiality must extend only to the moral rules and other moral agents (Gert 2005:148).

Publicity

The presence of impartiality within the moral system is highlighted by the role played by publicity. Transparency begets morality and opacity sponsors the reverse. Violations of the moral rules must be publicly allowed to be classified as justified (Gert 2005:153). Publicity provides a mechanism via which moral agents' impartiality in relation to the moral rules and other moral agents can be determined. Gert's (2005:11) definition of the public system is as follows: '(1) everyone who is subject to moral judgement must know what morality prohibits, requires, discourages, encourages and allows, and (2) it is not irrational for any of them to use morality as a guide for their own conduct'. Morality is a *public* system because it applies to all rational persons, and, as aforementioned, all rational persons know what morality is and what it expects of them (Gert 2004:3). The moral system's public status also means that moral agents cannot elect to operate 'outside' of the moral system; their actions will be judged based on its contents, irrespective of their personal dedication to the moral system (Gert 2005:12).

Rawls' (1972:177) definition of publicity includes an important element that Gert appears to have overlooked—that publicity offers a way for people to recognise when their interests are being met, thus inspiring 'allegiance to the system': 'Since everyone's good is affirmed, all acquire inclinations to uphold the scheme'. Thus, according to Rawls (1972:582), publicity is essential for enabling people to agree comfortably with what is occurring, or what is being proposed: 'For publicity allows that all can justify their conduct to everyone else (when their conduct is justifiable) without self-defeating or other disturbing consequences…'. However, Gert (2004:vi) does recognise the rationality that stems from acting morally, stating: 'It is never irrational to act morally', which suggests that social reciprocity is inherent to the system.

The components of rationality, impartiality and publicity provide the theoretical underpinnings of the moral system. The rationality possessed by moral agents ensures their understanding of human limitations and what they wish to avoid, such as death, pain, disability and deprivations of freedom or pleasure, unless an adequate reason can be found for suffering those ills. That moral agents would not wish to experience these harms, nor wish them upon people for whom they care, renders their adoption of the moral rules that prevent such harms, except when justified, logical (Gert 2004:12). The impartiality within the moral system, which requires impartiality towards (at least) all moral agents and the moral rules that govern society, ensures consistency within the moral system. By preventing actors from exhibiting partiality towards only a specific section of society, violations are only truly justified if publicly allowed. All rational agents thus advocate impartiality within the moral system. The publicity of the moral system arises from its application to all persons who know what morality expects of them and who can guide their actions by it; in other words, all rational actors, who are, in turn, moral agents.

The Moral Attitude and the Two-Step Procedure

Step One

As previously mentioned, moral agents possess the following moral attitude to the moral rules and their violation:

> Everyone is always to obey the rule 'Do not...,' except when a fully informed, impartial rational person can publicly allow violating it. Anyone who violates the rule when a fully informed, impartial rational person cannot publicly allow such a violation may be punished (Gert 2005:222–3).

The two-step procedure illuminates the morally relevant features of a violation in a way that can enable moral agents to become 'fully informed' about the issue under consideration. The first step in the two-step procedure contains the following 10 questions:

1. 'Which moral rule is being violated?'
2. 'Which evils or harms (including their kind, severity, probability, the length of time they will be suffered, and their distribution) are being (a) caused by the violation, (b) avoided (not caused) by the violation, or (c) prevented by the violation?'
3. 'What are the desires and beliefs of the person toward whom the rule is being violated?'
4. 'Is the relationship between the person violating the rule and the persons toward whom the rule is being violated such that the former sometimes has a duty to violate moral rules with regard to the latter independent of their consent?'
5. 'What goods or benefits (including kind, degree, probability, duration, and distribution) are being promoted by the violation?'
6. 'Is the rule being violated toward a person in order to prevent her from violating a moral rule when her violation would be (a) unjustified or (b) weakly justified?'

7. ‘Is the rule being violated toward a person because he has violated a moral rule (a) unjustifiably or (b) with weak justification?’
8. ‘Are there any alternative actions or policies that would be morally preferable?’
9. ‘Is the violation being done intentionally, or only knowingly?’[14]
10. ‘Is the situation an emergency such that people are not likely to plan to be in that kind of situation?’ (Gert 2004:59–72).

Question one uncovers the specific moral rule, or rules, being violated by the act in question. Violations of certain moral rules are more serious than others, and thus judging them ‘justified’ requires more forceful reasons (Gert 2005:226). Further, in relation to a certain act, violating one moral rule may be justified, but violating a different moral rule may be unjustified.[15] Question two considers everyone who is affected by a violation, whether negatively or positively, and includes the duration for which they are affected, and the distribution of that harm or benefit. Foreseen and foreseeable outcomes of a violation are the most important considerations in analysing this characteristic, while intended consequences and actual consequences are less significant (Gert 2005:227–8). Gert defines ‘foreseeable’ based on the characteristics of moral agents: ‘Foreseeable consequences are determined by the knowledge and intelligence of the agent; they are what he can be expected to foresee. What a significant number of people with similar knowledge and intelligence would foresee in a situation is foreseeable’ (Gert 2005:228). For example, any moral agent would foresee the result of forcefully eliminating competition from an industry to extract rents to be to deprive competitors of the freedom to remain within that industry, or determine their own time of exit. This concept will be explored in-depth in the moral analyses within Chapters Four through Seven.

Question three concerns the relevant desires and beliefs of the ‘victim’ of the violation. In relation to desires, a ‘victim’ may either rationally desire the violation to occur or not to occur. He or she may also possess irrational desires for the violation to take place, such as someone desiring suicide because his or her fiancé died. Further, he or she may have no relevant desires in relation to the violation, such as in the case of someone with a severe mental illness (Gert

[14] This distinction is subtle but significant. It will be fully explained by a later example; however, for now, an intentional violation refers to an act by an agent that desires to bring about an adverse consequence, whereas a knowing violation is an act by an agent that does not desire to bring about the adverse consequence.
[15] For example, one may justifiably cause pain to a person whose wound they are tending. However, if they do a poor job and disable the person, this violation would likely be considered unjustified.

2005:229). For example, if a patient rationally desires to experience pain to be cured of cancer, his or her rational acquiescence would be important to a fully informed analysis of the violation of the moral rule ‘Do not cause pain’ by the patient’s doctor. In relation to beliefs, the beliefs possessed by a ‘victim’ regarding the impact of the violation may be rational and well-evidenced; rational and based on adequate evidence; absent (that is, where no beliefs are held about the impact of the violation); or irrational (Gert 2005:229). For example, a moral agent may irrationally believe that a life-saving operation is a waste of time due to refusing to believe a doctor’s statements about the effectiveness of the procedure. Such information would inform the judgement of the violation of the moral rule ‘Do not deprive of freedom’ caused by the doctor if he or she were to perform the surgery without the patient’s consent (see Gert 2005:229).

Question four enables the recognition of relationships that may rightfully possess a power imbalance, such as those between parents and their children, and a government and its people (Gert 2005:230). However, Question five is only a morally relevant feature if it is answered in the affirmative; that is, if the ‘victim’ of the violation has given rationally informed consent (Gert 2005:230). This prevents violations that result in the receipt of unjustifiable benefits, such as the money a robber receives after committing a bank heist, from muddying ethical analyses.

Question six illuminates the morally relevant features that relate to violations carried out to prevent unjustified or weakly justified violations of the moral rules (Gert 2005:231). For example, a moral agent who shoots dead a terrorist to prevent him or her from activating the bomb he or she planted in a busy marketplace is violating the moral rule ‘Do not kill’. However, this action prevents the unjustifiable violation of moral rules by the terrorist, justifying the moral agent’s own violation. Similarly, Question seven uncovers morally relevant features that may be used to justify moral rules that are violated to carry out punishments arising from unjustified or weakly justified violations of the moral rules (Gert 2005:232), such as the imprisonment of a convicted serial killer. Question eight considers potential alternatives in relation to a moral rule violation. Gert argues that rational, impartial moral agents would find knowledge of morally preferable alternatives morally relevant (Gert 2005:232); thus, they must be considered in any analysis of a violation. For example, instead of a Chairperson of a firm seeking rents by fostering collective action in his or her industry, he or she could simply seek competitive profits—arguably always classifiable as the more morally acceptable outcome (as will be explored in-depth in the moral analysis portion of Chapter Four).

Question nine highlights the moral relevance of violations that are performed either knowingly or intentionally. The distinction is subtle but clear. Chapter Seven will briefly explore this concept in relation to De Beers' trade relationships with rebel fighters in the war-torn diamond-producing African nation-state of Angola in the mid- to late 1990s. De Beers' leaders *knew* that by buying diamonds from the rebels they were helping to fund a bloody and protracted civil war; however, it was not their *intention* for the money they paid the rebels to be spent in that manner. However, it is unlikely that rational, impartial moral agents would consider the distinction relevant to the ultimate justifiability of the associated moral rules. Question ten accounts for emergency situations that may result in violations being viewed differently than in non-emergency situations. For example, in non-emergency scenarios, doctors would not be allowed to refuse to treat gravely injured people. However, in an emergency, like after a bomb blast, it is likely that this violation of the moral rule 'Do your duty' would be considered justified (Gert 2005:234).

Gert (1999:17) does not claim that the questions within step one of the two-step procedure necessarily cover all morally relevant features of any given violation. Other moral features may be relevant to specific violations, and thus should be included in the first step of the analysis. However, as will be shown, Gert's list of 10 morally relevant features wholly satisfies the examination of violations that forms the bulk of this study. Moreover, because the above list is not a 'checklist', those questions irrelevant to the violation do not need to be answered (Gert 1999:20). Thus, as Questions six, seven and ten are not relevant to the moral rule violations in the following chapters, these questions will be excluded from the associated examination.

Step Two

In the second step of the two-step procedure, moral agents must determine whether a moral rule violation can be considered justified. The following 'morally decisive question' (Gert 1998:236) must be asked: What would a moral agent 'estimate the consequences to be of everyone knowing that a kind of violation is allowed and that it is not allowed?' (Gert

2004:74). A violation is deemed unjustified if no rational, impartial moral agent would desire the *consequences* of that kind of (hypothetical) contrary-to-fact violation to be publicly permitted. In other words, 'If no impartial rational person would prefer the consequences of this kind of violation being publicly allowed to the consequences of it not being publicly allowed, it is *unjustified*' (Gert 1998:237). For example, if a moral agent experiencing financial hardship violated the moral rule 'Obey the law' by stealing a loaf of bread, the consequences of impartial, rational moral agents publicly allowing this kind of violation could (hypothetically) result in anyone who considered themselves poor violating laws by stealing food whenever they wanted. Impartial, rational moral agents would not desire consequences of violation such as this being publicly allowed, and would thus deem the original violation unjustified. The extended historical period covered by the applied section of this study—the diamond industry's development over more than a century—makes an explicit acknowledgement of the abstract nature of the second step in the analysis particularly important.

Although the two-step procedure in the moral system cannot definitively determine the 'correct' answer to all moral issues, it helps to define the limitations that apply to what can be considered genuine moral debates (Gert 1998:238–9). When a violation of a moral rule is justified, this means that in that instance the otherwise immoral action is acceptable: 'To justify a violation of a rule is to advocate that the rule be violated, that is to claim that there is an adequate reason for violating it…' (Gert 2004:43). In contrast, people can be excused for violations of moral rules provided their excuse is acceptable. This does not mean that their act is justified; rather, '…to excuse a violation is only to advocate that the person not be blamed for the violation' (Gert 2004:43). For example, if a schoolchild accidentally cheats in a mathematics test due to never having been informed that the use of calculators was forbidden, he or she has an excuse for cheating, but the cheating itself is not justified.

Conclusion

This chapter has outlined and assessed the third arrow of the tripartite theoretical framework that will be employed in this applied study of the modern diamond industry: Gert's moral systems theory. Chapter Two demonstrated that the first and second arrows of this study's theoretical framework, the theory of rent seeking and the logic of collective action, cannot be used to conduct a moral analysis of the goals and actions of the leaders of the diamond industry, thus demanding the inclusion of an explicit moral theory. The moral systems theory incorporates three key components: 10 moral rules, three theoretical foundations and a two-step procedure for applying the system to moral questions. This model has repeatedly been proven as a practical and robust framework for the consideration of moral rule breaches across a number of diverse fields of enquiry, including business, health, the media, information technology and intellectual property. This record of success makes the moral system an appropriate framework for application, in the following chapters, to the study's first question regarding the moral dimensions of the goals and business practices pursued and utilised by successive Chairmen of De Beers. It will also enable the answering of the study's second question: Were the systematic *prima facie* moral rule infractions by the leaders of the diamond industry throughout its history justified, or should they be classed as unjustified and thus deserving of moral condemnation?

Chapter 4: The Diamond Industry from 1869 to 1902: Cecil Rhodes and the Establishment of the De Beers Monopoly

'The price of diamonds and other precious stones may, perhaps, be still nearer to the lowest price at which it is possible to bring them to market, than even the price of gold' Adam Smith, Wealth of Nations (2005:181).

Introduction

This study examines the modern diamond industry, from the year 1869 to today. This chapter employs the three-arrow theoretical framework to explore the major developments that occurred in the first 33 years of this timeline, from the birth of the modern industry in the Cape Colony in 1869 to the death of the founder of De Beers, Cecil Rhodes, in 1902. This period witnessed enormous change within the diamond industry. Prior to 1869, the supply side of the global diamond industry consisted of an erratic trickle of alluvial stones emanating principally from Brazil and India (see Lenzen 1970:Chapters IV,V and VI). This limited supply generated no real demand for systematic institutional efforts to control and direct the industry, or for investment in new production techniques. Minor diamond discoveries were made in South Africa in 1867; however, it was the discovery of large-scale, concentrated deposits from 1869 to 1871 that changed the industry forever. This initial period was pre-industrial; the low-tech tools favoured within the alluvial mines of India and Brazil remained ubiquitous. However, the uniform reliance on malapropos technology was short-lived. From 1873, a proto-industrial era emerged, in which competing visions of the industry's future fought for control.

These struggles, and their conclusions, can be best understood through the combined lens of the logic of collective action (Olson 1971) and the theory of rent seeking (Tullock 1967). This chapter will show that, within each stage of the early development of the production sphere, there were always two opposing positions: first 'diggers' versus capitalists, then oligopoly (intermediate group) versus monopoly. Each struggle represented an intermediate goal: victory for one party over the other. Which position would eventually dominate was dependent on both the climate of the time, and the structures that existed. Specifically, the legal and industrial conditions pertaining at any time determined the environment for collective action, and thus the likelihood that collective goods could be achieved. The legal conditions were the legislated policies within the Cape, while the industrial conditions were the industry structures, and the characteristics of the 'group' of producers, specifically.

This chapter will illustrate that Cecil Rhodes, the founder of De Beers, was both a capitalist and a monopolist. As the mining landscape changed and the diggers were forced off the diamond fields, Rhodes overcame the intermediate group characteristics of diamond production within the Cape to create the ultimate privileged group: a production monopoly. Rhodes' subsequent establishment of a cartel agreement between De Beers and the diamond-marketing sphere afforded him both upstream and downstream market control, which he used to restrict diamond supplies and concurrently raise diamond prices (Worger 1987:253–5). It will be argued that Rhodes achieved his two 'intermediate goals' of monopoly and cartel to realise his 'ultimate goal': the extraction of 'perpetual rents'.

The third arrow of the framework, Gert's moral system, will be employed to determine the ethicality of Rhodes' intermediate and ultimate goals, and the methods by which he achieved them. This will inform the content of Rhodes' moral template. This knowledge is important to the goals of this thesis for two reasons. Firstly, it illuminates the nature and origins of the diamond industry's moral status, facilitating understanding of how and why the diamond industry obtained its poor reputation, and allowing for appropriate calibration of the later changes occurring within De Beers against its original moral position. Secondly, the demonstrated success of Rhodes' attainment of near-absolute market control in procuring rents signalled to future leaders of De Beers that attaining such advantages in perpetuity was possible. As will be illustrated in Chapters Five, Six and Seven of this study, Rhodes' intermediate and ultimate goals were successfully adopted, and adapted, by his key successors at De Beers into the twenty-first century. These successive reproductions ensured the perpetuation of not only the market distortions that were conducive to perpetual rent extraction, but also of the moral rule violations that Rhodes had shown were essential to the realisation of his intermediate and ultimate goals. Therefore, Rhodes' moral template had an enormous moral influence over his successors, and thus over the ethical evolution of the diamond industry.

This chapter will commence with an overview of the fledgling modern diamond industry that emerged in 1869, following with an examination of how changes in the mining environment challenged the diggers' dominance. The development of the production sphere's intermediate group status will then be explored. The role Rhodes played in further concentrating the industry to enable monopolisation will be subsequently examined, prior to an investigation of Rhodes' creation of the diamond industry's first cartel agreement. Rhodes' efforts to ensure De Beers' market power remained absolute will then be assessed. The moral analysis portion of this chapter will commence with an examination of the moral dimensions of general monopoly and cartel industry structures, and the extraction of rents. Following this, the moral status of Rhodes' intermediate and ultimate goals, and the lengths he went to achieve them, will be established. This chapter will conclude by using the findings of this chapter to address apologist positions that seek to defend Rhodes' anticompetitive conduct in the diamond industry.

Satisfying Rhode's First Intermediate Goal: Monopoly

The Early Years of the Modern Diamond Industry

The formation of the modern diamond industry had characteristics readily recognisable in other extractive sectors where precious output offered windfall gains to the lucky and swift: new deposits were discovered, miners 'rushed' to stake their claims and the concept of 'survival of the fittest' permeated the disorderly melee that ensued.[16] As the initial modest discoveries of diamonds in modern-day South Africa in 1867 gave way to serious finds in 1869, the mining of the originally black-controlled alluvial river diggings was expropriated by an influx of approximately 5800 whites (Turrell 1987:1) of predominately Boer and European extraction. By the time the vast dry diggings of Bultfontein, Dutoitspan, De Beers and Kimberley, the four major administratively recognised mining sites in Griqualand West, had been fully unearthed in 1872, an estimated 28–50,000 white diggers were working in the diamond fields (Turrell 1981:198).[17] This large, and thus latent (in the Olsonian sense), group

[16] The term 'rush' describes the race to the deposits that occurred after a new discovery. This 'rush' is linked to the 'casino mentality' that often surrounds mineral deposits.
[17] The four mining sites resided within the town of Kimberley.

of diggers, supported by the 50–80,000 African labourers[18] who entered the Cape annually (Turrell 1987:19), operated independently; in other words, they did not cooperate on a meaningful scale to mine the claims (see Lenzen 1970:148–9).[19]

The 'diggers' were a distinct group of miners. Predominately, they were white men with blue-collar skill sets, and were generally financially insecure. Many of them possessed a casino mentality in relation to mining, and dreamed of 'striking it rich' (Beet 1931:xvii), whether in the gold or diamond fields. A minority group of wealthy miners existed alongside the diggers. Generally, these were educated wealthy white men from the upper classes in Europe, who saw diamond mining as a potential long-term investment. The abundance of diggers was a result of the virtual absence of barriers to entry in the initial rush period. The extremely basic extraction methods used at that time meant that anyone in the possession of simple tools and the physical capacity to use them could become a diamond miner (see Algar 1872:47–8). Further, the 'rushes' that inevitably followed the rich discoveries of diamonds in Bultfontein, Dutoitspan, De Beers and Kimberley meant that no single entity had either the time or the capacity to stem the sheer volume of people entering the region. Similarly, it was not possible to prevent the 'staking rushes'[20] that ensured the competitive and highly fragmented division of the deposits:

> the proprietors of the farms on which the diamonds were being found were utterly helpless to prevent the appropriation of their property. The diggers 'rushed' the farms and dug out their mines, dictating such terms as they pleased to the actual owners of the soil (Morton 1877:73).

As the river diggings were gradually abandoned from late 1869 to 1871, the 55 diamondiferous acres of the four mining zones in Griqualand West were divided into approximately 4000 claims (Worger 1982:10). The diggers, despite their *prima facie* latent group status, successfully engaged in collective action. The Diggers' Committees, which were established at the outset of the rush in 1869 and represented the interests of the diggers, dictated that a maximum of two claims could be held by each individual (digger or miner), or up to three by the initial discoverer (Lenzen 1970:145). This controlled ownership of the claims was accurately characterised by Gardner F. Williams (1902:268), a future Manager of

[18] The vast majority of the native black workers in the diamond mines were employed as labourers by white diggers. Note that the diamond fields were either under British or Cape Colony law and thus slavery was illegal; if they had been in Afrikaaner territory, that would not have been the case.
[19] Claims were 31 feet square sections of diamondiferous earth. They were regularly subdivided into halves, quarters, and eighths.
[20] A 'staking rush' was the race to stake individual claims.

De Beers Diamond Mining Company (De Beers DMC), as the 'equalising of opportunity' for the diggers; namely, the opportunity, but not the certainty, 'of obtaining sudden wealth' (Beet 1931:xvii). This controlled, atomised ownership was the reason that the diggers mobilised in the Diggers' Committees, and is thus classifiable as the diggers' collective good.

The successful collectivisation of the latent diggers was despite their group's possession of the characteristics that typically impede collective action, such as inadequate incentives to compel cooperation, predicted suboptimal shares of the collective good and high administrative costs (Olson 1971:48). The diggers' mobilisation, against the odds, was in large part due to the relatively unique nature of their collective good (for a market entity). Collectivising to protect claim access was not dependent on uniform self-sacrifice, like limiting output to increase diamond prices would have been. This can be extrapolated from the fact that the highly competitive staking of the 4000 claims would have ensured that few of the tens of thousands of diggers possessed more than the mandated maximum number of claims from the outset. Limiting claim ownership was therefore primarily a mere protection of the status quo, and thus required little negotiation, or sacrifice, to initiate. The visibility of ownership also demanded little administrative oversight to ensure digger compliance. Thus, the key factors that often hamper or derail collective action; for example, negotiation, secrecy and administration requirements (Olson 1971:47–8), were eliminated.

It is extremely unlikely that the diggers would have successfully collectivised if higher diamond prices were their collective good. The latency of the production sphere meant that, as Olson (1971:9) predicts, self-interest prevailed within the mines; no evidence suggests that the diggers did anything other than attempt to maximise their incomes by selling whatever diamonds they found. The size of the group meant that the marginal costs of an individual digger reducing his output in an attempt to influence diamond prices would not have been exceeded by the marginal gains he stood to make from such a sacrifice (Olson 1971:48). Collectivising to protect their access to the mines was thus the most attractive and achievable way for diggers to attempt to safeguard their incomes, whether high or low.

Upon commencing work at the dry diggings, miners assumed that Bultfontein, Dutoitspan, De Beers and Kimberley consisted of the same alluvial placers as the river diggings. Consequently, low-tech mining methods continued to be favoured for extraction of diamonds from the superficial yellow rock. The archetypal 'poor white digger' was thus reliant on simple tools such as sieves, shovels and buckets (see Beet 1931:Part Two Chapter II, Doughty 1963:Chapter 3), equipment that had barely evolved beyond that used in artisanal production in India and Brazil (Williams 1902:148).

In 1871, Sir Henry Barkly, the High Commissioner and Governor of the Cape Colony, oversaw the British annexation of Griqualand West.[21] The new government passed into law the Diggers' Committees' regulations regarding claim size and maximum ownership (Lenzen 1970:146), thus providing the diggers with legal protection for their collective good. The diggers' combination of technological underdevelopment and agency capture would affect the development of the production sphere for several years. Agency capture, also known as regulatory capture, is a term used to describe the hijacking of a regulatory body by a group whose interests it then promotes, to the detriment of society (see Stigler 1971).

Cecil Rhodes, who was an anomaly as a wealthy claimholder, and was thus not a member of the Diggers' Committees, frequently spoke of the inevitable death of the traditional digger as the mining process evolved (Rotberg 1988:67). Rhodes arrived on the diamond fields in 1871, and was initially somewhat of a reluctant miner, working the claims of his brother, Herbert (Williams 1902:273–4). Nonetheless, Rhodes' success in the diamond fields was virtually immediate: by 1872, he was overseeing the production of £5000 worth of claims, and was earning an average £100 a week (Baxter 1974:97). He purchased his first De Beers claim in 1873.[22] Despite the fledgling status of the industry and his relative inexperience in mining, Rhodes quickly came to believe that amalgamation was the only way forward for the diamond industry. He wanted to centralise control under a single entity, as he considered the competition within the production sphere to be injurious to the viability of the industry (Williams 1902:276).

This belief was held by Rhodes despite the reality that rough diamond prices had remained steady in the early years of diamond production even with the greatly increased supply, as will be examined shortly. This suggests that Rhodes' problem with competition on the diamond fields had less to do with the effect on diamond prices and thus sufficient incomes, and more to do with the resultant inability to realise *inflated* profits. However, Rhodes was unable to commence his plan to amalgamate the production sphere until two things had changed in the

[21] The Cape Colony was not awarded control of the region by Britain until 1880.
[22] Rhodes' initial purchase was one-quarter of a claim.

industry: the annulment of the legislative protection enjoyed by the diggers, and the loss of the group of capitalist producers' latent characteristics. Although Rhodes did not want to establish a cartel of producers, his desired monopolisation of the production sphere would have been nonetheless hampered by its latent characteristics. The sheer number of diggers would have made negotiations to create a monopoly near to impossible, and the associated administrative costs would have been exorbitant. Therefore, although Rhodes would later come to wield enormous power in the diamond-production sphere, he was no more powerful than any other wealthy claimholder during the sector's early development.

Kimberlite Pipes and the Diggers' Downfall

The discovery in 1872 that Griqualand West's 'dry diggings' were actually rich kimberlite pipes was the first sign that the diggers could not maintain their hold on the production sphere *ad infinitum*. The blue ground of the pipes was deeper, harder and needed more post-extraction treatment to release the diamonds from the rock (see Lenzen 1970:152). Claims began to reach previously unforeseen depths, and necessitated an injection of capital to fund the technology suddenly required. As McKay (1998:31) explains: 'The blue deposits changed the nature of diamond mining from labour-intensive small-scale endeavour to one that required large entry investments in scale and capital goods'. The mining of the newly discovered kimberlite pipes could only be efficiently practiced with the adoption of new technology. However, the state refused to modify the claim limitation legislation to reflect these changes (Worger 1982:19). Thus, the fragmented nature of the production sphere continued to be legally protected.

The wealthy claimholders, such as Rhodes, did begin to adapt to the blue ground and slowly accrued some, if not all, of the required technology. The year 1873 marked the commencement of the proto-industrial era within Griqualand West, defined by the spasmodic uptake of comparatively advanced technologies by wealthy claimholders, such as aerial tramways, dynamite and, occasionally, steam-powered machinery (see Williams 1902:Chapter VIII). However, many wealthy claimholders were prevented from expanding claim ownership to the degree that would enable greater technological adaptation (Turrell 1987:35). While the capitalists wished to establish a nascent sector that was attractive to capital investment; the diggers advocated the protection of the sector's atomised (latent) status. The minimal assets and technologies held by these small-scale miners,[23] and the often-unpredictable nature of the output produced, were not attractive to investors in the way that concentrated ownership would have been. Technological development was thus severely constrained in the mines (Newbury 1989:29).

During 1873, the continued separation of individual claims began to cause structural problems within the mines. Having reached a depth of up to 160 feet in the most populous Kimberley mine, the claims became prone to reef collapses and flooding, affecting productivity (see Lenzen 1970:148–9, Turrell 1981:205).[24] The kimberlite deposits were consequently underworked, and the capital-to-labour ratio across the entire system was low. The continued dominance of the diggers' uneconomical, labour-intensive techniques ensured that, despite the commencement of the proto-industrial era, labour productivity within the mines did not increase (Turrell 1987:9).

Despite the sector's apparently low and near static level of labour productivity, South Africa's diamond exports grew spectacularly (see Table 4.1).

Table 4.1: The rapid increase in diamond exports between 1869 and 1873

Year	Total carats exported (units)
1869	16,542
1870	102,500
1871	269,000
1872	1,080,000
1873	1,100,000

(Turrell 1987:10 Table 1).[25]

During the five-year period from 1869 to 1873, diamond prices remained relatively steady at just above £1 per carat, or roughly sh 30 (Lenzen 1970:141). Lenzen (1970:143) attributes this steady price to the improved productive capacity of the diamond-manufacturing centres and the long-wave economic boom occurring at the time, during which 'the market for diamonds expanded appreciably'. Consumers were thus numerous and wealthy enough to absorb this

[23] After 1872, some diggers joined forces with their neighbours, but they were still very small operators and thus this did little to change the latent status of the group.
[24] 'Reefs' were the walls of the claims, and the walls of the perimeter of the mine. Reef collapses would typically affect the claims around the perimeter, while flooding would affect claims in the centre of the mine.
[25] This unparalleled growth can be largely accounted for by the discovery of the rich kimberlite pipes.

increased diamond supply. However, the economic downturn of 1873 caused diamond prices to crash, from an average sh 30 per carat to sh 20 per carat by 1874 (Turrell 1987:10). Falling profits exacerbated the financial insecurity of the diggers and forced many of them off the fields completely (Meredith 2007:37). The majority of the traditional diggers who stayed in the town of Kimberley gradually lost their claims, and begrudgingly fell into share worker or waged labour agreements (see Turrell 1987:49–52), often working for wealthy claimholders like Rhodes.[26]

By 1874, the government began to acknowledge some of the impracticalities associated with digger dominance of the mines. The new Lieutenant Governor of Griqualand West, Richard Southey (1873–75) changed the law to increase to 10 the number of claims an individual or company could possess. In addition, the Diggers' Committees were replaced with less-influential Mining Boards, and the instatement of a Mining Ordinance took control of the mines out of the diggers' hands.[27] The diggers' formal influence in the Cape was being gradually eroded. Rhodes further escalated his acquisition of claims in the De Beers mine in response to these legislative changes (Rotberg 1988:68), and took steps to amalgamate his claims with fellow producers Charles Rudd and Robert Graham.[28]

The diggers did not quietly acquiesce to the steady degradation of their agency capture. In March 1875, the diggers established the Diggers Protection Association (DPA), which consisted of 800 armed male diggers, spread across seven 'companies'. Initially the DPA was little more than an agitated mob; however, the prosecution of a DPA member for an illegal gun sale to prominent shareholder digger and DPA founder Alfred Aylward escalated the unrest (Turrell 1987:43). The 'Black Flag Rebellion' was initiated on 12 April 1875, and saw the rampaging diggers destabilise the Cape, both socially and economically. At Southey's request, British troops disbanded the diggers a mere 10 weeks after the Rebellion started. The five trials that resulted saw no guilty verdicts, and the once-mobilised white diggers quickly dissipated.

[26] Share workers were diggers that worked a claim only in an agreement with the claimholder; they were not the claimholder themselves. They paid a pre-determined percentage of their earnings to the claimholder.
[27] Control of the mines was awarded to a state-appointed surveyor.
[28] Graham combined his claims with those of Rhodes and Rudd in 1874.

Towards the Realisation of an Intermediate Industry Structure and Group Status

Unbeknownst to the diggers at the time, the Black Flag Rebellion would play a central role in aiding the contraction of claim ownership within the mines, and thus the production sphere's accrual of intermediate characteristics. In January 1876, Colonel Crossman released his report on the causes of the Black Flag Rebellion, which had been commissioned by the Cape Colony Government in the aftermath of the uprising. Colonel Crossman's central recommendations were an increased presence of mining companies in the diamond fields, and the abolition of the 10-claim limitation. Colonel Grossman directly referred to the legal and industrial limitations curtailing capitalist dominance of the mines (Turrell 1987:73). Although claim ownership was more concentrated than ever before, in the previous year the vast majority of the 765 claimholders across the four mining zones still owned less than four claims each (see Newbury 1989:30 Table 1.2). Thus, in 1876, ownership of the claims remained highly atomised, and the industry still exhibited the characteristics of a latent group.

The structural limitations imposed by the production sphere's continued latency were clearly illustrated by the failure of J.B. Robinson, a highly successful diamond merchant, to form a collective group of producers in the Kimberley mine in 1876. Robinson (quoted in Roberts 1972:103) invited claimholders to amalgamate their claims and work them 'upon cooperative principles'. However, the independent miners could not see the potential benefits to be gained from acting collectively, and saw Robinson's actions as an attempt to take control of the mine. As argued in Chapter Two, the cost-benefit analysis of participation in collective action in latent groups is rarely favourable to pro-group behaviours (Olson 1971:48). It is thus unsurprising that Robinson's invitation to collectivise was not only rejected, but also widely derided by the miners (see Roberts 1972:103–4).

The environment for capitalist dominance was not immediately improved in the aftermath of Colonel Crossman's report. Crossman's recommendations regarding claim limitations were not promptly implemented by Southey's successor, Colonel Owen Lanyon (1875–78), thus delaying legislative change. The resultant extension of the proto-industrial era caused a crisis of confidence in the diamond fields, compounded by the 30 per cent decline in diamond prices in 1876. A shortage of domestic savings within South Africa, and the persistent unattractiveness of small-scale miners to foreign investors, constrained the access to capital needed to boost growth (Worger 1982:30–2). As diggers exited the industry, wealthy claimholders purchased the fire-sale claims that had become untenable in the market depression (Meredith 2007:51). Among these affluent men was a 23-year old Englishman named Barney Barnato,[29] who founded the Barnato Mining Company and purchased four claims in the Kimberley mine during this tumultuous period (Meredith 2007:53).

In November 1876, Colonel Lanyon nullified the legislation regarding maximum claim ownership limitations and weighted votes for the Mining Boards in accordance with the extent of claim ownership. The residual influence of the old Diggers' Committees was thus formally eradicated (Worger 1982:35). These changes also eliminated the legal limitations previously influencing the outcome of the conflict between diggers and capitalists. Thus, capitalists desiring a greater contraction of claim ownership, such as Rhodes, had only to contend with the challenges posed by the atomistic industry structure, which, without the presence of legal constraints, was able to change rapidly. These legislative changes also meant that the diamond mines in Griqualand West become more attractive as destinations for foreign investment.

The Kimberley mine, which was the richest in the region, was particularly appealing to foreign diamond merchants, who purchased large sections of claims therein. By 1877, less than 20 people owned 50 per cent of the 300 claims in the Kimberley mine (Worger 1982:37). Its claims were collectively valued at £1,000,000 in 1877, compared to the £200,000 valuation for the claims within De Beers (Meredith 2007:53). De Beers contained comparatively fewer white diamonds, fewer large diamonds, and an abundance of low-value tinted (non-white) stones (see Wagner 1971:149–50). However, De Beers was still a more attractive mine than Bultfontein and Dutoitspan, which were shallower and harder to mine (see Williams 1902:513), and whose claims were valued at only £30,000 and £76,000, respectively (Meredith 2007:53).

As at 1877, the production sphere's rapid accrual of intermediate characteristics had commenced, as illustrated by the swift contraction of claim ownership within the mines. As De Beers was not a focal point of merchant acquisition, despite it being cheaper to mine than Kimberley (Newbury 1989:47), the consolidation of claims within the De Beers mine was carried out by pre-existing claim holders (Worger 1982:37–8). By late 1878, five of the 76 total claimholders within De Beers owned 90 per cent of the claims, with a minimum claim

[29] Barnato's real name was Barney Isaacs, but he went by 'Barney Barnato', the stage name he had used in his previous profession as a sideshow entertainer.

ownership of 19, and a maximum claim ownership of 100 (Worger 1982:41). The legislative changes enabled Rhodes to initiate his plan to acquire control of the diamond-production sphere of South Africa, beginning with the amalgamation of the De Beers mine (Meredith 2007:59). Rhodes and his partners were well positioned for such a takeover, having already gained almost complete control of the richest section of the De Beers mine, known as Baxter's Gully, after Southey's removal of the two claim limitation in 1874 (Rotberg 1988:111).

The continued contraction of claim ownership meant that by 1879 the production sphere had become classifiable as an intermediate group. Olson (1971:43) argues that the defining feature of a major shift away from latency is the capacity of group members to engage in activities that affect their competitors in a tangible manner. It can be assumed that the aforementioned dominance of only a small number of miners in the De Beers and Kimberley mines would have resulted in these correlative effects. Therefore, at this stage of the sector's development, the opposing positions were no longer digger versus capitalist, but instead oligopoly (intermediate group) versus monopoly. Rhodes was a hopeful monopolist; he believed monopoly 'was the essence of success in diamond mining' (Williams 1902:291). Rhodes also believed the market for diamonds was static, and thus required strict monopolistic supply controls (Rotberg 1988:181). Rhodes (quoted in Chapman 1980:1) calculated this demand based on the average number of people getting engaged each year: 'The possibility to sell diamonds depends on the ability of the young men of the whole world to buy engagement rings…'.[30] However, complete control over the world's diamond output needed to be achieved to realise such a perfect equilibrium.

By the late 1870s, the diamond-production sphere of South Africa had entered its industrial era. The use of steam engines within the Kimberley mine dramatically increased, from 16 in 1877 to 306 in 1881; and as at 1879, the companies therein were receiving an average annual profit of 30 per cent (Turrell 1987:73). Output expanded in line with the increased company presence and adoption of technology: between 1877 and 1880, South Africa's diamond exports increased from 1,765,000cts to 3,140,000cts (Lenzen 1970:143). Consequently, the value of the mines improved significantly from their 1876 levels: 'the valuation of the Kimberley mine rose by 50%, that of De Beers by 400%, Dutoitspan by over 500%, and Bultfontein by 1,600%' (Worger 1982:42).

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[30] Rhodes' calculation would come to define De Beers' diamond supply/demand calculations for over a century.

Unlike the merchants in the Kimberley mine, the producers in the remaining mines did not have easy access to the foreign capital required to fund meaningful growth. To remedy this, in 1880 many claimholder producers formed joint-stock companies to attract capital into the diamond fields (Worger 1982:45). On 1 April 1880 Rhodes created the De Beers Diamond Mining Company (hereafter De Beers DMC), a joint-stock company that was an amalgamation of the claims he had accrued with Rudd and others and the largest claimholder companies in the De Beers mine, including Dunsmore & Alderson and Stow & English (Williams 1902:279). De Beers DMC was floated with a value of £200,000, based on the value of its 90 unified claims (Worger 1982:47). Barnato also floated the Barnato Mining Company (located in the Kimberley mine). This pattern was repeated across the mines, and by April 1881 there were 66 diamond-mining companies operating in the four mines; swelling to 71 in the Kimberly mine alone several months later (Turrell 1987:105).

Speculation and Bureaucratic Rent Seeking

The explosion of incorporations in 1881 led to massive share speculation within the mines of Griqualand West. Their value rapidly increased by £7,000,000 more than the previous year's assessment (Meredith 2007:110). Compounding the ensuing volatility was the continued self-interest exhibited by the companies in the diamond fields, whose business strategies were akin to the producers in the sector's atomistic recent past; that is, each company set out to maximise its income via mining 'as many diamonds as possible as quickly as possible' (Worger 1982:53). Consequently, in 1882, as share and diamond prices collapsed because of oversupply and the depression in the European diamond market, many companies in the mines were bankrupted. During this crisis, Rhodes began in earnest his attempt to overcome the intermediate nature of the production sphere and establish monopoly control thereof. De Beers DMC, utilising the financial acumen of Alfred Beit,[31] actively set about buying up firms and smaller operators that owned claims within the De Beers mine (Baxter 1974:97), slowly cultivating its ownership thereof by 'absorbing step by step its floundering neighbours' (Williams 1902:280). The initial hostility of Rhodes' rationally self-interested claim holder competitors had been eroded by their financial vulnerability (Rotberg 1988:183).

[31] Beit (1902:290) was an employee of Jules Porges & Co. Williams credits him with enabling the realisation of Rhodes' dreams for the amalgamation of production and marketing.

Rhodes had explicitly pronounced his desire to see a monopolised production sphere and an amalgamated marketing sphere operate under the control of a single entity: De Beers DMC (see Chilvers 1939:48, Lenzen 1970:155, Rotberg 1988:182, Meredith 2007:59, Baxter 1974:97). As observed by Rhodes' close colleague Gardner F. Williams (1902:280): 'His master mind was steadfastly bent on the attainment of the control of the development and output of the four great diamond-producing mines of South Africa…'. Lenzen (1970:155) argues that Rhodes was attempting to eradicate competition from the diamond-production sphere and limit output to maximise profits in an effort to protect against downward trends in the market:

> The market price had therefore to be fixed by way of a collective monopoly so that it offered a wide margin over the cost price, which, allowing for possible costs of the closure of mines and the normal overhead had to show a profit. It was not the aim to preserve a minimum profit through the lowering of production costs, but to obtain a maximum profit in order to establish a stabilising fund in the event of a drop in demand caused by recession.

As argued by Tullock (1989:20), rent seekers rarely specify that their market-distorting practices are designed primarily to enrich themselves, and instead shroud their deeds in more palatable terms such as 'stabilisation'. This appears to be what Lenzen is doing on Rhodes' behalf, despite openly acknowledging that Rhodes was pursuing rents in the form of inflated profits.

History would show that high diamond prices were themselves destabilising in times of economic crisis, as diamonds were eschewed more readily by consumers, along with other discretionary items in the 'conspicuous' consumption basket. This is something Lenzen (1970:170) himself acknowledges occurred during the Great Depression under Ernest Oppenheimer's Chairmanship of De Beers, as will be explored in Chapter Five. It can be deduced from this that Lenzen implicitly assumed that diamond producers faced a conventional, downward sloping demand curve. However, Lenzen (1970:155) subsequently contradicts his original stabilisation argument by stating that Rhodes wanted to make diamonds expensive because '…the diamond is a commercial article which is bought because it is expensive'. Lenzen appears to be arguing that Rhodes' 'profit maximisation' was motivated by the perception that consumers' demanded diamonds because they were expensive; in other words, the demand curve slopes upwards. However, elegant empirical work by van Saldern (1992) illustrates that the demand curve for diamonds is conventionally downward sloping but is relatively price inelastic, conclusively disallowing this contention.

Lenzen's (1970:144) upward sloping demand curve hypothesis is also challenged by the fact that diamonds were already expensive in the pre-monopoly era, as his own figures attest. Based on Lenzen's figures, the average carat of rough diamond sold for approximately sh 23 throughout the 1880s. Comparatively, the average annual rental price for real estate in England and Wales in 1880 was approximately sh 20 per acre (Carus-Wilson 1958:128–31). Diamonds, even in their unfinished state, were thus high-priced, luxury goods even *without* the presence of market distortions. What Lenzen's argument fails to recognise is that Rhodes wanted monopoly control over the industry to make diamonds *more* expensive, and thus create a source of inflated profits, or rents, extracted from overpaying consumers.

The first step in Rhodes' plan was to amalgamate the De Beers mine before amalgamating all four Griqualand West mines, thus creating a monopolised production sphere (Williams 1902:280). Rhodes' plan was necessitated by the sector's still very competitive state. As argued by Gardner F. Williams (1902:280 author's italics): 'The range for amalgamation of the four mines was so great that no single man, however ambitious, could hope to cover it by any *single-handed* effort'. In other words, it would have been extremely difficult, if not impossible, for Rhodes to have successfully amalgamated *en masse* the hundreds of private operators in the Cape's mines; actors whose behaviours conveyed their intent to pursue their own self-interest (Worger 1982:53). Rhodes' plan to first monopolise the De Beers mine would affect the industrial limitations enabling the survival of the oligopoly structure in two key ways: not only would it reduce the number of independent operators within the production sphere and thus simplify acquisitions, it would also position De Beers DMC at the apex of diamond production. The output and financial strength brought by this dominance would enhance Rhodes' capacity to employ either positive or negative incentives to encourage or compel cooperation among his competitors. Thus, Rhodes' amalgamation of the De Beers mine would assist the monopolists to overcome the oligopoly.

Rhodes' amalgamation of the De Beers mines commenced in the early 1880s, but it did not gain momentum until several years later. In the meantime, Rhodes sought a political position that would enhance his promotion of the interests of the diamond industry; in other words, that would enable him to engage in bureaucratic rent seeking. In 1881, Rhodes was elected to a seat in Parliament. Rhodes immediately exploited the clear conflict of interest he possessed as both the Chairman of De Beers and a politician. In 1882, the Diamond Trade Act, a pet policy of Rhodes and fellow parliamentarian/diamantaire[32] J.B. Robinson, came into force in Griqualand West. The Act was extremely unpopular outside the mining capitalist clique (see Roberts 1972:132–6). It gave claim holders an unprecedented ability to search, trap, detain and punish employees suspected of engaging in illegal diamond buying (IDB) or unlicensed diamond trading, and to try them without the presence of a jury (see Turrell 1987:181–4).[33] Rhodes' motivation for this Act was twofold. The theft of diamonds from company-held claims was extreme; one estimate put it as high as 40 per cent of total output (see Smalberger 1974:399). Secondly, the diamonds that were sold outside company controls, for which IDB provided an avenue, could not be managed in line with market variations. Accordingly, and perhaps most crucially, the Diamond Trade Act helped to remove a threat to Rhodes' desire to attain complete control over the world's diamond supply.

Rhodes continued to use his position to influence diamond policy within the Cape. In 1883, Rhodes successfully saw the Precious Stones and Minerals Mining Act—a law related to company representation on Mining Boards—changed to account for the number of claims owned by individual entities. This meant that large companies, who owned many more claims than did individual operators, quickly came to dominate the Mining Boards. Large companies used this influence to direct much-needed mine maintenance to their own claims, thus running unrepresented competitors into the ground (Meredith 2007:118). Rhodes had again successfully eradicated a legal limitation impeding his pursuit of monopolisation. However, despite the declining number of independent diamond producers, the production sphere remained a competitive oligopoly. Rotberg (1988:183) is the only author, besides Gardner F. Williams, to acknowledge the role played by group size and its associated characteristics in delaying collective action (or monopolisation) in the mines at this time:

> in 1883, no common cause was to be made voluntarily among the still numerous producers. Because the diamond market had taken a turn downward, competition was keen, trust was lacking, and there was no body or group to enforce a program of regulation.

[32] The term 'diamantaire' is used to refer to someone with enormous knowledge of the diamond industry, particularly the marketing side.
[33] 'Trapping' was the term used for inciting people to engage in IDB and then arresting them for it. The modern equivalent would be 'entrapment'.

The group characteristics that Olson (1971:43) argues can impede the realisation of collective action were doing just that in the diamond industry's production sphere.

Rhodes' bureaucratic rent seeking continued unabated as he sought to concentrate the industry further under his own control. In 1884, Rhodes executed what was, to that date, his most blatant extraction of rents: he convinced the government not to tax the diamond industry. As an alternative, Rhodes, in his position of power as Treasurer, oversaw greater taxes levied on small members of the agricultural sector, and the copper industry. Rhodes' actions were undeterred by the enormity of the diamond industry's operations in comparison to the state's agricultural sector, and the large deficit the government had accrued (Worger 1987:199–200). Rhodes had exploited his position to direct the government's time and resources towards the needs of the diamond industry without regard for other industries or the state's citizens, despite the financial hardship the state was experiencing. This move succinctly illustrates the capacity of the organised minority to further their own interests at the expense of the unorganised majority (see Olson 1982:37).

Underground Operations and Amalgamation

The push towards underground operations in the diamond mines in 1885 was a fundamentally important development within the production sphere (see Williams 1902:Chapter XI). With reef falls and flooding repeatedly crippling the ever-deepening open pit mines, underground mining offered a remedy to the disruptions. The four largest producers, De Beers DMC, The French Company, The Standard Company and Barnato Diamond Mining—the latter three all operating in the Kimberley mine—pursued underground operations. However, De Beers DMC was the only company to manage the enormous overheads associated with this development successfully and to provide a dividend to its shareholders. Thus, it was in an unparalleled position of financial strength within the production sphere. Yet, the sector remained an unmobilised intermediate group, with each mining company continuing to maximise its own output, which, in turn negatively affected diamond prices (Meredith 2007:153–4).

In 1885, 98 diamond producers remained in the four mines in the Cape. Dutoitspan contained 16 companies and 21 private claim holdings, while Bultfontein had eight companies and 24 private claim holdings. Ownership of the larger and more valuable De Beers and Kimberley mines was much more concentrated, with 11 companies and eight private claim holdings in

Kimberley, and only seven companies and three private claim holdings in De Beers (Williams 1902:278). With mine output still governed by self-advantageous income maximisation, diamond prices dropped to sh 19/6 per carat—their lowest level since 1877 (see Lenzen 1970:143–4). This squeezed small and higher cost producers substantially. With smaller producers financially vulnerable due to the price decline, combined with the already observed contraction of claim ownership in the De Beers mine and the corresponding reduction in competing interests, the monopolisation of the mine under a single interest was now more feasible than at any other time in its history. It is therefore unsurprising that Rhodes' monopolisation attempt gained real steam in 1886 (Turrell 1987:87).

The financial dominance of De Beers DMC within the De Beers mine enabled Rhodes to employ negative incentives to compel competitors' cooperation. Although he was not seeking a cartel agreement between the De Beers producers, Rhodes did need them to agree to sell their operations to De Beers DMC. To encourage their cooperation, Rhodes was able to use negative incentives to render their independent existence economically unfeasible, thus making Rhodes' propositions more attractive. Specifically, Rhodes deliberately over-produced and dumped diamonds on the market in an effort to prime smaller competitors for takeovers through economically unsustainable price falls (Turrell 1987:211, Meredith 2007:155). That Rhodes was able to influence market prices to such a significant degree illustrates not only De Beers DMC's comparative size, but also that the remaining group of producers was approaching 'privileged' status from the perspective of successful collective action. Further, Rhodes courted companies who elected to sell out to De Beers, and secretly obtained significant share interests in reluctant companies to compel their cooperation (Turrell 1987:213–4). [34]

Rhodes was not the only wealthy claimholder who attempted to amalgamate a mine within the Cape Colony; however, he was the first person to do so successfully. The failure of other major amalgamation attempts occurred in mines with more producers than in De Beers, and thus more competing interests. The inability to foster cooperation is in each case linked to the incompatible self-interests of the actors therein, including the Rothschild's Dutoitspan

[34] The companies in the De Beers mine that were absorbed by De Beers DMC were: Wrigley and de Pas (1880); Stow, English and Compton (1881); J Calvert (1881); De Beers Central DMC (1883); London and South African DMC, Independent DMC (1884); International DMC, Frere DMC (1884); Baxter's Gully DMC (1884); Cotty Brothers and Bosman (1886); United DMC (1886); Elma DMC (1886); Oriental DMC (1887); Gem DMC (1887); Victoria DMC (1887); The French Company (1887); and Schwab's Gully (1887) (Turrell 1987:214–5).

amalgamation scheme of 1882; the Merriman Dutoitspan scheme of 1885; and Merriman's amalgamation attempt in Kimberley in 1885 (see Turrell 1987:207–11). C.J. Posno[35] and partners also failed in 1885 to monopolise the Kimberley mine (see Worger 1987:194–5, Rotberg 1988:187–8).[36] In the abovementioned cases, these producers could not recognise the long-term benefits of collective action over short-term gains; thus, independence prevailed within a competitive oligopolistic framework.

By 1887, Rhodes' actions had successfully brought the De Beers mine under the complete control of De Beers DMC. Rotberg (1988:181) argues that Rhodes was patient in waiting for the right time to amalgamate. Indeed, the challenging nature of kimberlite mining, the technological advancements that had taken place since 1873 and the commencement of underground mining operations had all contributed to the concentration of the production sphere, and changed the group of producers from latent to intermediate. Rhodes had elucidated to shareholders the logical need for cooperation that accompanied the emergence of underground operations in Kimberley and De Beers (see Williams 1902:276). De Beers DMC's financial strength, which was underpinned by its underground mining operations, was also vital to Rhodes' plan, as acquisitions could not have occurred without it. However, these features alone did not result in the monopolisation of the De Beers mine, or in the production sphere's accrual of privileged characteristics.

Rhodes may have been patient, but he was also proactive in overcoming the intermediate status of the production sphere, as his long-standing plan to amalgamate the De Beers mine attests. Despite arguments that Rhodes should not be lauded as the force behind De Beers' monopolisation, or that his individual success has been inflated (Newbury 1987, Turrell 1987), it was Rhodes' plan that was enacted, and that would eventually see the group of producers obtain the privileged group characteristics that would facilitate the victory of monopoly over oligopoly. As argued by Lenzen (1970:155), Rhodes was '...the personification of the movement towards centralised control in the diamond production since the mid-1870s'.

[35] The Posno family were jewellers based in Amsterdam.
[36] Rhodes' decision to launch an amalgamation scheme soon after Posno's was said by a close friend of Rhodes, J.B. Currey, to have been nothing more than an attempt to spoil Posno's plan, rather than to create an amalgamated production sphere at that time, as claimed by Rhodes himself (see Rotberg 1988: 189). This argument makes sense seeing as Rhodes would have had very little power in Posno's scheme, and would not have wanted to see the control of the industry in anyone else's hands. It is also unlikely that Rhodes, having seen the difficulties experienced by Posno in negotiating with an intermediate group, would have tried to do the exact same thing immediately afterwards.

Barnato and the Kimberley Mine: Rhodes' Monopolisation of the Production Sphere

As Rhodes amalgamated the De Beers mine, Barnato was attempting the same in the Kimberley mine. A series of mergers between Barnato-controlled concerns and those of Baring-Gould Brothers and the Standard Company led to the formation of the 'Central Company'. The Central Company emerged as the only potential challenger within the Cape to the behemoth that was De Beers DMC. By 1887, the Central Company possessed three-quarters of the capital of De Beers DMC: £1,423,550 versus £2,009,620 (see Turrell 1987:214–9). The Central Company was also highly profitable, having that year returned a shareholder dividend of 35 per cent (Meredith 2007:153).

De Beers DMC's acquisition of the Kimberley mine was the next logical step in Rhodes' attempted monopolisation of the production sphere (Worger 1987:245). Ownership of the Kimberley mine was more concentrated than in either Bultfontein or Dutoitspan and thus contained fewer competing interests. Further, Rhodes (quoted in Rotberg 1988:191) was threatened by the power wielded by the Central Company, arguing that, if the Kimberley mine was controlled by a unified competitor, like the Central Company, it could be 'a very serious danger to our company'. Being two large competitors within an oligopoly, the independent actions of De Beers DMC and the Central Company had the capacity to harm one another. Rhodes was cognisant of this threat (Williams 1902:291). An optimised collective good could not be obtained while De Beers DMC and the Central Company were in direct competition.

De Beers DMC required considerable capital to gain control of the Kimberley mine (Rotberg 1988:202), which, due to the local shortage of savings, was almost exclusively raised abroad (Frankel 1969:26). In 1880, through Gardner F. Williams, Rhodes established contact with the London-based Nathaniel Rothschild, the head of banking giant N.M. Rothschild & Sons. Beit also played a crucial role by attracting the support of German and French financiers in the mid-1880s, who, combined in a syndicate with Rothschild, provided De Beers DMC with the financial backing it needed to realise Rhodes' first intermediate goal of amalgamating production (Frankel 1969:63, Rotberg 1988:240).

Turrell (1987) presents a version of the amalgamation of De Beers DMC and the Central Company that conflicts with the almost uniformly recounted version of events (see Williams 1902:291–6, Frankel 1969:63, Roberts 1972:Chapters 15–17, Wheatcroft 1985:Chapter 6, Rotberg 1988:205–6, Kanfer 1993:Chapter 6). Typically, Rhodes' acquisition of the Central Company is described as using the purchase of a key independent producer therein—the Compagnie Francaise des Mines de Diamant de Cap de Bon Esperance, or 'the French Company'—as the access point to take control of the Kimberley mine. De Beers purchased the French Company in 1887 for £1,400,000. Rhodes then deftly 'placated' Barnato by trading the French Company for shares in the Central Company, thus showing Barnato that he was not seeking to 'own' Kimberley producers. Barnato approved of this exchange of shares; however, it actually provided Rhodes with the opportunity to acquire more shares in the Central Company. Unbeknownst to Barnato, by early 1888, Rhodes and Beit had secretly amassed 60 per cent of the Central Company's shares. This left an out-maneuvered Barnato with no option but to hear Rhodes' offer for the company. Consequently, later that year, Barnato agreed to sell the Central Company to Rhodes for £5,338,650. The amalgamated De Beers Consolidated Mining Company (hereafter De Beers CMC) was officially formed on 31 March 1888.[37]

While Turrell (1987:206–25) generally repeats this version of events, he claims that, rather than buying the French Company to secure influence in the Kimberley mine, Rhodes was forced to sell the French Company back to Barnato at the urging of Nathaniel Rothschild, who did not want to shoulder the liabilities associated with De Beers DMC owning the firm. Rhodes secured Rothschild's financial support of £500,000—money that was to be used to amalgamate the Central Company and De Beers DMC—only *after* this sale. Although Rhodes and Barnato were initially opponents, Barnato's enthusiasm for De Beers DMC's takeover of Central Company emerged early in the amalgamation process. However, F. Baring-Gould, a director of the Central Company, was staunchly opposed to the sale, as he believed the Kimberley mine was worth more than the De Beers mine. In 1888, with Baring-Gould still immovable, Rhodes convinced Barnato to join forces with De Beers DMC, essentially leaving Baring-Gould to hold off a hostile takeover by the firm. Baring-Gould was unable to contain De Beers DMC's advances, and on 31 March 1888, Rhodes bought the Central Company for £5,338,650, and formed De Beers CMC.[38] In recognition of his assistance, Barnato was

[37] This sale occurred despite a court having sided with disgruntled Central Company shareholders, declaring the sale invalid. In response, Rhodes and Barnato liquidated the Central Company and sold its assets to De Beers, thus bypassing the court's order.

[38] De Beers CMC possessed £3,950,000 in capital immediately after formation.

awarded, among other things, a Life Governorship of the new company (Turrell 1987:221–3).[39]

Turrell's (1987:206–25) version of events, while departing from the general consensus about the amalgamation of the two companies, is supported, within his account, by more primary sources and traceable documentation than any other narrative of the events of which this study is aware; each deviation from the traditional story is underpinned by evidence corroborating his assertions. The reason that so many authors have subscribed to the traditional account of the formation of De Beers CMC is likely due to the folklore status it has attained over decades of retelling. While it might be appealing to believe what *prima facie* appears the most intimate retelling of the events by Gardner F. Williams (1902), who was mine manager of De Beers DMC at the time of the takeover, Rhodes and Barnato were very secretive about their cooperation (Turrell 1987:222). Thus, despite Williams' (1902:291–6) relative proximity to the men, his account contains surprisingly little information about the events surrounding the amalgamation.

Turrell's account of the amalgamation of De Beers DMC and the Central Company documents behaviour that aligns with what would be rational conduct in a production sphere steadily accruing privileged group characteristics. As argued by Olson (1971:49–50), privileged groups have the greatest capacity to achieve a collective good because the members thereof can recognise that their marginal costs of cooperation would be lower than their marginal gains. Thus, it is unsurprising that Barnato and Rhodes, as Chairmen of the largest companies in a steadily shrinking pool of producers, recognised the harm to the collective good their continued competition would cause:

> Both [Rhodes and Barnato] realised very keenly the practical necessity of effecting combinations of the claims covering the mines [De Beers and Kimberley] in order to provide a uniform and efficient development and to secure the scarcely less essential control of the diamond output (Williams 1902:276).

It was rational for Rhodes and Barnato to cooperate to further reduce the oligopolistic traits of the production sphere and eliminate the threat their operations posed to one another. However, Rhodes did also employ positive incentives in courting Barnato's cooperation, as Barnato's abovementioned receipt of the lucrative Life Governorship of De Beers illustrates.

[39] The other Life Governors were Rhodes, F.S.P. Stow and Beit.

With the creation of De Beers CMC, Rhodes had greatly lessened, but not eradicated, competition within the production sphere. Although Rhodes could not attain perpetual rents with such an industry structure, he chose to pursue 'suboptimal rents' in the interim; in other words, he contributed to the protection of an unoptimised collective good (see Olson 1971:40–1). De Beers CMC was a large enough producer to influence greatly the level of price volatility that existed within the market by controlling its own output. In June 1888, up to 1000 men lost their jobs as Rhodes scaled back operating hours within the Kimberley and De Beers mines by 50 per cent to reduce his company's diamond output (Worger 1987:229). In an effort to cut costs, Rhodes also doubled the number of black convict labourers working on the mines, and replaced waged labour with subcontract workers (Worger 1987:249). Diamond prices reacted to the reduced supply, rising by almost 50 per cent to sh 30 per carat (Worger 1987:253). In response, producers within Dutoitspan and Bultfontein acted as typical free riders and increased their output to take advantage of the price increases.

Rhodes' desire for perpetual rents is evidenced by his continued amalgamation of the production sphere, despite De Beers CMC's ability to extract suboptimal rents of such a respectable nature. The simple reality is that if Rhodes did not desire perpetual rents, he would have ceased his amalgamation of the production sphere well before optimisation was reached. However, despite his unparalleled market control, Rhodes remained intolerant towards the existence of independent diamond producers, even where they were deemed unviable (Rotberg 1988:491–2). Bultfontein and Dutoispan were mines that Rhodes (quoted in Roberts 1972:190) had once described as 'too rich to leave and too poor to pay'. In other words, while not plentiful mines, their output, if unregulated, enabled them to act as spoiling free riders, taking advantage of the price stability created by De Beers CMC without contributing to the protection of the collective good.

Rhodes (quoted in Williams 1902:294) acknowledged that De Beers CMC's control of Bultfontein and Dutoispan would not be beneficial to the producers therein: '…that so far as the amalgamation of the diamond mines was concerned, it would not help the poorer mines, but rather the other way'. Rhodes knew he had the power to exploit De Beers CMC's dominant firm status and its resultant ability to employ negative incentives to compel favourable responses from the members thereof: 'The poorer mines, 'on the margin of cultivation', would have to accept our offers, or fight us on two grounds, larger outputs and lower rates' (Rhodes quoted in Williams 1902:296).[40] As Rhodes' statement illustrates, the companies within Bultfontein and Dutoispan faced the prospect of either joining forces with De Beers CMC, or experiencing the impact of a swamped diamond market and corresponding (short-term) price falls. Compliance from the two mines was something Rhodes expected (Worger 1987:242). However, they did not get the chance to cooperate; in 1889, Rhodes gained control of Bultfontein and Dutoitspan by buying several of the companies that operated therein outright, and by buying large shareholdings of other companies, at a total cost of £14,500,000 (see Williams 1902:302–4). De Beers CMC subsequently controlled all diamond production in Kimberley, making Rhodes an exceptionally powerful man (Rotberg 1988:211–2).

The near-absolute monopoly Rhodes' possessed over South Africa's diamond supplies gave him further power to enhance the industry's collective good, and draw it closer to optimisation. In 1889, Rhodes cut output to 50 per cent of the mines' 1888 levels, partially through the complete closure of the Dutoitspan and Bultfontein mines. This severe supply restriction, coupled with the near-absence of competition in the production sphere, saw diamond prices hit sh 38/3 per carat—close to double the average prices that diamonds had achieved in 1888. Motivated by the high diamond prices, small alluvial producers outside the monopoly, particularly in the Orange Free State, replicated the earlier free riding response of Dutoitspan and Bultfontein and boosted their own production (Worger 1987:253–5). Their operations would also eventually come under the control of De Beers CMC, as will be explored shortly.

Satisfying Rhode's Second Intermediate Goal: Cartelisation

The Diamond Industry's First Cartel

Having all but fulfilled his first intermediate goal, Rhodes turned his attention to the realisation of his second intermediate goal: the cartelisation of the production and marketing spheres. Rhodes wanted to establish a cartel agreement between De Beers CMC and the diamond merchants who acted as custodians of diamond distribution. The merchants were a threat to Rhodes' realisation of perpetual rents for two reasons: firstly, they were unmobilised

[40] It is reasonable to assert that implicit in Rhodes' statement was an intention to swamp the market to compel compliance from the producers within Bultfontein and Dutoitspan.

and thus in competition with one another. Secondly, their self-interest lay in buying diamonds as cheaply as possible from producers and selling them at the highest possible price point to merchants and retailers, irrespective of market volatility (Worger 1987:239).[41] Their disregard for market stability and the treatment of producers was something Rhodes had experienced, and had come to resent (see Meredith 2007:155). While the production and marketing spheres acted with autonomy, there was always the potential for the supply–demand equilibrium to be compromised. Thus, the prices the firm could achieve for its diamonds, and an assurance that they would not be sold without regard for market volatility, were the next hurdles to overcome to fulfil Rhodes' ultimate goal of extracting perpetual rents.

In 1889, the marketing sphere operated as an unmobilised latent group. There were hundreds of diamond merchants, primarily residing in major European cities, including London, Antwerp and Amsterdam. The marketing sphere's latent nature imposed limitations on Rhodes' ability to form a successful cartel between the two groups. To address these limitations, in 1889 Rhodes aided the collectivisation of four dominant members of the marketing sector. The resultant Diamond Pool Committee (DPC), colloquially known as 'the Syndicate', consisted of four large London-based financiers/diamond merchants, including Wernher Beit & Company, Barnato Brothers, Mosenthal Sons & Company and A. Dunkelsbuhler & Company**.** Rhodes wanted to establish an exclusive marketing agreement with the Syndicate in which De Beers CMC's output quotas would be fixed, alongside the price the Syndicate would pay for the stones. This cartel agreement would control the supply of diamonds that reached the market, and ensure De Beer CMC's receipt of inflated diamond prices. Rhodes convinced the Syndicate's members that the resultant market stability would be in their best interests, and in 1889 the first cartel agreement in the modern diamond industry was formed (Spar 1994:49–50).[42]

The Syndicate agreed to purchase the monopoly's monthly output (up to 200,000cts) from February to April for the premium price of a minimum sh 37 per carat (Worger 1987:254). Rhodes' creation of the DPC and subsequent establishment of the cartel agreement effectively rendered the diamond-marketing sphere a mobilised privileged group. De Beers' near-absolute

[41] The manufacturers then sold the polished stones to diamond merchants. The largest consumers of diamonds in 1900 were, in order of descent, the US, England, Germany, France and Italy (Williams 1902:525).
[42] Because De Beers CMC had a virtual monopoly over the diamond industry's output, this cartel agreement essentially deprived other diamond marketers of supply, and thus helped to turn the marketing sphere into a privileged group.

control over diamond supplies meant that non-DPC merchants would have found it extremely difficult, if not impossible, to access adequate diamond supplies *directly from diamond producers*. Moreover, the marginal benefits to the collusive merchants outweighed their marginal costs of collectivising, abetting their cooperation in the scheme. Rhodes' monopoly control over diamond production, coupled with the cartel agreement with select members of the marketing sphere, thus created barriers to entry for both would-be diamond producers and diamond marketers.

The impacts of Rhodes' monopolisation of production and the collective action between De Beers CMC and the Syndicate were quickly realised. De Beers CMC's profits grew markedly. With a decline in labour costs, due to the scaling back of production, and the Syndicate's assured high diamond prices, De Beers CMC's profit margin jumped from 34 per cent in 1888 to 52 per cent in 1889 (Worger 1987:255). As observed by Gardner F. Williams (1902:305), 'This profit was largely due to the complete control of production, systematic operation, and regulation of the [diamond] output'. In other words, Rhodes' anticompetitive actions had enabled the extraction of rents. De Beers shut down mines, reduced production and increased diamond prices (via the cartel). This, in turn, brought significant negative social costs, including a sharp increase in unemployment in the cutting centres in Europe, and within the mines themselves. Although De Beers increased its per-carat prices by 50 per cent, manufacturers were forced to pay double that amount when buying from the Syndicate, thus causing large-scale layoffs in Amsterdam. The mines also saw a workforce decline of up to 50 per cent (Turrell 1987:226).

Rhodes had originally expected to fully monopolise the production sphere in South Africa by 1890 (see Rhodes 1888). However, the production sphere at this time still required further elimination of competition to realise this intermediate goal; he was obtaining rents by this time, but they were merely suboptimal. Two small, but rich diamond mines in the Orange Free State, Jagersfontein and Koffiefontein (see Wagner 1971:152), had to be neutralised for Rhodes to operate a 'successful cartel' (Rotberg 1988:491); that is, to optimise cooperation and thus optimise the collective good. In 1890, Rhodes (1890) wrote to Stow about how his immobilisation of rich sections of Koffiefontein had prevented it from falling into competitors' hands:

> The investment at the present moment, will show a big profit, as there is really a demand by working men for blocks in Koffyfontein [sic], and we could sell out almost all our own; but we do not think it wise, as it would undoubtedly make a large production.

Rhodes was creating barriers to entry in Koffiefontein to deter competition. To reduce the production of Jagersfontein from £30,000 per month to £12,000 per month, Rhodes (1890) stacked the Jagersfontein Board with pro-De Beers members:

> an antagonistic Directorate will produce diamonds even at a loss, to their detriment and ours; and by this stroke I have changed the Jagersfontein Board from being our opponents, to heartily co-operating with us, and we are firmly convinced of the wisdom of the policy of curtailing the production.

Thus, the threat the two mines posed to Rhodes' perpetual rents were successfully minimised.

After establishing De Beers CMC in 1888, Rhodes enacted cost-cutting measures that seriously affected the town of Kimberley. Black wages declined by 25 per cent, and skilled labourers saw their wages drop by nearly 35 per cent (see Worger 1987:264–7). Kimberley had changed from a bustling town to one that was barely surviving the onslaught of the monopoly. Land values fell by up to 300 per cent (Turrell 1987:227); and, as local workers, banks and merchants had been all but excluded from participating in the operation of the diamond industry, in 1890 local banks witnessed a 44 per cent decline in deposits compared to the previous year. Moreover, despite the population of Kimberley having declined by 50 per cent since 1888, the lack of work left the vast majority of the remaining townsfolk in the grip of extreme poverty (Worger 1987:270–2).

Prime Minister Rhodes and the Cape's Economic Decline

In 1890, Rhodes was elected Prime Minister of the Cape Colony. This position provided Rhodes with what was essentially direct agency capture. Unlike other rent seekers, Rhodes did not have to lobby government for the protection of De Beers CMC's rents (Tullock 1993:70); he could use his political power to direct government resources to sponsor the enrichment of the owners of the diamond industry, and directly defend the industry's interests. However, as Prime Minister of the Cape, Rhodes was compelled to respond to the social upheaval occurring in Kimberley, which he did by creating the Parliamentary Select Committee, which he tasked with determining the origins of the Cape's economic turmoil (Turrell 1987:226).

However, the Parliamentary Select Committee was merely a public relations exercise. Rhodes exploited his political power to stack the Parliamentary Select Committee with company men, including Barnato and J.X. Merriman. Unsurprisingly, the Committee's findings into the causes of the poverty that ravaged the Cape entirely excused Rhodes' monopolisation of the diamond-production sphere. Conversely, an independent, minority investigation laid the blame squarely upon Rhodes' production monopoly. The state intervention subsequently recommended never took place (Turrell 1987:226). Rhodes, having gained near-absolute control over the production sphere was intent on preventing the emergence of any legal limitations that might threaten De Beers CMC's monopolisation of the industry. Rhodes' political power in the Cape, and thus his agency capture, proved '…essential to the protection of De Beers' profits' (Worger 1987:256).

The seriousness of the economic situation in Kimberley did little to prevent De Beers CMC from further reducing competition and avenues for employment in Griqualand West by pursuing its 1891 acquisition of the newly discovered Wesselton diamond mine.[43] After its discovery, the mine had been rushed by destitute diggers desperate for an income. The self-interest of the diggers meant that Wesselton posed a threat to De Beers' market control (Oats 1891). Rhodes, for his part, fought doggedly to secure possession of the mine for De Beers (see Rotberg 1988:491). However, Rothschild advised Rhodes to rethink the purchase, stating 'I cannot advise you to buy new mine [sic] as purchase money would encroach upon already much reduced profits of De Beers' (Rothschild 1891).[44] Rhodes did not take Rothschild's advice and continued his pursuit of Wesselton, revealing the stark difference in outlook between the financier, interested in current profits and the ability to generate cash flow, and the prospective monopolist playing the 'long game'. Rhodes was clearly willing to trade short-term financial risks (borrowing heavily to acquire assets) and profit reductions (dumping diamonds to lower prices and weaken less able competitors) to bring about the industry structure required for the extraction of optimal rents in perpetuity. Chapters Five, Six and Seven will demonstrate how Rhodes' most powerful successors also readily bore short-term losses in their pursuit of perpetual rents.

[43] The Wesselton mine was also located in Kimberley. It was also known as the Premier mine; however, to prevent confusion with another mine of that name, which was discovered in 1902, this study will only use the name 'Wesselton' to refer to this mine.
[44] Rothschild was concerned that De Beers CMC was over-extending itself financially by purchasing the mine. This had been caused by Rhodes' use of De Beers' profits to fund enterprises outside diamonds.

In seeking to control Wesselton, Rhodes exploited his political position (his ultimate agency capture) to legislate that the farm’s owner, J.J. Wessels, possessed the only rights to the diamond deposits on his land. Thus, Wessels was free to expel the diggers and sell the mine to the highest bidder. Rhodes, keen to acquire the mine quickly, and as cheaply as possible, subsequently flooded the market with diamonds to drive down diamond prices and reduce the value of the Wesselton mine prior to purchase (Rotberg 1988:496). The fragility of the domestic labour market clearly did nothing to discourage Rhodes from further depressing the diamond market in the negotiation stages of the sale. Most importantly, however, this flooding would have acted as a negative incentive, discouraging Wessels from entertaining the idea of eschewing the overtures of De Beers CMC and acting as a free rider.

The seemingly relentless march of the monopoly caused a hostile response from members of the community. However, the lack of compunction Rhodes had for the negative social costs of his rent-seeking activities was evidenced by the fact that the ‘severe attack’ (Worger 1987:279) the monopoly sustained in the aftermath of Wesselton from the Kimberley townsfolk did nothing to halt the company’s monopolistic ambitions, nor did it encourage Rhodes to rethink the cartel agreement. On the contrary, according to De Beers itself, the company’s contentious procurement of Wesselton ‘signalled the beginning of a policy of acquiring diamondiferous farms *around* Kimberley’ (De Beers 1988:7, author’s italics).

The remaining threat to De Beers CMC’s monopolisation of the production sphere was the growth of ‘debris washing’ as a secondary mining method. The already scrutinised blue earth that had been discarded by the mines in Kimberley became a source of diamonds (albeit a very minor one) and thus a source of employment for several hundred independent, nomadic diggers who had remained on the diamond fields. As a latent group, these diggers were governed only by self-interest: they sought to maximise income by maximising output. In 1892, Rhodes mounted a successful legal challenge to the ownership of the discarded blue earth to terminate digger access. That same year, Rhodes used De Beers CMC’s dominance of Dutoitspan’s Mining Board to prevent the performance of much-needed mine maintenance. This further reduced the output potential of non-De Beers CMC claims, which Rhodes could not *directly* control (Worger 1987:280–1). As these measures demonstrate, monopolising the major producers was not enough for Rhodes; he sought to insulate De Beers CMC against all possible threats to its market control. As Rhodes (quoted in Worger 1987:261) declared in

1893, he '…wished to make the property [De Beers CMC] as safe as possible, and able to face all contingencies'.

Rhodes' Rent Hedging

By the mid-1890s, De Beers CMC controlled 90 per cent of the world's diamond production (Lenzen 1970:158).[45] Rhodes had succeeded in employing monopoly and cartel industry structures to secure inflated diamond prices (Rotberg 1988:498), and had thus achieved the intermediate goals necessary to achieve his ultimate goal of perpetual rents. From 1895, De Beers CMC's profits began an upward trend that would continue for 12 years (Newbury 1989:147). Between 1895 and 1901, the firm returned a dividend to its shareholders of 40 per cent, or over £1,500,000 annually (Worger 1987:298).[46] Rhodes (quoted in Worger 1987:294) was pleased with these results, and declared in 1896 that De Beers CMC was 'one of those cases where a monopoly is judicious and justified by the results'. However, the results to which Rhodes was referring were a bounty enjoyed only by himself and his associates (Rotberg 1988:498). Consumers were paying far more for diamonds than they had during times of competition, and the town of Kimberley was suffering because of Rhodes' monopolisation of its dominant sector. Rhodes had clearly demonstrated that in a rent-seeking scenario, it is the minority that benefits at the cost of the majority (Tullock 1989:20).

After Rhodes' successful establishment of monopoly and cartel structures, the preservation of the status quo became the central requirement for the continued realisation of De Beers' perpetual rents. Consequently, Rhodes did not seek to expand the production sphere, but merely worked to keep its growth, and output, in check: 'De Beers neither expanded itself nor permitted others to enter diamond production' (Worger 1987:295). Through stifling competition *ad infinitum*, Rhodes created an environment that prevented 'creative destruction', defined by Schumpeter as the process capitalist enterprises go through that causes the continuous destruction and reconfiguration of the industrial organisations, technologies and ideas that previously existed therein: 'The essential point to grasp is that in dealing with capitalism we are dealing with an evolutionary process' (Schumpeter 1942:82). The resultant

[45] There were minor river diggings that were not controlled by De Beers CMC. In addition, Brazil, Borneo, India and the Australian state of New South Wales continued to produce very small numbers of diamonds.
[46] A dividend was provided every year throughout this period except for the year 1900. The Anglo-Boer War, which went from 1899–1902, had a significant impact on the diamond industry in Kimberley during this time, with mines often inoperable due to the resultant instability.

reconfiguration, according to Schumpeter (1942:82–3), destroys any monopoly power that had been attained in the previous market conformation, and instead awards the new entrepreneur for their pioneering efforts.

The growing capital intensity of extraction once the blue deposits and underground mining grew to dominate is an example of creative destruction. In that instance, this process assisted the capitalists and undermined the independent digger. However, with Rhodes' intermediate goals established, the forces of creative destruction were, from his perspective, no longer benign, and needed to be kept at bay. Innovation from outside, new entrants and any reversion towards competition were all equally dangerous to Rhodes' objective of extracting perpetual rents. As argued by Olson (1982:59), free entry into an industry ensures that atypical (inflated) profits fostered by market distortions are ephemeral. If Rhodes had allowed the forces of creative destruction; namely, new entrepreneurs, to enter the diamond industry, his market control would have been challenged, and his perpetual rents lost.

Rhodes was removed as Prime Minister of the Cape Colony in 1896 (his second term began in 1894) after the disastrous and extremely embarrassing Jameson Raid of 1895 (see Rotberg 1988: Chapter 19).[47] As De Beers CMC moved into the twentieth century, Rhodes felt the need to impress upon the board the importance of 'rent protection'; that is, of preserving the source of the rents that had been obtained (Tullock 1993:70). In particular, Rhodes was concerned about the ever-present threat of the discovery of new diamond deposits. By 1900, De Beers CMC had acquired 500,000 acres of land in South Africa that Rhodes believed had the potential to be diamondiferous, largely through the firm's acquisition of a notable landholder, the London and South African Exploration Company. Rhodes used his remaining political influence to ensure that the firm was given 'preferential' rights to new diamond discoveries within the Chartered Territories, and 'pre-emptive' rights to diamond deposits discovered within the South West Africa Company territories (Innes 1975:7). Such expansive pre-emptive measures are indicative of the risk Rhodes perceived in operational diamond deposits arising outside the control of the De Beers monopoly: 'Rhodes preferred to let no

[47] The Jameson Raid was an amateur attempt, privately sponsored by Rhodes, to topple the Kruger government within Transvaal and establish the province as a British territory. It is a subject of debate how much was known or sanctioned by London. The reasons for desiring control over the Transvaal were many and varied, including the discovery of its incredibly rich gold fields. Given Rhodes' involvement, the establishment of a more pro-diamond industry leadership within the region is an additional likely motive. This was another illustration of Rhodes' use of government resources to promote personal interests centred on diamonds.

potentially threatening Kimberlite pipe escape his net' (Rotberg 1988:492). Rhodes considered these actions as necessary insurance measures: 'We have acquired further the sole right to diamonds throughout the whole of the Chartered Territories, a by no means inconsiderate asset from a point of insurance against risk' (Rhodes 1899).

Rhodes' behaviour was actually a special form of rent protection that this study will call rent hedging. In finance, a risk, such as a future adverse move in exchange rates, is 'hedged' by an option contract, whereby the buyer of the option enters into an agreement with a counterparty, to secure the right to buy or sell the currency at a future time at an agreed price. The buyer is paying an upfront price for a reduction in uncertainty. The analogy with Rhodes' activities is very close. Rhodes essentially bought a series of expensive options—pre-emptive rights, outright land purchases—to hedge against the risk of new diamond deposits being discovered and developed outside his control.

Rhodes (1899) believed that the board of De Beers CMC did not possess the same extreme caution as he in relation to the threat new diamond deposits posed to De Beers CMC's market control, and thus its perpetual rents. In 1899, Carl Meyer wrote to Rhodes on behalf of himself and six other members of the London Board of the firm in an attempt to allay Rhodes' fears.[48] However, Meyer's letter merely highlighted the board's laissez faire attitude towards rent protection:

> If new and important discoveries of diamonds are made in South Africa, we [De Beers CMC] ought to have first chance of securing them. But if for some reason or other, they should all the same get into hostile hands, we are sure the shareholders will not blame us, as long as we shall be able to prove to them that [we] have exercised reasonable precautions. If such discoveries should be made in other parts of the world we cannot be expected to secure them, but, fortunately, the demand for diamonds, with the increasing prosperity of the world is now on so large a scale that the possible discovery of diamonds need not frighten us to the same extent as it has done hitherto (Meyer 1899).

This letter demonstrates that the De Beers board did not consider the unoptimised control of diamond supplies to be a major threat to the firm's capacity to make a *sufficient* income that would enable it to meet the expectations of its shareholders. The board did not share Rhodes' concern about the emergence of competition because it was not as deeply invested in the goal

[48] The other members of the London Board of De Beers CMC were F. Baring-Gould, C.E. Atkinson, Thos. Shiels, John Morrogh, H. Mosenthal and Francis Oats.

of pursuing perpetual rents; competitive profits were perfectly acceptable to its members. Therefore, Rhodes was right to question the board's understanding of the measures required to re-enforce De Beers CMC's monopoly and cartel structures, and thus protect the firm's extraction of perpetual rents.

Rhodes remained committed to De Beers CMC's monopolisation of the diamond industry and its consistently renewed cartel agreement with the Syndicate up until his death in 1902.[49] In 1901, De Beers CMC and the Syndicate concluded a new agreement between the two entities, which initiated an even profit split on the sale of diamonds (Worger 1987:299) and minimised the incentive to cheat. The dominant role Rhodes played in determining the operation of De Beers CMC is illustrated by the markedly different trajectory of the firm after Rhodes' death. After 1902, the De Beers board's repeated failure to both recognise the threat posed by the discovery of new deposits and to take measures to gain control over these deposits contributed to the industry's eventual return to a competitive oligopoly status, and the reversion of De Beers CMC's rent-extraction capacity to merely producing above-'normal' profits, rather than high 'optimised' rents.

De Beers needed another Chairman who understood and efficiently pursued Rhodes' intermediate and ultimate goals, and like Rhodes, was willing to do whatever it took to achieve them. As will be demonstrated throughout this study, Rhodes' intermediate and ultimate goals for the diamond industry would strongly influence the future operation of De Beers. This is evidenced by the continued application of Rhodes' methodology to the operation of the diamond industry (Lenzen 1970:158), particularly by the members of the Oppenheimer family (Spar 1994:75). The degeneration of De Beers CMC's near-absolute market control after 1902, and the lengths to which Rhodes' most powerful successor, Ernest Oppenheimer, went to replicate Rhodes' perpetual rent extraction in a changing diamond industry will be examined in Chapter Five.

Rhodes' Moral Template

In this section, the third arrow, Gert's moral system (2005), will be used to examine the morality of Rhodes' reign over De Beers. This analysis will perform two functions. Firstly, it

[49] By this time, it was estimated that South Africa had contributed £80,000,000 of rough diamonds to the world market (Williams 1902:526).

will determine the moral dimensions of general monopoly, cartel and the extraction of rents, by uncovering the specific moral rules violated by these practices. As demonstrated in Chapter Two, there is currently a gap in the literature regarding the illumination and justification of the morality of market distortions and rent seeking. This study will fill this gap. Secondly, this information will be used to identify the moral rule violations performed by Rhodes in the pursuit and execution of his intermediate and ultimate goals. The two-step procedure within the moral system will be applied to determine the ultimate justifiability of Rhodes' violations, and thus the moral template and associated moral status he bestowed upon De Beers and the greater diamond industry during his time in power.

Rhodes' goals, and the methods he employed to realise them, became his legacy in the diamond industry, and informed its moral trajectory for many decades. Firmly establishing the ethicality of Rhodes' goals will clarify how the diamond industry acquired its original moral status, and why his predecessors' later adoption (and augmentation) of his intermediate and ultimate goals was so influential to the moral development of the diamond industry.

Monopoly and Cartel: A Moral Perspective

In this study, the term market is used in regards to a conventional competitive market; the buyers and sellers therein cannot individually affect prices (Pindyck and Rubinfeld 1997:22). Monopolies concentrate market power under a single seller (Pindyck and Rubinfeld 1997:333), while cartels moderate (or remove) competition in industries by collectivising multiple members thereof (see Marshall and Marx 2012:Chapter 2). Profits are negatively affected by competition (Marshall and Marx 2012:ix). Thus, the suppression or minimisation of competition enables monopolists or cartelists to control the supply environment in which they seek their profits, which they can then inflate through supply manipulation—a process that renders rents.

The control enjoyed by monopolies and cartels impacts many different actors within a market, particularly consumers and current and prospective future competitors. These groups experience different restrictions in markets affected by monopoly and cartel, and therefore should not be analysed collectively. Consumers are also excluded from the application of selective incentives, which, as illustrated within this chapter, can be used by monopolists and cartelists to compel or encourage their competitors' acquiescence to their goals. Therefore, the moral rule violations that affect consumers (the demand side of the market) and current and prospective future competitors (the residual of the supply side) will be determined separately in the following analysis.

Consumers

Determining what is lost by consumers in a monopolised or cartelised market illuminates which moral rules are violated by such industry structures. Adam Smith (2005:537–8) argued that a master–servant relationship exists between consumers and producers, which demands deference from the latter to the desires of the former: ‘Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer’. The relationship between the producer and consumer that Smith is referring to is an example of a *demand-driven* market. Hutt (1934) created the term ‘consumer sovereignty’ to express the power consumers wield in a demand-driven market. According to Hutt (1934:15), in a market controlled by consumer force, ‘natural scarcities’, defined as exchange that is devoid of ‘contrived scarcities’, is the point at which equilibrium exists. When monopoly enters the equation, the consumer is no longer determining production; rather, ‘we have *contrived scarcities* or restrictions on the free adjustment and utilization of productive power’ (Hutt 1934:15). These contrived scarcities wrongly empower the producer over the consumer, and thus represent ‘the frustration of consumer sovereignty’ (Hutt 1934:17).

Consumer sovereignty can also be categorised under the term ‘consumer choice’. Consumer choice signifies consumers’ capacity to maximise their satisfaction within their budgetary constraints, in turn selecting their *‘most preferred combination of goods and services’* (Pindyck and Rubinfeld 1992:73 italics original). In an industry devoid of notable competition, consumers cannot choose goods from a multitude of different firms, preventing them from maximising their satisfaction, and affecting their welfare. Indeed, external regulation in the form of competition laws exist primarily to disincentivise anticompetitive conduct, and thus protect consumer choice and welfare (Bork 1978, Lande 2000–2001). In summary, monopoly and cartel market structures first remove consumers’ ability to choose, followed by their ability to choose from products that would maximise their utility, and thus their satisfaction.

Consumers also experience other losses when competition within a market is removed or reduced. In microeconomic terms, competition plays the role of ‘policing’ producers, by encouraging the pursuit of competitive advantage. This results in producers seeking to manufacture the highest quality goods at the best prices. The absence of competition removes this ‘policing’ from the market, thus rendering consumers vulnerable to sub-par quality goods and non-competitive, or less competitive, pricing (Marshall and Marx 2012:22). Further, the absence of competition in a market limits consumers’ ability to engage in price and service comparisons, and thus elicit useful information from the market prior to purchase (Marshall and Marx 2012:83–4). The ability to make comparisons that inform choices is particularly important, as asymmetric information has the capacity to disadvantage the consumer (see Akerlof 1970).

It must be recognised that consumers may not always attempt to be fully informed about their purchasing decisions, but instead choose to operate as ‘rationally ignorant’ consumers (Tullock 1989:21). Nonetheless, consumers’ attempts to uncover even a portion of reliable market information about those that are cartelised or monopolised would potentially outweigh the benefits they would accrue from that knowledge (see McCluskey and Swinnen 2004:1233–4). In other words, akin to the logic that dictates collective action, the marginal costs of the consumer’s pursuit of that information would outweigh his or her marginal gains (Olson 1982:18). These market distortions can thus act as disincentives to consumers to seek or demand more information about the products they are buying. This imbalance ultimately further empowers the monopolist or cartelist over the consumer, thus further degrading consumer sovereignty.

Hutt (1934:17) argues that the term ‘consumer sovereignty’ does not itself mean that the sovereignty of consumers is morally defensible. However, if, as Hutt argues, consumer sovereignty in the market is the absence of constraint in the form of *contrived scarcities*, the term is referring to the importance of consumers’ ability to determine their consumption choices without the presence of artificial constraint. Hildebrand (1951:20) recognises that the term sovereignty is a paradox of repression—something that is ‘bad’ and should be avoided. Thus, to advocate consumer sovereignty is to condemn the repression of consumers in the market. Yet, as this study’s application of the moral system will show, the deprivation of consumer freedom (sovereignty) in the market is not as condemnable as Hildebrand's unambiguous judgement would suggest.

In summary, in markets affected by monopoly and/or cartel, consumers either lose, or have impeded:

1. Their ability to determine/influence what is available on the market;
2. Their ability to choose goods from a variety of producers; and
3. Their ability to (knowledgeably) maximise their satisfaction in line with their budgetary constraints.[50]

These three consumer losses relative to a competitive baseline could represent a multitude of moral rule violations. This study will focus on the violations that are most fundamental to each consumer loss. The first two losses experienced by consumers in a market arise from violations of the moral rule 'Do not deprive of freedom', while the third arises from violations of the moral rule 'Do not deprive of pleasure'.

'Do not deprive of freedom' is a moral rule that disallows the curtailing of moral agents' actions and their control over what actions happen *to* them (Gert 2005:167). The two elements of this rule are violated when market distortions impede consumer sovereignty. To reiterate the aforementioned arguments, in monopoly and cartel industry structures, consumer choice is undermined as consumers are left unable to choose goods from a variety of producers. Competition is also unable to 'police' quality and pricing. Consumers are thus left vulnerable to sub-par quality and inflated pricing structures, and are concurrently unable to choose goods from an array of producers. This prevents consumers from freely determining what actions happen to them, and from freely determining which actions they personally elect to perform. The moral rule 'Do not deprive of pleasure' reproves deprivations of the things that give moral agents pleasure (Gert 2005:168). The abovementioned restrictions on personal liberty prevent consumers from gaining the maximum utility and satisfaction that they, as rational actors, would wish to extract from the goods they purchase. This constraint deprives consumers of

[50] There is a quantitative aspect here, in that a reduced supply limits the aggregate volume of consumption. There is also a financial aspect, in that higher prices may limit the individual's ability to consume the good at the desired level. Finally, there is an opportunity cost of consumption foregone on other goods and services, given the disproportionate outlays required to acquire the good when priced at monopolistic levels.

pleasure. Therefore, it can be said that the market structures of monopoly and cartel have clear moral dimensions.

Competitors

The reduction or elimination of competition within a market also affects competitors, both current and future (potential). For example, if a monopoly is sought via engagement in bureaucratic rent seeking (Buchanan 1980:7–8) or corrupt practices (Ades and Di Tella 1995), other producers may be forced out of the industry, or prevented from entering. If select producers within an industry cartelise, they may choose to exploit their comparative market dominance to adversely affect non-cartel firms, such as those firms' ability to remain financially viable. Cartel members may also choose to take measures to prevent would-be future competitors from entering their industry (see Marshall and Marx 2012:147–50). Further, as this chapter has shown, the monopolising or cartelising entity may also choose to employ selective incentives to either encourage or compel cooperation from competitors, or drive them from the industry to optimise its own market control (Olson 1971:34–5). While positive incentives can benefit the recipient, negative incentives are designed to limit the choices competitors can make with regard to either remaining in or exiting the industry, or participating in or eschewing collective action. Thus, in monopolising and cartelising industries, competitors and future competitors can lose:

1. The ability to freely operate (independently) in an industry;
2. The ability to remain within an industry (if they are being forced out); and
3. The ability to freely enter an industry.

These impositions fundamentally violate both elements of the moral rule 'Do not deprive of freedom'. However, it must be recognised that although firms may be harmed or disadvantaged by the actions of competitors, it is not always a moral issue. Technological externalities and, to a lesser extent, those externalities that are pecuniary, are often acceptable elements of a competitive process. This is evidenced by the pursuit of competitive advantage and the welcome dissipation of rents that accompany the demise of monopoly control of a market. It is only if the corresponding disadvantage experienced by a competitor exceeds what is expected from 'normal competitive displacement' that the protagonist firm is behaving anti-competitively (Marshall and Marx 2012:143 FN1).

Justified Violations as They Pertain to Market Distortions

This study does not operate from the assumption that all monopolies and cartels are immoral, nor that they all necessarily possess a moral dimension. The argument that any restriction on the operation of perfect competition is immoral (Velasquez 1998:218, De George 1999:267) is an inflexible perspective that is contradicted by real-life examples of both amoral and morally acceptable monopoly and cartel industry structures, as will be examined below.

Hutt (1934:15) argues that the creation of contrived scarcities, and thus the diminution of consumer sovereignty, occurs regardless of monopoly type. This is true only if it is assumed that the right to consumer sovereignty is (theoretically) present in *any and every* market. This study does not operate from such an assumption. An innovative firm that produces a new product and thus possesses monopoly control over the associated industry is not depriving consumers of their sovereignty, as consumer sovereignty did not previously exist in that industry.[51] It is indeed questionable as to whether a *contrived* scarcity exists at all in such a market because only one producer exists, and its existence did not arise out of an artificial constraint.[52] This reality challenges Hutt's assertion. Instead, it can be argued that such a monopoly is 'amoral' because it does not possess a moral dimension—its existence does not violate a moral rule and is therefore not a moral issue.[53]

In relation to market distortions that justifiably violate moral rule, market failures typically arise when the market either does not provide society with valuable public goods, undersupplies them, or overprices them when they are supplied (Pindyck and Rubinfeld 1997:612–3). In such cases, the government may intervene and become the monopoly producer/provider of that public good. Pindyck and Rubinfeld use the example of a non-exclusive and non-rival mosquito abatement program in a region (a public good). The government could encourage citizens in the affected area to pay a fee for (private) abatement services, but free riders would likely emerge, rendering atomised efforts to tackle the mosquito

[51] Sincere thanks to Professor Heather Gert for helping to illuminate the complexity of this issue in relation to her father's theory.
[52] This is assuming there is no legal monopoly in place; for example, a patent, which would be a contrived scarcity.
[53] Such a monopoly would gain a moral dimension if the innovator attempted to prevent the emergence of competition within his industry to protect the dominant market position that the original positive innovation bestowed. This intervention, if successful, would be a contrived scarcity, and would violate the abovementioned moral rules.

problem ineffective. However, by becoming the sole monopoly provider of the abatement services, the government could effectively implement the program (Pindyck and Rubinfeld 1997:675–6).

Continuing this example, the consumers (tax payers) in the region may be deprived of the option of selecting their own mosquito abatement services, and may consequently be unable to maximise their satisfaction with the service. However, the associated moral rule violations of ‘Do not deprive of freedom’ and ‘Do not deprive of pleasure’ would be considered justified by rational, impartial moral agents, as the provision of the public good would have been ineffective without the government’s intervention. As argued by Gert (1996:105), when rational, impartial moral agents state that a violation should be publicly allowed, they are declaring their preference for the outcomes that arise *because* of the violation, above the outcomes that would have occurred if the violation was not allowed. No rational, impartial moral agent would consider the consequences of the latter to be preferable to those of the former. Thus, this would be a morally justified monopoly.

Rent Extraction: A Moral Perspective

As argued in Chapter Two, this study does not subscribe to Tullock’s (1967) argument that the term rent seeking is only applicable to that which is negative-sum. This study instead focuses on the justifiability of the *extraction* of rents, which, as argued previously, informs the morality of the whole of the associated exercise, including the generated waste, if relevant.

To determine which key moral rules are violated by the extraction of rents, it must be understood what is gained by the extractor, and what is consequently lost by whosoever is funding that extraction. Naturally, this equation cannot be based on clearly quantified figures, as extracted rents are not an easily measured good (see Tullock 1989:Chapter 3). However, in any act of rent extraction, whether arising from productive innovation or negative-sum rent seeking, there must be someone who ‘gains’ and someone who ‘loses’. Olson’s (1982:42) pie sharing analogy illustrates the effects of rent extraction on society. The size of the pie increases when people in society contribute to its growth and take only what they earn as a result. However, if people take more of the pie than they have rightly earned, the size of the pie decreases.

An individual's receipt of only the returns he has earned, and nothing more, is implicit in Olson's pie sharing analogy. People desire the pie to be divided along these lines (see Kahneman et al. 1986:S288–92), as it would be irrational for them to accept the harm that would accompany their receipt of less than their fair share (Gert 2005:30–1). However, the extraction of rents changes the rules of the game in the market to advantage the protagonist (Congleton 1980:153–4) at the cost of others (see Tullock 1967:228, Buchanan 1980:7–8). Akin to the multiple moral rule violations that could be attributed to the existence of monopoly and cartel industry structures, the extraction of rents has multiple moral dimensions. However, the moral rule violation that is central to the act of rent extraction is 'Do not cheat', which is defined as violating the rules of a game in an effort to gain advantage over the other participants (Gert 2005:193).[54]

Akin to the justified moral rule violations that may accompany market distortions, rent extraction does not always violate the moral rule 'Do not cheat' in a way that rational, impartial moral agents would classify as unjustified. For example, an innovator can typically charge more for his new product than he could if it were priced in a competitive environment. This rent creation does not necessarily equal an unjustified violation of the moral rule 'Do not cheat'. Whether the extraction of rents is justified in such cases is likely to be a contested issue based on differing opinions about greater harms. If the innovator did not have the capacity to extract rents, innovation may be stifled within society. A portion of rational, impartial moral agents may consider this a worse outcome than publicly allowing the violation. However, other rational, impartial moral agents (an arguably smaller group than the former) may consider rent extraction, and thus the creation of a 'loser', a greater harm than potentially stifling innovation. Therefore, such violations would often be classified as 'weakly justified'. The reality will often depend upon the *ex-post* behaviour of the innovator; that is, to what extent are subsequent rents optimised, to what extent are the initial rents protected or hedged, and to what extent are other firms put at a disadvantage?

[54] Other moral rule violations attributed to rent extraction would be 'Do not deprive of freedom' and 'Do not deprive of pleasure', which would arise out of the loss of funds experienced by those affected by the extraction of rents. However, this study is only examining the moral rule violations that are most fundamental to each examined practice.

Rhodes' Moral Rule Violations and the Two-Step Procedure

Rhodes' violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat' will be examined collectively with respect to each group of affected moral agents. Distinct analyses of each affected actor are unnecessary in instances in which a common moral rule violation exists, and each causal action was performed to fulfil common intermediate and ultimate goals. The only distinction that will be made between affected producers and merchants will refer to producers and merchants who were prevented from ***remaining*** within the diamond industry, and those that were prevented from ***entering*** the diamond industry. The former actions were carried out in the *pursuit* of the monopoly/cartel, while the latter was a result of the *functioning* of the monopoly/cartel.[55] Although it may be appealing to systematically address each question within the two-step procedure in list form, Gertian analyses of moral issues have repeatedly shown that such a dry analysis is unnecessary for demonstrating the justified, weakly justified or unjustified status of violations (Hennessey and Gert 1985, Elliott 1991, Elliott and Culver 1992, Gert et al. 1996, Gert et al. 1997, Gert 1999).

The ensuing two-step moral analysis of Rhodes' intermediate and ultimate goals, and the methods he used to achieve them, will be structured as follows: Rhodes' moral rule violations 'Do not deprive of freedom' and 'Do not deprive of pleasure' will be examined concurrently in relation to diamond consumers. This will be followed by an examination of Rhodes' violations of the moral rule 'Do not deprive of freedom' in relation to competitors (potential and actual) within the diamond industry. Subsequently, Rhodes' violations of 'Do not cheat' will be considered in the context of rents extracted from diamond consumers (residing anywhere within the diamond supply chain). This examination will classify Rhodes' violations as justified, weakly justified or unjustified.

Rhodes' Intermediate Goals of Monopoly and Cartel

Consumers (The Demand Side)

'Do not Deprive of Freedom': Step One

[55] As this study is examining a contained mandate, there is the potential for some overlap. To streamline the analysis of Rhodes' theory of how to succeed, only the key moral rule or rules that were broken by each act are analysed. Where a moral rule is analysed in regards to various acts, that moral rule was broken in a different way in each instance, necessitating multiple analyses.

Diamond consumers within the supply chain were harmed by Rhodes' violation of the moral rule 'Do not deprive of freedom' because his actions deprived them of the freedom to choose goods that were produced by an array of producers in a competitive market. In destroying their consumer sovereignty, Rhodes prevented consumers from determining which actions they performed. Rhodes' violations also ensured that diamond consumers were entirely dependent on the diamonds emanating from De Beers, which deprived them of the freedom to control which actions happened *to* them; they could not help but have experienced purchasing restrictions because of the supply alterations Rhodes instigated. The probability of these harms occurring is extremely high. Virtually every diamond consumer during Rhodes' reign (literally hundreds of thousands of people) would have fallen victim to these deprivations, which existed for the life of Rhodes' monopoly and cartel structures within the diamond industry.

As rational actors, diamond consumers within the supply chain would not have wished to experience the harm caused by Rhodes' violations of this moral rule. They would have wanted to exercise consumer sovereignty, to choose goods from an array of producers, and be free from the threat of supply alterations/disruptions. Diamond consumers would have held the rational belief that the market control possessed by De Beers had the capacity to impinge on their consumer sovereignty. The alternative option that rational, impartial actors would have advocated would have been Rhodes eschewing control of both the diamond production and marketing spheres, and operating as a producer in a competitive market. However, it was Rhodes' objective to proactively stifle competition within the diamond production and marketing spheres, and thus destroy consumer sovereignty within the market. Rhodes clearly foresaw the import of his actions. Therefore, it can be said that Rhodes intentionally violated the moral rule 'Do not deprive of freedom'.

'Do not Deprive of Pleasure': Step One

Diamond consumers experienced harm from Rhodes' violations of the moral rule 'Do not deprive of pleasure' because, as De Beers controlled virtually every diamond on the market, they were unable to maximise their satisfaction with their purchasing decisions. The lack of policing in the industry in the form of competition had the capacity to impact consumers' access to quality diamonds and, as will be explored later in this study, competitive pricing. Consumers were also unable to extract reliable information from the market that could have aided their maximisation of individual satisfaction. The probability of the harms associated with Rhodes' violations of this moral rule is extremely high—virtually every diamond consumer during his time in power would have fallen victim to them, and they occurred for as long as Rhodes' monopoly and cartel structures existed within the diamond industry.

As rational actors, diamond consumers within the supply chain would not have wished to experience the harm caused by Rhodes' violations of this rule. They would have wanted to exercise consumer sovereignty and maximise their satisfaction in line with their budgetary constraints. Diamond consumers would have held the rational belief that Rhodes' violations, caused by the market control he attained for De Beers, had the capacity to impinge on their consumer sovereignty. The alternative option that rational, impartial actors would have advocated would be Rhodes eschewing monopolisation and cartelisation of the diamond industry, and thus leaving consumer sovereignty intact. However, it was his goal to remove competition from the diamond industry and thus capture and constrain the diamond industry's consumer base. The result would have been foreseen by Rhodes. Thus, it can be said that Rhodes intentionally violated the moral rule 'Do not deprive of pleasure'.

'Do not Deprive of Freedom' and 'Do not Deprive of Pleasure' (The Demand Side): Step Two

The second step in the two-step procedure applies the following question to the violations: 'What effects would this kind of violation being **publicly** allowed have?' (Gert 2005:236). As the aforementioned analyses have illustrated, market distortions like Rhodes' monopoly and cartel industry structures caused harm to disobliging consumers by depriving them of freedom and pleasure. The consequences of publicly allowing moral rule violations of this kind; that is, violations that are a result of monopoly and cartel control over an industry, would be the widespread violation of the central tenets of consumer sovereignty: the freedom to choose, and the right to maximise satisfaction from purchasing decisions. Rational, impartial moral agents would see the harm that would arise from publicly allowing these kinds of violations, and would not make an exception for Rhodes. Consequently, Rhodes' violations of the moral rules 'Do not deprive of freedom' and 'Do not deprive of pleasure' would be classified as unjustified, and thus immoral.

Competitors: Actual, Prospective and Future (The Supply Side)

In the ***pursuit*** of his monopoly and cartel industry structures, Rhodes often either directly forced existing competitors out of business, or prevented them from being able to operate successfully in the industry, thus creating an environment in which their exit from the industry was both hastened and inevitable. The ***existence*** of Rhodes' monopoly and cartel industry structures prevented prospective and future competitors from freely entering the production and marketing spheres.

'Do not Deprive of Freedom': Step One

In relation to **existing** competitors, the historical evidence outlined in this chapter shows that Rhodes regularly forcefully deprived the owners of competing companies of the freedom to operate successfully and thus remain within the diamond industry. Several groups of producers and marketers fall into this category, including every producer or marketer who was forced out of the industry because Rhodes either implicitly or explicitly threatened them; every producer or marketer who was unable to operate effectively because of Rhodes' agency capture, and thus his ability to determine and influence legislation and mining boards; and every producer or marketer who left the industry due to the inability to operate successfully because of Rhodes' anticompetitive practices, such as his diamond dumping and creation of the cartel.

Existing competitors were harmed by Rhodes' violations of the moral rule 'Do not deprive of freedom' because they were prevented from exercising the freedom to act (in relation to operating as an independent diamond producer or marketer), and the freedom to determine whether they were acted upon (in relation to personally determining their exit out of the diamond industry). The probability of these harms occurring is extremely high: any diamond producer who did not willingly sell their operations to Rhodes, and any marketer who was not a member of the De Beers cartel during the period of Rhodes' reign, would have fallen victim to Rhodes' violations. The associated deprivations lasted for as long as De Beers maintained its monopoly and cartel control.

In relation to would-be **future or prospective** competitors—actors who *would have* become diamond producers or marketers if it were not for Rhodes' control over the industry—Rhodes used implicit and explicit barriers to ensure that their entry into the industry was near to impossible. In relation to the former, Rhodes' monopoly and cartel control would have deterred producers and merchants from entering the diamond industry, as their chances of competing successfully with such market structures would have been palpably low. His demonstrated use of negative incentives against competitors would also have deterred would-be competitors from entering the industry, lest they fall victim to those harms. Rhodes' agency capture, and thus legal influence within the Cape, would have also acted as a barrier to entry by dissuading actors from attempting to challenge his dominance in the production sphere.

Rhodes' explicit barriers to entry limited competitors' access to the production and marketing sectors of the diamond industry, and included his pre-emptive acquisition of 500,000 acres of potentially diamondiferous land; De Beers' attainment of preferential rights to new diamond discoveries; and Rhodes' successful legal challenge to the ownership of mine debris. These acquisitions were sought to prevent the emergence of new active diamond deposits, and thus new competition. The creation of the Syndicate and the subsequent cartel agreement with De Beers was also an explicit barrier to entry for would-be diamond merchants who were seeking to buy *directly* from producers. Its existence, in combination with De Beers' monopoly control of production, would have deterred would-be diamond marketers from entering the industry.

The harms caused by Rhodes' violations of this moral rule included would-be competitors' inability to determine their own actions freely. Would-be competitors could not freely enter the diamond industry as would otherwise have been possible in a more competitive market; that is, a market without the presence of De Beers' monopoly and cartel structures, Rhodes' agency capture or other barriers to entry. The probability of these harms occurring is extremely high. Any would-be competitor affected by Rhodes' barriers to entry would have experienced these deprivations of freedom.

As rational actors, the affected **existing** and **potential/future** producers and merchants would not have wanted to experience the harms that arose from Rhodes' violations of this rule. They would have wanted the freedom to operate successfully within the diamond industry, and determine their own destinies regarding their entry or exit. They would have possessed the rational belief that Rhodes' actions would harm their independent operations by depriving them of the abovementioned freedoms. The alternative option that rational, impartial actors would have advocated would have been Rhodes eschewing his desired monopolisation and cartelisation of the diamond industry. However, it was Rhodes' intention to deprive both existing and future competitors in the production and marketing spheres of the freedom to operate independently, so he could gain, and retain, near-absolute control over the world's diamond supplies. Rhodes would have foreseen, and intended, for his action to deprive his existing and future competitors of their freedom.

'Do not Deprive of Freedom' (The Supply Side): Step Two

Existing and future competitors will be examined collectively in the following analysis. The consequences of publicly allowing moral rule violations of this kind; that is, violations arising from the pursuit and maintenance of monopoly and cartel control over an industry, would be the stifling of existing and future competition within markets by larger, more powerful actors capable of establishing both implicit and explicit barriers to entry and employing negative incentives. Thus, if violations like Rhodes', designed to optimise market control and thus optimise rents, were known to be publicly allowed, this would greatly increase the amount of harm suffered within society. Rational, impartial moral agents would see the harm that would arise from publicly allowing these kinds of violations, and would not make an exception for Rhodes. Thus, Rhodes' violations of the moral rule 'Do not deprive of freedom' would be classified as unjustified, and thus immoral.

Rhodes' Extraction of Rents and the Two-Step Procedure

As this chapter's historical analysis of the diamond industry has shown, Rhodes had two primary sources of rents: one from diamond consumers, in the form of inflated diamond prices; and one from the government, in the form of a tax exemption for the diamond industry. Only the former will be analysed below, as it was the primary method of rent extraction adopted by his successors, and is thus the most relevant to the goals of this study.

Consumers

'Do not Cheat': Step One

Rhodes sought control over the diamond industry to institute inflated diamond prices that would ensure diamond consumers became his primary source of rents. As soon as De Beers possessed the market power to contribute effectively to either a sub-optimised or an optimised collective good, Rhodes altered diamond production to realise these higher prices. Rhodes' actions meant that diamond consumers were paying more for diamonds than they would have been in a competitive (or more competitive) market, to create a source from which De Beers' could extract its rents.

The harm caused by Rhodes' violations of the moral rule 'Do not cheat' was a product of the (relative) disadvantage consumers endured as a result of funding De Beers' rent extraction. Rhodes created his source of perpetual rents by forcing diamond consumers, who were unable to exercise their consumer sovereignty in a tightly controlled market, to overpay for diamonds that would have been cheaper if competition were allowed to exist within the industry. De Beers' extraction of rents gave the firm a financial advantage over other (less powerful) actors within the market, particularly consumers. Diamond consumers, as rational actors, would not have wished to experience this disadvantage. They would have possessed the rational belief that De Beers' inflated diamond prices harmed them by taking more money out of their pockets than if rents were not pursued by Rhodes. The alternative option that rational, impartial actors would have advocated would have been Rhodes eschewing rents. However, it was his ultimate goal to extract perpetual rents from a captive consumer base. The disadvantage consumers experienced because of this rent extraction would have been foreseeable for Rhodes, meaning that he intentionally violated the moral rule 'Do not cheat'.

'Do not Cheat': Step Two

If violations of this kind were publicly allowed, consumers would be disadvantaged in any industries in which conditions were amenable to the extraction of rents. This would greatly increase the amount of harm suffered within society. Rational, impartial moral agents would see the harm that would arise from publicly allowing these kinds of violations, and would not make an exception for Rhodes. Thus, Rhodes' violations of the moral rule 'Do not cheat' would be classified as unjustified, and thus immoral.

The Moral System versus Apologist Positions on Rhodes' Actions

The findings from the application of the moral system's two-step procedure to Rhodes' moral rule violations, which determined his violations to be unjustified and thus immoral, come into conflict with the oft-repeated arguments that Rhodes' anticompetitive actions, and those of his successors, 'saved' the diamond industry (see Lenzen 1970:155, Rotberg 1988:182) and should thus be lauded. These arguments are based upon the naïve assumption that a diamond industry, in any form, would not have survived, going forward, in the presence of competitive production and marketing spheres. This is untrue. An industry based on the extraction and sale of a mineral for which there is an existing and long-term market never need cease to exist. Only the rents were saved from dissipation, not the industry itself.

If Rhodes, or anyone else, had not monopolised and cartelised the industry, history suggests that the industry would have gone through periods of struggle, defined by the maximisation of profits by each unmobilised actor in both the production and marketing spheres, and sporadic drops in diamond prices that aligned largely with the corresponding economic conditions of the time. During these times, many actors in the production sphere would likely have lost their investments or a portion thereof, lost their status in the industry, and/or been forced out of the industry completely. However, the production sphere would have regenerated; new owners would have gained access to the industry in the wake of the mass exodus; and after each crash, the previous structures and expectations would have been replaced by entrepreneurs with new ideas that were *more adaptable to the realities of the industry* (see Schumpeter 1942, Olson 1982:Chapter 3). Indeed, recalibration of this kind occurred in the diamond industry when diggers were gradually pushed out of the production sphere by the changing mining environment after 1872. Ergo, the diamond industry would not have died; rather, it would have fundamentally changed, developing like any normal commodity market in which competitive conditions prevailed.

However, without monopoly and cartelisation, the inevitable 'creative destruction'-driven reconfiguration of the market brought by competition (Schumpeter 1942:83) would mean that the investments that Rhodes and his colleagues had made in the production sphere, and De Beers' dominant position therein, would have been lost (see Olson 1982:59). As argued throughout this chapter, in gaining complete control of the diamond industry, Rhodes was attempting to ensure his ability to extract optimised rents *ad infinitum*. Monopolists can use their market power to prevent creative destruction within their industries and the competitive diminution of profits over time, thus protecting their position therein (see Abbring and Campbell 2004); something Rhodes clearly chose to do. The 'White Knight' argument that condones Rhodes' anticompetitive actions is therefore based on two erroneous assumptions: a naïve underestimation of the durability of an established extractives market, and a rose-coloured view of Rhodes' rationale for controlling the diamond industry.

For the sake of staging a hypothetical argument in support of Rhodes’ actions, if one were to assume that Rhodes’ anticompetitive actions were altruistic and designed to ‘save’ an otherwise doomed diamond industry, it could be argued that Rhode’s moral rule violations were carried out in an effort to *minimise* the harm that would have arisen if competition were allowed to remain within the industry. If these potential harms were seen as greater than were those generated by the violations, this argument would be valid. As argued by Gert (1996:105), violations that occur in an effort to minimise harms can only be classified as justified if the harms generated by the violations are palpably less significant than those being prevented. Thus, for Rhodes’ defence to be possible, the reconfiguration of the diamond industry if competition had emerged must be seen as a greater evil than the abovementioned harms suffered by consumers, competitors and would-be competitors on account of Rhodes’ violations of the moral rules.

However, no rational, *impartial* moral agent would consider the short-term ‘harms’ prevented by Rhodes’ anticompetitive actions to be greater than the long-term harms those actions caused. As argued, it is illogical to believe that the diamond industry would have been destroyed if competition were allowed to exist therein; it would merely have been forced to recalibrate and adapt to the realities of the environment in which it operated. Further, creative destruction is a standard feature of (competitive) markets (Dunne et al. 1988). Therefore, it is not an ‘evil’, but instead a risk factor that market entities must assume upon entry into their chosen industries. In contrast, the role of consumer sovereignty in markets holds no requirement for enduring anticompetitive practices (for example, contrived scarcities); indeed, they are explicitly condemned (Hutt 1934). Therefore, it can be stated that efforts to justify Rhodes’ activities based on harms allegedly deterred are misguided.

Considering the issue from a microeconomic perspective, further support could be provided to the argument that the harms prevented by Rhodes’ actions were not greater than those caused. Three key pieces of evidence support this assertion. Firstly, as illustrated by Tullock (1967:225–32), the waste that is generated by rent seeking is typically greater than the transfers received by the protagonist. This creates a net loss that is borne by society. Rhodes’ powerful and well-moneyed De Beers was thus highly likely to have cost society more than the transfers it received. Secondly, Rhodes was not engaging in productive profit seeking. Indeed, he deliberately attempted to *prevent* the discovery of new diamond deposits (Worger

1987:295). Consequently, the diamond industry that resulted from Rhodes' efforts was smaller than it would have been if competition had been allowed to exist therein. Therefore, the resources Rhodes dedicated to creating and maintaining the De Beers monopoly and cartel represent social opportunity costs. Thirdly, by establishing barriers to entry that were designed to prevent competition from returning to the diamond industry, Rhodes slowed the rate of development therein. Competition within an industry ensures the pursuit of competitive advantage, and thus accelerates growth via innovations and technological advancements. Organised minorities, in contrast, seek to stifle change for fear of losing their status within the affected industry, which prevents efficient resource allocation and decelerates the rate of growth (Leibenstein 1966, Olson 1982:62–5). It can thus be argued that in attempting to 'save' his own interests in the diamond industry, Rhodes was causing long-term damage to its economic growth and development. This topic is worthy of deeper analysis; however, that is beyond the scope of this study.

The application of the moral system to Rhodes' intermediate and ultimate goals has demonstrated that during his leadership of De Beers he violated the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat' in ways that rational, impartial moral agents would not publicly allow, and would thus classify as unjustified. Apologist positions that attempt to justify Rhodes' actions as beneficial to the diamond industry fail to account for the harms he inflicted by preventing the emergence of competition therein. By analysing the impact Rhodes' intermediate and ultimate goals had on the diamond industry through the lenses of both morality *and* economic theory, it is impossible to judge his actions as anything but harmful, unjustified, and thus immoral.

Conclusion

This chapter has examined the early development of the modern diamond industry, from 1869 to 1902. This period saw the discovery of enormous diamond deposits that initiated the establishment of a fully developed diamond industry, which, prior to 1869, had operated as little more than an inchoate trade. At the apex of this emerging industry was Cecil Rhodes, who saw the potential for centralised control over the diamond industry and the instatement of inflated diamond prices—ambitions that inspired the formation of what this study has classified as his intermediate and ultimate goals. The tripartite framework outlined in Chapters

Two and Three has been applied in this chapter to illuminate not only the motivations behind Rhodes' intermediate and ultimate goals and the lengths to which he went to accomplish them, but also the rejection of moral constraint that he embraced in their pursuit and realisation.

The moral system has been used to illuminate the moral dimensions of monopoly and cartel and the extraction of rents. The application of the moral system's two-step procedure to Rhodes' moral rule violations has illustrated that rational, impartial moral agents could not publicly allow them. It is thus possible to declare that Rhodes' intermediate and ultimate goals, and the lengths to which he went to achieve them, were immoral. The illumination of this immorality is significant to the aims of this study for two reasons. Firstly, it illustrates how and why Cecil Rhodes became the architect of the modern diamond industry's original moral position. Secondly, it shows how Rhodes, by successfully monopolising the production sphere and cartelising the production and marketing spheres, demonstrated the minority benefits that could accrue to those in power; namely, the perpetual rents that could be extracted from overpaying consumers. Forthcoming chapters will illustrate the significance of Rhodes' influence over his most powerful successors, and explain why their adoption and adaptation of Rhodes' goals were so significant to the (lack of) ethical evolution of the diamond industry over the greater part of the twentieth century. This will establish that Rhodes was not only the architect of the diamond industry's original moral position, but also the original source of the poor moral status for which it remains known today.

Chapter 5: The Diamond Industry from 1902 to 1957: Ernest Oppenheimer's Quest to Extract Perpetual Rents.

Introduction

This chapter employs the three-arrow theoretical framework to examine the key developments that occurred in the modern diamond industry from 1902 to 1957, from the death of Cecil Rhodes to the death of his successor at the apex of De Beers, Ernest Oppenheimer. It will be shown that, despite the re-emergence of competition in the diamond industry after Rhodes' death and the failure of the De Beers' board to protect the firm's monopoly control and perpetual rents, Ernest Oppenheimer managed to revive Rhodes' ultimate goal. Like his predecessor, Oppenheimer fought to eliminate competition from the production and marketing spheres of the diamond industry to extract perpetual rents.

However, the intermediate goals via which Oppenheimer was to achieve this shared ultimate goal could not mirror those of Rhodes. The steady geographical diversification of the diamond industry after Rhodes' death and the emergence of independent producers rendered Rhodes' preference for monopoly ownership of production impracticable by the time Oppenheimer entered the diamond-production sphere in 1917. As such, collective action became the primary tool through which Oppenheimer sought control over global diamond supplies, with cartelisation being his first intermediate goal. While Rhodes' second intermediate goal had been a cartel agreement between diamond production and marketing, Oppenheimer disliked the competing interests that remained within such an agreement. Instead, he sought to align the interests of the two entities *permanently* by vertically integrating the largest producers in the production sphere with a diamond-marketing monopsony. After he obtained the Chairmanship of De Beers in 1929, vertical integration became Oppenheimer's second intermediate goal.

The framework outlined in Chapter Two predicts the difficulties faced by Oppenheimer in achieving his goals. As each new diamond producer came on line, a multiplicity of competing interests threatened Oppenheimer's realisation of collective action and decentralised the marketing sphere. Moreover, many changes had occurred within the industry since Rhodes' death. High prices had been achieved even during prolonged periods of competition; the political influence once wielded over the Kimberley producers could not be replicated on a global stage; the Syndicate of Rhodes' era had become antiquated; and some producers, and the states in which they resided, were simply unwilling to 'play ball' with De Beers. Akin to Rhodes' forceful monopolisation of the production sphere, Oppenheimer's pursuit of an *optimised* collective good left no room for competing interests or conscientious objectors; compliance among diamond producers and marketers had to be achieved, whatever the means. The use of persuasive incentives, both positive and negative, thus became paramount as Oppenheimer fought to replicate Rhodes' near-absolute control over global diamond supplies in a far more challenging context.

This chapter will show that in both pursuing and realising his intermediate and ultimate goals, Oppenheimer adopted Rhodes' moral template. Specifically, he re-introduced into the diamond industry the systematic and discretionary unjustified violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat' that Rhodes had found necessary for the fulfilment of his goals. Moreover, the adaptations Oppenheimer made to Rhodes' intermediate goals resulted in an augmentation of his predecessor's original violations. This was primarily a product of the unparalleled control Oppenheimer exerted over the industry, which made more actors than ever vulnerable to his violations. Further, Oppenheimer added two additional moral rule violations to De Beers' operational mandate: a breach of 'Do not deceive', and a consistent violation of 'Obey the law'. The subsequent moral analysis will demonstrate that these violations would also be classified as 'unjustified' by rational, impartial moral agents. During his leadership of the diamond industry, Oppenheimer thus both embraced and enhanced Rhodes' immoral *modus operandi*.

An examination of this period of the diamond industry's history is significant to the aims of this study for three reasons. Firstly, it illustrates how the industry came to reinhabit the moral nadir that Rhodes had established during his leadership of De Beers after the competitive interregnum that followed his death. Secondly, it shows how Oppenheimer increased the immorality of De Beers' operations by both expanding the breadth of those affected by the associated moral rule violations, and increasing the number of moral rule violations that were central to the realisation of his intermediate and ultimate goals. Thirdly, it examines how the structures that Oppenheimer established, and the increasingly optimised rents he extracted (and protected), ensured that unjustified moral rule violations became a self-perpetuating aspect of De Beers' corporate DNA, in line with the ultimate goal they facilitated. Chapters Six and Seven of this study will reveal how Oppenheimer's successors, in adopting his intermediate and ultimate goals, embraced not only Rhodes' violations re-introduced by Oppenheimer into De Beers, but also the additional violations that Oppenheimer had personally initiated. Oppenheimer's influence over the ethical evolution of the diamond industry was, for that reason, profound.

This chapter will commence with an overview of the decentralisation of the diamond industry that Oppenheimer faced from the year 1902. It will then examine the path Oppenheimer took to enter the diamond-production sphere, and the often-aggressive methods he used to limit the decentralisation of production that was occurring with each new diamond discovery. What Oppenheimer subsequently did to gain control not only of the production and marketing spheres, but also the greater diamond industry, will then be explored. At the end of the chapter, an analysis of the morality of Oppenheimer's reign will take place.

Enter Oppenheimer

Ernest Oppenheimer arrived in South Africa in 1902, at the age of 17. He had travelled to the British colony to work as a sales representative of the English diamond merchant, A. Dunklesbuhler and Company, a member of the marketing Syndicate Rhodes had established in 1889. The diamond-production sphere that greeted Oppenheimer was slowly moving away from the privileged group status that Rhodes had been central to the creation of in the previous two decades. In 1902, Thomas Cullinan ended De Beers' monopoly control of production when he discovered the diamondiferous kimberlite pipe in Transvaal that would become the Premier mine.[56] Despite the potential size of Premier's output, the De Beers board initially exhibited only low-level caution about the new mine (Newbury 1989:172). Francis Oats, a director of De Beers, believed the deposit had been 'salted' and was thus bogus (see Gregory 1962:60), despite not possessing any evidence to support this assumption.[57] This modest reaction to the emergence of a new competitor was exactly what Rhodes had counselled the De Beers board against only three years earlier (see Rhodes 1899).

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[56] The Premier Mine in Transvaal is not to be confused with the Wesselton mine in Kimberley, which was also known as Premier. To prevent confusion, this study does *not* refer to Wesselton as Premier at any time.
[57] When a deposit was 'salted' it had been either fraudulently created or enhanced by the manual addition of rough diamonds.

Irrespective of the De Beers board's self-professed complacency towards the emergence of mines like Premier (see Worger 1987:304), the owners of Premier did not wish to either cooperate with De Beers, or sell the mine's output through the Syndicate.[58] Cullinan declared he had no intention of reducing the mine's output (Wheatcroft 1985:242). In 1904, the Premier Diamond Mining Company established an independent marketing firm in London—a direct competitor to the Syndicate. This ended the De Beers cartel's monopsony control over diamond distribution. Rhodes' perpetual rents were thus lost upon the entry of the independent Premier Diamond Mining Company into the production and marketing spheres.

By 1907, Premier's output had reached 1,899,986cts—more than double its 1904 output of 749,635cts (see Table 5.1). Despite Premier's growth, it remained on a distinctly lower tier than the five large mines controlled by De Beers, primarily because of the poor quality of the gems it produced. For example, although it produced nearly half of De Beers' output in 1905, Premier's annual sales totaled only £900,000, a mere £100,000 more than the value of Brazil's meagre artisanal output, and far less than the £5,000,000 De Beers received for its diamonds (Worger 1987:299). In 1906, the De Beers board remained largely apathetic towards Premier's independent operations; a comfortable disregard no doubt cushioned by the failure of Premier to impact diamond prices significantly. Indeed, average diamond prices remained relatively stable during Premier's early operations.

Table 5.1. Annual carat output by De Beers and Premier and average prices per carat, 1902–7

	De Beers Group	Premier	Average Carat Price
1902	2,025,132cts	n/a	sh. 39/10
1903	2,205,652	99,208	sh. 39/4
1904	2,060,017	749,635	sh. 39/2
1905	1,953,255	845,652	sh. 36/10
1906	1,936,788	899,746	sh. 46/
1907	2,061,973	1,899,986	sh. 38/7

Source: (Lenzen 1970:160). Note: n/a stands for not available. Prices are in British shillings and pence.

Premier's negligible price impact up to 1907 was aided by the price revolution that had commenced in 1896, which saw consumption levels rise rapidly in the early 1900s (see Hackett Fischer 1996:186–90). The robust consumer demand associated with a strong

[58] The majority shareholder of the mine was the Transvaal government.

recovery in the world economy meant that the market could absorb the increased diamond supply without a major deleterious impact on prices. Nonetheless, the De Beers board's complacency regarding the emergence of new competitors was based on a short-term outlook that was dependent upon demand remaining strong, and diamond prices weathering the increased supply *ad infinitum*. The importance of centralised control for maintaining artificially high (rent-extracting) diamond prices was demonstrated to the De Beers board when a depression hit the world's largest diamond markets, the United States and Europe, in 1907. The trigger for this collapse was a financial crisis in the United States (Friedman and Schwartz 1993:156–68).[59]

The Challenges of Collective Action

During the downturn in economic activity and diamond demand, Premier's independence became a considerable threat to general diamond prices. The owners of Premier initially recognised the mutual benefit to be had in cooperating with the cartel. In 1907, they agreed to sell £450,000 of diamonds to the Syndicate every six months for five years. However, this agreement quickly broke down after the mine's owners argued they were being underpaid by the cartel, and when the Syndicate rescinded on the agreement to buy a 'guaranteed minimum' from the mine (see Gregory 1962:62). Premier's cheaper, lower-grade diamond also continued to sell during the Depression, unlike the higher grades of De Beers' diamonds (Newbury 1989:181). Premier subsequently eschewed collective action and increased its output by 10 per cent (Lenzen 1970:161). Its owners were seeking to maximise their income by maximising output to take full benefit of the mine's (cyclical) competitive advantage. Premier's disagreeable experience with De Beers, and its apparent competitive advantage, ensured the board would not favour cooperating to protect industry-wide prices; the incompatible interests of the two entities were not conducive to collective action (Olson 1971:1–2). The discord between the two entities was palpable; Premier's directors accused De Beers of over-producing diamonds and expressly threatened to end its monopoly over Kimberley (Newbury 1989:183) (which Premier technically had already achieved).

[59] The financial crisis highlighted that the lack of a central bank was a severe shortcoming in the US' institutional framework. The crisis led to the formation of the Federal Reserve System in the US in 1913 (see Friedman and Schwartz 1993:156–168 and Chapter 5).

By 1908, 55.6 per cent of South Africa's total diamond production was accounted for by Premier, and average diamond prices had declined from sh 38/7 in 1907 to sh 26/5 (Lenzen 1970:169). In an effort to alleviate the impact of Premier's sales, and thus obtain suboptimal rents, the De Beers board reduced its own output by roughly one-third (Lenzen 1970:161). The board had thus assumed the role Olson (1971:41) argues is often rational for an industry's largest firm: countering free riding at its own cost to protect the (unoptimised) collective good. Despite the marked price falls, the board of Premier remained confrontational regarding the issue of collective action with De Beers. De Beers, in turn, believed that Premier's policies were designed to push diamond prices lower (Gregory 1962:62–3). However, it was not the intention of Premier to negatively affect the collective good; this was merely a symptom of the firm's maximisation of income, and the compositional effect of Premier increasing its market share during an economically depressed time.

In 1908, there was also a fear that synthetic diamonds had been successfully manufactured. A Frenchman, Henri Lemoine, claimed to have successfully executed an experiment in which powdered carbon was heated into diamonds. While, Lemoine was eventually found to be a fraud—a spectacle that became known as 'L'Affairs des Diamants' in the French press (The New York Times 1908)—the potential for the successful creation of synthetic diamonds remained a serious threat to De Beers' control of supply. As argued in Chapter Two, monopoly rents dissipate once competitors introduce a reasonable substitute into the market (Buchanan 1980:4–6), here represented by synthetic diamonds. De Beers' response to the threat posed by General Electric's creation of genuine synthetic diamonds in 1955 will be explored in-depth in Chapter Six.

The Depression ended in 1908. Soon after, large alluvial deposits in German South West Africa (hereafter GSWA) were discovered, the mere rumour of which compelled the Cape Prime Minister and Rhodes' former government colleague, J.X. Merriman (quoted in Gregory 1962:65) to declare: 'a discovery of a new diamond field would be a hideous calamity for us all'. Despite Merriman's prophesy, the De Beers board disproved the adage 'once bitten, twice shy' when it once again displayed indifference towards the new deposits. Oats naively declared that alluvial placers could not possibly pose a threat to kimberlite pipes. He also (incorrectly) argued that GSWA's output would only affect De Beers' lower grades of diamonds, and should thus not be considered a serious competitor (see Gregory 1962:67). The

De Beers board's initial apathy to both the Premier mine and the deposits in GSWA illustrates how markedly it had deviated from Rhodes' first intermediate goal. As argued by Norman (2010:111), De Beers' loss of Rhodes' visionary leadership was the primary reason for the firm's successive failures regarding Premier and GSWA.

When the reality of the threat posed by GSWA's deposits soon became apparent, De Beers was unable, in the short term, to either gain control of the alluvial deposits or engage in collective action with the producers. In 1908, the Deutsche Kolonial Gesellschaft (hereafter the German Colonial Company) obtained monopoly rights over a 10,286 square mile area of diamond deposits known as the 'Sperrgebiet'.[60] In 1909, these rights were awarded by the German Colonial Company to the German Diamond Company, which then split the prospecting rights to the Sperrgebiet with the Fiscus (Treasury) in 1910 (Hahlo 1959:157–8).[61] From 1909, GSWA's output was sold to a newly created independent marketing company, the Diamond Regie of South West Africa. The Regie then sold GSWA's steadily growing output (see Table 5.2) directly to Antwerp, thus circumventing the Syndicate (Newbury 1989:189).

Table 5.2: Annual carat output by De Beers, Premier and GSWA, 1908–13.

	De Beers Group	**Premier**	**GSWA**
1908	1,473,272	2,078,825	2,083
1909	n/a[62]	n/a	495,536
1910	n/a	n/a	891,307
1911	2,514,688	1,774,206	816,296
1912	2,432,027	1,992,474	1,003,265
1913	2,656,866	2,107,983	1,284,727

Source: Lenzen (1970:169). Note: n/a stands for not available.

The emergence of GSWA as a producer, and the formation of the Diamond Regie, introduced additional competing interests into both the production and marketing spheres of the diamond industry. By 1909, there were four notable diamond producers in Southern Africa: De Beers, GSWA, Premier and New Jagersfontein Mining and Exploration Company Ltd. (which was owned by Barnato Brothers and was a long-serving member of the De Beers cartel), and three diamond marketers. The small number of actors in the group still rendered it 'privileged' (see

[60] This translates into 'closed territory', which was essentially a monopolised area of diamond deposits.
[61] The German Colonial Company had, just prior to the discovery of diamonds, surrendered its mining rights (held since 1885) over German South West Africa and was thus required to request their reinstatement.
[62] In 1909 and 1910, De Beers and Premier did not publish their respective annual outputs in carats, only the value.

Olson 1971:50). However, it was rational for GSWA and Premier to act as free riders, for three key reasons. Firstly, the De Beers' board was willing to independently protect a suboptimal collective good by counteracting, to a degree, the impact of the increased output. This was rational, insofar as De Beers' comparative size, and thus its share of the collective good, meant that its marginal costs were exceeded by its marginal gains. However, De Beers' assumption of this role also meant that the collective good alone was not sufficient for incentivising pro-group behaviours within GSWA and Premier. Secondly, the De Beers board, unlike its former Chairman, Rhodes, appeared unwilling to apply either positive or negative incentives to its competitors to encourage or compel cooperation and thus enable the optimisation of rents (see Olson 1971:34–5). Thirdly, diamond prices were recovering quickly after the 1907 Depression, remaining on an upward trajectory until World War I (see Table 5.3). GSWA and Premier thus lacked the rational incentive to collectivise, whether financial or otherwise.

Table 5.3: Average diamond price per carat, 1907–14.

	Average carat Price
1907	sh. 38/7
1908	sh. 26/5
1909	sh. 27/10
1910	sh. 30/
1911	sh.34/2
1912	sh. 39/1
1913	sh. 42/6
1914	sh. 39/2

Source: (Lenzen 1970:160).

Note: Prices are in British shillings and pence.

It must be recognised that, although the aforementioned price revolution had enabled high diamond prices throughout the early twentieth century, diamond prices would nevertheless have been higher if output had been centrally regulated. This is a logical outcome, given that regulation enables supply decreases, which correspond with price increases, where a downward sloping or vertical demand curve prevails. In other words, if the De Beers board had successfully maintained control over the diamond-production sphere and competition had not developed therein, the pursuit of *suboptimal* rents would not have been the board's only option. However, the De Beers board had done little to either prevent *or* redress the re-emergence of competition in the diamond industry. Nonetheless, irrespective of the board's loss of Rhodes' perpetual rents, De Beers remained the dominant producer within the diamond industry (see Table 5.2).

Oppenheimer's Preference for Artificial Scarcity

During this time, Oppenheimer continued to work for A. Dunklesbuhler and Co., also serving as a local councillor in 1908–12. He had witnessed the competition Premier and GSWA had reinvigorated in the diamond industry and had kept abreast of developments through his many contacts therein; his cousin Fritz Hirschhorn was a director of De Beers, and his brothers Bernard, Louis and Otto were all associated with A. Dunklesbuhler and Co. and other members of the Syndicate.[63] From early in his career in the diamond industry, Oppenheimer was vocal about the potential for rent extraction via the creation of artificial diamond scarcity. In 1910, he wrote to De Beers to assert his opinion that diamond prices could be higher: 'Common sense tells us that the only way to increase the value of diamonds is to make them scarce, that is to reduce the production' (E. Oppenheimer quoted in Jessup 1979:59).

The timing of Oppenheimer's statement is significant. Since he had arrived in South Africa in 1902, the average diamond price had been sh. 35/8 per carat (Lenzen 1970:169). As shown in Chapter Four, the average diamond price Rhodes had achieved from 1890 to 1900 (inclusive) was sh. 27/4 per carat (Lenzen 1970:159). The significant increase in diamond prices that occurred after Rhodes' death must not be mistaken for proof that the monopoly and cartel industry structures created by Rhodes did not increase diamond prices. As previously discussed, the comparatively high diamond prices of the early twentieth century were the result of a global price revolution that had commenced in the 1890s and gained significant momentum at the beginning of the century (Hackett Fischer 1996:186–90). Therefore, the prices that Oppenheimer was witnessing in the diamond industry were not low; indeed, it would be impossible to argue that they posed any threat to the viability of the industry, as evidenced by the success of the four major producers therein, three of whom were in competition with one another. Oppenheimer's protests about diamond prices were instead motivated by a desire for *inflated* profits (rents), achieved via the creation of artificial scarcity. Oppenheimer's allegiance to Rhodes' ultimate goal was thus evident from early in his career

[63] Fritz Hirschhorn had been made a director of De Beers in 1905.

in the diamond industry. Nonetheless, De Beers' inability to counter the decentralisation of the production and marketing spheres, and the readiness of GSWA and Premier to operate independently, meant that the control required to restrict output and realise those rents did not exist in the diamond industry at that time.

Despite Oppenheimer's position on the periphery of the diamond-production sphere, he was quick to demonstrate his desire to play a key role in halting the industry's further decentralisation. In 1910, a large diamond deposit in the US state of Arkansas caught Oppenheimer's attention. The deposit was discovered in 1906, and was verified by Tiffany's chief mineralogist George Kunz as being 'a definite mine prospect' (Roberts 2007:99). Superficial digging unearthed more than 100,000 rough diamonds from the deposit, many of which were high-grade gemstones. The mine was owned by two entities, the Arkansas Diamond Company and Howard A. Millar, in a 60/40 split. The President of the Arkansas Diamond Company, S.W. Rayburn reached out to London diamond merchants in 1910 for investment opportunities after the mine failed to attract enough domestic capital to bring it online (see Roberts 2007:100).

Oppenheimer did not want the production sphere to gain another competitor (Roberts 2007:102), and thus more competing interests. He immediately initiated an attempt to take control of the Arkansas mine, to which members of the Syndicate soon joined their efforts. Oppenheimer, as lead negotiator for the participating members of the Syndicate, wished to purchase the mine outright, and rejected Rayburn's offers of shared ownership. Oppenheimer's desire to own the mine outright suggests he (and his associates) wanted absolute control over when, or if, the mine would produce diamonds. In contrast, the mine's owners wanted control over operations, presumably because they wanted to establish a profitable, functioning diamond mine. The Arkansas Diamond Company appeared keen to add to an already increasing global diamond output on its own terms, and accordingly, its existence posed a potential threat to the centralised production control that Oppenheimer wished to foster within the industry. Oppenheimer and Rayburn's individual incentives were thus too far apart, and negotiations between the two parties eventually broke down irretrievably (Roberts 2007:103).

The Arkansas Diamond Company was Oppenheimer's first personal experience with a diamond producer that was keen to pursue its own self-interests. It was also the closest

Oppenheimer came in his early career to applying Rhodes' methodology of seeking market control via outright ownership, albeit unsuccessfully. Rayburn's insistence on maintaining control over the Arkansas mine was perhaps influenced by the high diamond prices that prevailed, and the demonstrated success of Premier and GSWA's independent operations. In other words, the incentive to engage in collective action had been diminished by the (successful) self-interest of other producers. As argued by Olson (1971:42–3), the size and consanguinity of intermediate groups means that the decisions made by each actor can significantly impact the decisions of other members of the group, including the decision not to engage in collective action. Thus, although the industry was now technically an unmobilised privileged group, it was showing signs of oligopolistic behaviours.

With the breakdown of the negotiations, Arkansas remained a potential threat to a centralised production sphere. However, in 1911, an industry outsider, Thomas Cochran, invested in the Arkansas mine while a partner at J.P. Morgan. Cochran's involvement started a chain of events that later led the US Department of Justice to conclude that the Arkansas mine had been sabotaged to prevent it producing diamonds (see Roberts 2007:104). Oppenheimer's subsequent involvement in later efforts to control the mine when it once again emerged as a potential competitor will be examined later in this chapter. Oppenheimer's early contribution to the Arkansas scheme illustrates two things about his leadership potential in the diamond industry: firstly, the proactive nature of his participation, well before he actually became a diamond producer, suggests he possessed a level of foresight regarding *long-term* objectives. Secondly, his assumption of the protectionist role pioneered by Rhodes indicates that he was willing to shoulder the responsibility of addressing the decentralisation of the production sphere that the De Beers board had all but eschewed.

In 1913, the De Beers board continued to contribute to the realisation of suboptimal rents. De Beers and the Syndicate, as self-appointed protectors of the industry's collective good, were able to exert a measure of control over GSWA's output when the Regie staged its first competitive tender. De Beers and the Syndicate agreed to a joint purchase of a parcel of the fringe diamonds to prevent them from reaching the market and further diluting supply. Despite the increased diamond output from the four key African producers, diamond prices recovered strongly after the end of the Depression, increasing from sh 26/5 per carat in 1908 to sh 42/6 in 1913 (Lenzen 1970:160). Nonetheless, it was believed that diamond prices would inevitably be adversely affected by the unregulated output.

Oats (quoted in Gregory 1962:69) was opposed to De Beers purchasing diamonds from the Regie, declaring that the Germans should instead be left to experience the ill-effects of uncontrolled production: '*Rather leave them alone and let them realize fully drop in prices and effect of competition* [sic]' (italics original). Oats had recognised that De Beers' independent protection of the collective good was fostering (rational) self-interested free riding among the other producers. With the De Beers board unwilling or unable to apply negative incentives to compel cooperation from GSWA, Oats wanted GSWA's output to reach the market in order for the company to experience what would effectively be a self-inflicted negative incentive; the corresponding price falls would perhaps compel the producer to collude with De Beers. However, by this time, the majority of the De Beers board was in favour of proactively engaging with its newest African competitor, whose 1913 output of 1,284,983cts was almost half of De Beers' output of 2,656,866cts (Lenzen 1970:160). This is despite the Regie's contract with diamond merchants in Antwerp meaning that De Beers could not divert the firm's diamonds to the Syndicate (Newbury 1989:190).

The Alignment of Interests in the Production Sphere

At the end of 1913, GSWA exhibited an inclination towards contributing to the protection of the collective good by limiting its future annual output to 1,000,000cts (Gregory 1962:69). In early 1914, the German Colonial Government also expressed a willingness to meet with its competitors with the goal of establishing a cartel agreement, which was conveyed to De Beers by the Government of South Africa.[64] Soon after, Oppenheimer participated in a tour of GSWA's deposits on behalf of the De Beers cartel. Oppenheimer and his colleague, Alpheus F. Williams, the General Manager of De Beers,[65] subsequently recommended the cooperative regulation of diamond sales, but believed the Germans would demand generous quotas in any such agreement (see Newbury 1989:190–1); that is, they believed that positive incentives would encourage GSWA's participation in any collective action with De Beers.

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[64] The Union of South Africa was formed in 1910 after Britain's victory during the Second Boer War (1899–1902) saw the amalgamation of the Cape Colony and Natal with Transvaal and the Orange Free State.
[65] Alpheus F. Williams was the son of the former General Manager of De Beers, Gardiner F. Williams.

By this time, the Premier mine had also become more favourably disposed towards collective action. In 1911, Barnato Brothers had essentially bought two seats on Premier's board through the purchase of 106,050 deferred shares in the company (Newbury 1989:185). In 1913, a De Beers director, Solly Joel (quoted in Newbury 1989:187), was instated as a director of Premier and immediately advised shareholders of 'the great desirability of a diamond combine', thus countering the pro-independence sentiment that had previously influenced the decisions taken by the board. The formerly competing interests of the three major diamond producers in Southern Africa had thus become aligned.

On 30 July 1914, the four diamond-mining companies instituted a cartel agreement. The producers were given strict production quotas, and were required to market their output through the Syndicate. The Syndicate consisted of four collectivised diamond merchants who took a 4 per cent commission on all sales.[66] Thus, the previous competition within the marketing sphere was neutralised by this agreement. As illustrated by the production quotas below, De Beers was allotted the largest quota and it remained the dominant producer:

1. De Beers Consolidated Mines Ltd.: 48.5 per cent
2. German Diamond Administration: 21 per cent
3. Premier Mining Co. Ltd.: 19.5 per cent
4. New Jagersfontein Mining and Exploration Company Ltd.: 11 per cent.[67]

This cartel agreement brought together producers who in 1913 accounted for all but 66,995cts of the world's 6,116,571ct total output (see Lenzen 1970:162). Control over the majority of the world's diamonds was effectively centralised. A diamond standard was also instituted as part of the cartel agreement, which promoted the rarest (non-coloured) diamonds—those that were white and flawless—as the most desirable.[68] While the cartel agreement was never realised, due to the onset of World War I (1914–18) a mere five days after its establishment, its creation nonetheless illustrates that, after a decade of competition and a suboptimal provision of the collective good, the desire to collude formally extended across the major players in the industry. As argued by Olson (1982:38), even if a group has the impetus to

[66] The merchants were L. Breitmeyer & Co., Barnato Brothers, A. Dunkelsbuehler & Co. and Mosenthal Sons & Co.
[67] The Koffiefontein mine was acquired by De Beers in 1905. While its (small) operations were controlled by De Beers, it was not included in the 1914 cartel agreement as a conference producer. It would not become a direct member of the cartel until 1934.
[68] Fancy coloured diamonds, which come in all the colours of the rainbow, are the rarest diamonds in the world.

collectivise, it may have to wait for 'favourable circumstances' to appear before it can do so. It was an exogenous factor, in this case a world war, which delayed the realisation of collective action in the diamond industry at this time.

De Beers' competitors may also have been strategic in their delayed response to the firm's somewhat half-hearted drive for collective action. One may have every expectation of eventually joining a collusive cartel agreement to limit supply and still maximise output in the short term. This is entirely rational. This is because quota allocations in cartel supply agreements tend to mirror the market shares that existed *ex-ante*. Therefore, a smaller producer would be acting irrationally to join the cartel before it felt that its market share of production was close to maximisation. Once an outsider perceives that it has saturated the opportunity to gain from increasing its market share, the next step is to move to rent-seeking behaviours by joining the cartel. Thus, stability in market shares in an intermediate industry creates favourable conditions for collusive collection action, whereas a situation of fluctuating market shares does not.

The De Beers cartel reacted to the onset of war by lowering its prices. Oppenheimer, who at this time remained on the periphery of the production sphere, believed this response was not that of a genuine cartelising force. He believed De Beers should instead be pursuing complete control over output to increase prices (Kanfer 1993:192); in other words, emulating Rhodes' eradication of competition from the industry to attain perpetual rents. The desultory free riding of Premier and GSWA had shown Oppenheimer that individual actors could not be relied upon to act in the best interests of the group. The geographical diversification of the world's diamond deposits, and Oppenheimer's personal experience with a hostile Arkansas, had revealed that Rhodes' preference for monopoly ownership and expensive rent hedging could no longer be used to minimise competing interests. However, the pre-war cartel had also demonstrated that collective action, as the remaining option for obtaining control over the production sphere, was feasible. Thus, establishing a successful, functioning cartel became Oppenheimer's first intermediate goal. After the war ended, Oppenheimer exploited De Beers' enduring nonchalance towards external diamond deposits. He took decisive measures to first enter the diamond-production sphere, and subsequently cultivate cooperation with external producers. These actions would prove vital to his eventual attainment of perpetual rents.

Oppenheimer’s First Intermediate Goal: The Creation of a New Cartel

After the war ended, the reparations imposed on Germany for its role in the conflict included the loss of GSWA, which thereafter became known as South West Africa (SWA). The state formally came under the control of the Union of South Africa, at the League of Nations’ behest (Levinson 1998:89).[69] The difficulties experienced by German mining companies within SWA after the war created an opportunity for Oppenheimer to acquire considerable diamond interests for the first time. Although Oppenheimer wanted to become Chairman of De Beers, the board’s aversion to him meant that his initial foray into diamond production had to be made independent of De Beers. Oppenheimer thus decided to extend the portfolio of the company he had founded in 1917, the Anglo-American Corporation of South Africa (hereafter Anglo-American) beyond gold mining in the Transvaal region and into the diamond mines of SWA. Oppenheimer (quoted in Wheatcroft 1985:247) declared that he wanted to use this company to obtain the market power enjoyed by Rhodes and his colleagues in the diamond industry:

> The hope that, beside gold, we might create, step by step, a leading position in the diamond world, thus concentrating in the Corporation’s hands the position which the pioneers of the diamond industry… formerly occupied.

In 1919, Oppenheimer led negotiations with six German holders of SWA’s diamond deposits; and by the end of the year, Anglo-American had successfully amalgamated the companies (and thus their claims) at a cost of £3,500,000 (Kanfer 1993:192–3). The Consolidated Diamond Mines of SWA was subsequently formed, and Oppenheimer was instated as Chairman. Anglo-American’s acquisition of SWA’s deposits gave Oppenheimer clear power within the cartel: ‘He [Oppenheimer] controlled an important diamond-producing unit, and could henceforth play a direct role in the formulation of diamond policy’ (Gregory 1962:118). This gave Oppenheimer the influence he needed to direct the diamond industry along his mandated course.

The environment for the establishment of a new cartel agreement had improved after the war ended in 1918. Only four major producers remained within Southern Africa, and their individual interests were more aligned than ever before. The Precious Stones Act of 1899 had

[69] The Union of South Africa was awarded control over GSWA, but not ownership of the mines. The mine owners still owned the mines, but the Union had to oversee their activities and approve their sale.

legislated for the then-Cape Colony Government to receive 60 per cent of the profits from domestic deposits discovered thereafter. Premier and SWA were therefore excellent sources of revenue for the Union of South Africa, which, after the League of Nations' ruling, made the government more inclined towards assisting the diamond industry's cartelisation (Lenzen 1970:173), and thus its protection of the collective good.[70] Oppenheimer's acquisition of SWA's output had also prevented it from falling into the hands of operators that were disinclined to collective action, whether in the spheres of production or marketing. Further, in 1917 De Beers had gained a controlling interest in Premier; an acquisition that De Beers (1988:9), in hindsight, regarded as 'essential for the proper and efficient control of the production and sale of diamonds'.[71]

A new cartel agreement, entitled the Pretoria Convention, was created on 31 December 1919.[72] It consisted of production quotas for each of the four major producers of the total output the Syndicate would buy:

1. De Beers Consolidated Mines: 51 per cent
2. The Mandated Territory of SWA (formerly GSWA): 21 per cent
3. Premier Mining Co. Ltd.: 18 per cent
4. New Jagersfontein Mining and Exploration Company Ltd.: 10 per cent (Lenzen 1970:173).

As these figures show, the production quotas were very similar to those initially agreed to in 1914, prior to the commencement of global hostilities. Akin to the 1914 agreement, the producers were again contractually obligated to sell their output *only* through the Syndicate.

[70] The diamond mines of SWA were not domestic deposits; however, the Union's administrative control over the region enabled it to apply the Precious Stones Act of 1899 to their taxation regime.
[71] The Precious Stones Act was actually a double-edged sword from the perspective of stakeholder incentives. One purpose of the Act was to erect a high barrier to entry, as a 60 per cent tax on profits from new mines in the region made it very unlikely that a firm operating under this burden would be able to compete with the incumbent producers, who were exempt from taxation—a legacy of Rhodes' egregious bureaucratic rent seeking. This barrier to entry protected rents and increased the incentive for existing producers to cooperate. However, the Government had potentially different incentives. Since it stood to benefit from the opening of new mines, given the exorbitant tax rate that they would have to pay, it is not too difficult to envisage a scenario in which the Government's interest may have moved out of step with those of the incumbent producers. Therefore, while the Precious Stones Act was a valuable barrier to entry instigated at a time of monopoly, it was a potential vulnerability under different market circumstances. In fact, it demanded perpetual bureaucratic rent-seeking efforts and agency capture to prevent the Government giving in to the temptation of a 60 per cent profit share in new mines.
[72] Anglo-American's daughter company, the Consolidated Diamond Mines of South West Africa, was not explicitly included in the initial conference of producers in the cartel, as its territory was represented by the Union of South Africa.

The Syndicate took a 4 per cent commission, plus 5 per cent of all profits on diamond sales.[73] After the establishment of the Pretoria Convention, diamond prices rapidly rose to record-breaking levels,[74] thus illustrating the effects of regulated output, which were presumably amplified by a rebalancing of economic activity towards civilian spending, which would have released pent up demand for consumer products.

Table 5.4: Average diamond price per carat, 1915–1920.

Year	Average Ct. Price
1915	sh. 51/6
1916	sh. 44/5
1917	sh. 49/9
1918	sh. 53/4
1919	sh. 98/5
1920	sh. 113/11

Source: (Lenzen 1970:160).

Note: Prices are in British shillings and pence.

Oppenheimer's immediate participation in the Pretoria Convention, via the quota allocated to SWA's output, demonstrates his devotion to his long-term goal of securing perpetual rents for the diamond industry. Unlike his predecessors in SWA, and the original owners of the Premier mine, he did not seek short-term gains via the maximisation of output, nor did he wish to sell his firm's diamonds outside the Syndicate. However, Oppenheimer recognised that the Pretoria Convention was limited to regulating the diamond output from producers in Southern Africa; it could not control the fringe diamonds emanating from external producers, including Venezuela (discovered 1901), the Belgian Congo (DRC) (1907), Angola (1912) and the Gold Coast (Ghana) (1919).

While De Beers appeared willing to countermand free riding through its own supply reductions and parcel purchases, these reactive practices could only ever facilitate the acquisition of suboptimal rents. In contrast, by adopting Rhodes' zero-tolerance perspective on independent producers (Rotberg 1988:491–2), Oppenheimer saw the new deposits as a 'serious threat' (Gregory 1962:113) to the industry. Not only did their output have the capacity to impact diamond prices in the short term, if they were allowed to establish themselves fully

[73] The members of the Syndicate were L. Breitmeyer & Co., Barnato Brothers, Bernheim, Dreyfus & Co., The Central Mining Corporation Ltd. and the Anglo-American Corporation of South Africa Ltd.
[74] In relation to prices that had been achieved in the industry since 1869.

as independent operators (successful free riders), their subsequent entrenched competing interests would hamper collective action and thus debilitate the realisation of perpetual rents. Therefore, Oppenheimer's ensuing actions were designed to align the interests of each external producer with his own.

The Belgian Congo and Angola were the first fringe producers that Oppenheimer pursued post-Pretoria. The Belgian Congo's alluvial diamond deposits began to produce notable output in 1917 when the state exported more than 100,000cts (Levinson 1998:92). In 1918, two kimberlite pipes, Miba and Talala, were discovered. Their output, while considerable, was predominately industrial grade, and made the Belgian Congo the world's largest source of industrial diamonds (Green 1996:42). The Belgian Congo's diamonds were initially exclusively mined and marketed by Societe Internationale Forestiere et Miniere du Congo (hereafter Forminiere). In 1922, Anglo-American joined the largest member of the Syndicate, Barnato Brothers, in reaching an agreement with Forminiere to buy all of the Belgian Congo's future diamond production (see Gregory 1962:129–30). This agreement ensured the state's diamonds could be controlled by Anglo-American and Barnato Brothers, and thus prevented from entering the world market if conditions were unfavourable to an increase in supply. [75]

In 1921, Angola produced 100,000cts—enough to render it a serious producer (Levinson 1998:93). Initially, Angola's diamonds were independently mined and marketed by the private firm Companhia de Diamantes de Angola (hereafter Diamang). In 1923, Anglo-American and Barnato Brothers cooperated to obtain significant equity in Diamang. Subsequently, they established an agreement to purchase the entirety of the state's diamond output, and acquired a seat on the board for Oppenheimer (see Gregory 1962:130–1). The two firms thus had the capacity to influence and determine Angola's diamond production policies and control the sale of its output. At the time of his firm's agreements with Angola and the Belgian Congo, Oppenheimer (quoted in Gregory 1962:130) argued that centralised control was the only way for the diamond industry to operate:

> I have had a very lengthy connexion with the diamond trade, and my experience has taught me that, only by limiting the quantity of diamonds put on the market, in accordance with the demand, and by selling through one channel, can the stability of the diamond trade be maintained.

[75] The Belgian Congo gained independence in 1960 (Zaire) and its mines were nationalised.

Oppenheimer was employing the monopolist's favoured term of misdirection, 'stability', to superficially justify the market structures he was seeking to establish in the diamond industry.

Throughout the 1920s, Oppenheimer continued in his attempts to overcome the competition that existed in the production sphere. He did this either by fostering relations with external producers, or, in the case of hostile producers, by facilitating their exit from the industry.[76] Collective action (via cartel agreements backed by non-controlling equity stakes and interlocking directorships) was Oppenheimer's primary tool of incentive alignment in the production sphere. His actions cultivated commonality and mutual understanding between the industry's external producers, increased the privileged group characteristics of the production sphere, and thus primed the industry to overcome many of the challenges that typically fetter or prevent collective action in groups (see Olson 1971:60–3). Oppenheimer enabled negotiations between producers within a framework of pre-existing relations; negotiations Gregory (1962:129) asserts 'would certainly have been much more difficult to bring about without prior personal knowledge and understanding'.

The collectivisation of external producers was not, however, always sufficient to eliminate competing interests from the production sphere. In select cases, external producers were entirely shut out of the market to fulfil one of two objectives: to alleviate the cartel's self-appointed, yet financially burdensome, responsibility of removing their output from the market; or to destroy an external producer who was refusing to cooperate with the cartel. The approach taken to dealing with such producers was tailored to the circumstances; however, the eventual result, the relevant firm's inability to operate successfully on an independent basis, was consistent. In 1919, the Arkansas mine, approached by Oppenheimer earlier in his career, re-emerged when it began producing diamonds after a period of slow revival. The mine had suspiciously produced very few diamonds between 1911 and 1919, despite being a viable deposit. In 1921, Oppenheimer again showed an interest in the mine, and held a meeting with the mine's owners and managers. After this meeting, the mine was immediately and completely shut down for what the US Department of Justice (quoted in Roberts 2007:103) considered to be 'no apparent reason'. In 1942, after an investigation into the De Beers cartel, it was formally posited by the Department of Justice that the Arkansas mine had been sabotaged at the behest of Ernest Oppenheimer (see Roberts 2007:104).

[76] CAST, an English firm, was founded by Alfred Chester Beatty in 1924.

Although it is impossible to prove these allegations against Oppenheimer, it is nonetheless true that the US' possession of a diamond mine posed a serious threat to his long-term realisation of perpetual rents. The Sherman Antitrust Act, created to defend American consumers against firms engaged in anticompetitive practices, became law in the US in 1890. The Act required the authorities to pursue those believed to be engaging in such practices (see Congress of the United States of America 1890). If a successful mining company were established in the US, its engagement with the cartel would have made the firm party to the cartel's anticompetitive practices, and thus vulnerable to the Act. If Anglo-American had bought the mine outright, it would have given the firm a formal presence in the US and thus made the company liable to prosecution. Although Oppenheimer had attempted to facilitate the purchase of the Arkansas mine in 1910, by 1921 the Sherman Antitrust Act posed more of a threat to firms involved in anticompetitive activities, due to amendments made in 1914 (the Clayton Act) that addressed a wider range of anticompetitive behaviour, thus providing further support to the Department of Justice's trust-busting endeavours. Therefore, permanently immobilising the mine was the best course of action available to Oppenheimer in the 1920s.

The emergence of British Guiana (Guyana) as a diamond producer in 1925 saw the board of De Beers respond to this outside producer in a way that resembled Rhodes' preferred methodology. However, Oppenheimer, having finally been instated as a director of De Beers in 1926 with the assistance of Solly Joel (Wheatcroft 1985:247–8), still played a key role in eliminating the new threat, as a subsequent lawsuit, discussed below, attests. Alluvial diamond placers were originally found in the colonial state in 1913; however, British Guiana did not become a notable producer until 1922 when it exported £804,033 of diamonds. From 1922 to 1927, diamonds were British Guiana's second largest export, and were thus central to its economy (Spackman 1975:363), although it remained only a small producer on a global scale, exporting a mere 12,000cts annually on average during this time. In 1925, Otto Oppenheimer, Ernest's brother, represented De Beers in negotiations with the United Diamond Fields of British Guiana, the largest mining company in the country. It was agreed that two members of the Syndicate would purchase the entirety of its output, based on valuations of the stones carried out exclusively by Otto Oppenheimer (Epstein 1982:98).[77]

[77] The two marketing firms were Barnato Brothers and Dunklesbuhler and Co. The following year the Syndicate appropriated the contract.

British Guiana was a perceived threat to the cartel, primarily because of the potential discovery of kimberlite pipes within the state (Spackman 1975:364).[78] In the short term, De Beers was also eager to eliminate British Guiana's diamonds because of the discovery of rich alluvial deposits within South Africa in 1926 and 1927 (as will be explored shortly), the new diamond supplies from which the cartel would have to assume responsibility for if it wanted to protect the collective good. After the contract was signed with United Diamond Fields of British Guiana, Otto Oppenheimer steadily reduced the value of the firm's diamonds, from £4.10s/ct to less than £3/ct. Otto Oppenheimer then advised the firm that the Syndicate would have to lower its payments by an additional 10 per cent because its most recent sale of Guianese gems had netted a mere 5 per cent (Hyde 1960:199). By the end of 1927, British Guiana's diamond payments from the Syndicate had plummeted further, and the United Diamond Fields of British Guiana could no longer afford to buy diamonds from the local diggers upon whom it relied to mine the stones. The company was consequently bankrupted, leaving the country without its key diamond company, and thus its major diamond exporter.

In 1930, the United Diamond Fields of British Guiana launched a lawsuit against the directors of Barnato Brothers and Ernest Oppenheimer (among others) on charges of fraud and conspiracy in relation to the fraudulent reporting of diamond grades (see Anonymous 1930:13). The United Diamond Fields of British Guiana ultimately received damages totalling £325,000 from the defendants after the firm's lawyer, Sir Patrick Hastings, showed the jury that the 5 per cent profit Otto Oppenheimer had used to substantiate the Syndicate's 10 per cent pricing downgrade was a lie: the actual profit had been closer to 17 per cent. The defendants requested a settlement after they were made aware of the evidence Hastings possessed regarding the discrepancy between Otto Oppenheimer's quoted profits and the actual profits that had been made from the sale of British Guiana's diamonds (Hyde 1960:200).

The key witness for the plaintiff, Victor Coen (quoted in Hyde 1960:203–4), when asked to explain why the Syndicate would seek to destroy a company like the United Diamond Fields of British Guiana, responded:

[78] This kimberlite-centric concern illustrates that De Beers had not learned its lesson from GSWA in relation to the potential threat posed by (rich) alluvial deposits.

> The Diamond Syndicate is very reluctant to see new producers of diamonds coming into the field ... Any new producer that comes into the market is a nuisance to the Syndicate and is called a bone in its throat. If it cannot stop a new company being formed, it gets a contract to control its output. And, if the opportunity presents itself, the Syndicate quietly does away with it and buries it.

Key members of the Syndicate, including Ernest Oppenheimer, had successfully 'buried' the United Diamond Fields of British Guiana. With it went the firm's competing interests, and the cartel's 'responsibility' to buy the firm's diamond output.

It would be wrong to claim that Oppenheimer was solely responsible for the elimination of competing interests from the production sphere. However, his consistent engagement in efforts to either foster cooperation with external producers or bring about their eventual demise was unparalleled during his time in the diamond industry. As argued by Gregory (1962:74), it was Oppenheimer 'who faced the issues and solved the problems' afflicting the diamond industry in the interwar period; namely, those that arose from the competing interests that remained within the production and marketing spheres. Oppenheimer's ideological alignment with Rhodes was well known; he was referred to as Rhodes' 'understudy' (Time Magazine 1945), and later stated that he saw his Chairmanship of De Beers through the lens of Rhodes' leadership (Hocking 1973:481).

Single-Channel Selling

Oppenheimer (quoted in Gregory 1962:148) placed enormous importance on single-channel selling:

> I am ... as strongly convinced as ever that not only control of quantity to be put upon the market (which has largely been maintained between the producers) but sales through one channel is an essential for the permanent security of the diamond trade.

However, Oppenheimer believed the conflict that existed between the diamond producers and the Syndicate was a major flaw in protecting the collective good. While the Syndicate remained largely independent from the producers, it had the potential to 'go rogue' and trade diamonds without regard for the collective good, in turn destabilising the market (Spar 1994:50).

Oppenheimer also believed that the Syndicate's penchant for reducing diamond prices during market downturns resulted in producers perceiving a necessity to increase their production quotas to maintain sales volumes (see Gregory 1962:134).[79] The structures that existed in the diamond industry in the 1920s were detrimental to the realisation of perpetual rents for two reasons. Firstly, the interests of the merchants did not always align with those of the production sphere (in the aggregate). Additionally, the Syndicate's pro-cyclical inclinations, which were born of those competing interests, had the capacity to exacerbate negative market conditions and thus further reduce prices. Critically, it was essential to extend the time horizon in which cost/benefit analyses by industry actors could be undertaken to disincentivise short-term self-interest in either sphere. The vertical integration of diamond production and marketing would enable the realisation of successful, *long-term* inflated profits; that is, perpetual rents. This became Oppenheimer's second intermediate goal.

In 1923, Oppenheimer forwarded the marketing contract between Anglo-American and Angola to the Syndicate in exchange for Anglo-American's direct inclusion therein. Anglo-American officially joined the Syndicate in January 1924, which afforded Oppenheimer influence over both diamond production and marketing (Lenzen 1970:173). In March, the Pretoria Convention cartel agreement required renewal. This process brought the competing interests of the Syndicate and the producer members of the cartel to a head, and provided Oppenheimer with an opportunity to lay the foundation of his second intermediate goal. Conflict between the production and marketing spheres was fostering discontent within the industry; the Union of South Africa's administrative control over SWA and its disdain for the Syndicate threatened the derailment of negotiations between the Syndicate and the 'conference producers', the term applied to those firms that were signatories to the agreement (see Gregory 1962:138–9). If the government refused the quota offered by the Syndicate for SWA's output, the Consolidated Diamond Mines of SWA's subsequent requirement to market its diamonds elsewhere would likely have resulted in each cartel member no longer viewing the cartel as worthwhile. If major producers began to eschew the Syndicate and sell diamonds independently, the positive incentives of engaging in the cartel would have been reduced, while the incentive to act independently would have been amplified.

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[79] This section of research is heavily dependent on Theodore Gregory's book 'Ernest Oppenheimer and the Economic Development of Southern Africa' (1962). In researching his book, Gregory was given unparalleled access to the De Beers company archives, which gave him a unique degree of insight into Ernest Oppenheimer's career in the diamond industry, particularly during his early career within De Beers.

Oppenheimer was staunchly opposed to the drifting apart of the production and marketing spheres. However, he believed that the other producers and the Government of South Africa considered the Syndicate ‘almost unnecessary’ (Ernest Oppenheimer quoted in Gregory 1962:139). In late 1924, Oppenheimer found himself desperately trying to align the competing interests of each member of the cartel to prevent its dissolution. These interests were diverse: the syndicate had chosen to forgo the profit sharing method Rhodes had pioneered in 1895, which displeased the producers; the producers were obstinately focused on profit margins, and they were refusing to reduce their quota allocations; the administrators of SWA were not satisfied with the contract that the Syndicate was offering its dependents; and the Syndicate wanted to insure itself against risk through the instatement of unfavourable taxation regimes in its contracts with producers (Gregory 1962:141–2). The challenges posed by competing interests in the orchestration of collective action within intermediate groups are well illustrated by this period of the diamond industry’s history. They also illustrate Oppenheimer’s motivations for desiring an alignment of those interests via the vertical integration of the two spheres.

In November 1924, the frustration of the cartel members reached its zenith. De Beers threatened to break away from the cartel and reignite competition in the production and marketing spheres if the firm was forced to forgo any more of its demands (Gregory 1962:142), illustrating how far the board had deviated from Rhodes’ pro-centralisation mandate. A subsequent meeting in December again failed to reach an agreement between the cartel members, and Oppenheimer was informed that the Union of South Africa would be seeking tenders for the SWA deposits to which Anglo-American had been awarded the rights in 1919, thus creating the opportunity for the entry of new competitors into the production sphere. The Union of South Africa’s attempts to inject competition into the contract process had the potential to destroy the cartel, a situation arising out of the potential for diverging incentives among the government and the cartel that the Precious Stones Act created. However, in January 1925, an agreement was finally reached among the producers to adhere to the pre-existing quota allocations. Success was facilitated by the Syndicate’s exclusion from the negotiations, illustrating the chasm that had developed between the production and marketing spheres. Following this agreement, Oppenheimer acted, independently of the Syndicate, to secure a majority portion of SWA’s output for Anglo-American, thus preventing its sale to non-cartel marketers (Gregory 1962:144–7). Despite Oppenheimer’s ‘good’ (pro-group) intentions, the Syndicate responded to the creation of what was effectively an external contract by cutting Anglo-American out of the marketing collective.[80]

Anglo-American's control over a large portion of SWA's output meant that for a brief period following its expulsion from the Syndicate, the single-channel selling method Oppenheimer so vociferously advocated was effectively split in two. Oppenheimer was forced to placate the Union of South Africa's Minister of Mines by explaining that his decentralising actions were motivated by the Syndicate's inability to protect the best interests of the diamond industry. He also sought to reassure the Minister that he had no intention of maintaining the current status quo, and would attempt to instate another diamond monopsony (see Gregory 1962:147–9).

Soon after Anglo-American's expulsion from the Syndicate, Oppenheimer's former employer, A. Dunkelsbuhler & Co. voluntarily extricated itself from the Syndicate, which, in turn, collapsed (De Beers 1988:10). The cartel of Rhodes was thus relegated to the history pages. The Syndicate (hereafter the Old Syndicate) had become unwilling to cede its own interests for the sake of the group. In July 1925, Oppenheimer played a leading role in the establishment of what became colloquially known as the 'Oppenheimer Syndicate' (hereafter the New Syndicate), of which he was installed as Chairman. This new collectivised marketing body included the Anglo-American Corporation of South Africa Ltd., Barnato Brothers, Johannesburg Consolidated Investment Co. Ltd. (which was also controlled by Oppenheimer) and A. Dunkelsbuehler & Co.[81] By October, the New Syndicate had established quota agreements with all of the producers formerly contracted to the Old Syndicate, including De Beers.[82] The New Syndicate reinstated the production quota allocations originally agreed to in 1919, thus avoiding the hostility (and the incentives to eschew collective action) that had characterised relations with the Old Syndicate.

In establishing and leading the New Syndicate, Oppenheimer had taken a large step towards the realisation of his second intermediate goal. By positioning himself, the Chairman of Anglo-American, at the head of the marketing sphere, the interests of the marketing sphere were virtually mirrored by those of a key producer. This move not only further aligned the

[80] The Syndicate believed that Oppenheimer's actions had not resulted in an optimal outcome for the Union of South Africa.
[81] Barnato Brothers agreed to join the New Syndicate in July 1925 after a short period of negotiation.
[82] Several producers, including De Beers and Premier, initially refused the New Syndicate's offer to buy their output.

interests of the cartel participants, thus creating a more hospitable environment for the *long-term* realisation of collective action, but also provided Oppenheimer with the control over marketing that would prove vital to its future vertical integration with production. Oppenheimer explicitly acknowledged the long-term characteristics of the ultimate goal he sought, and the fact that cooperation was required to realise it: '...all of my efforts will be directed to protect the diamond trade, because it is quite evident that in the *long run* the Consolidated company cannot be prosperous if the other companies are not prosperous' (Ernest Oppenheimer quoted in Gregory 1962:149 author's italics).[83] Oppenheimer thus appears to have believed that actions arising out of narrow self-interest (that is, competitive conduct) would harm other producers, and thus the long-term interests of the diamond trade. However, Oppenheimer's callous treatment of diamond producers in Arkansas and British Guiana shows it was disingenuous of him to claim that he was concerned with the prosperity of the diamond trade as a whole. In reality, Oppenheimer sought the protection of his own near interests, and those of others aligned therewith, from the competitive forces that would challenge his control over the diamond industry, and thus his pursuit of perpetual rents.

Latency in the Production Sphere

Despite the lengths to which Oppenheimer went to minimise competition and align incentives in the diamond industry, the production sphere's decentralisation was reinvigorated soon after the establishment of the New Syndicate. In 1926 and 1927, two major alluvial diamond deposits were discovered in South Africa; one in Lichtenburg, located in Witwatersrand, and the second in Little Namaqualand, located south of the Orange River. The alluvial deposits of Lichtenburg and Little Namaqualand were initially rushed by thousands of independent diggers, which caused a virtual reversion to the atomistic conditions Rhodes had fought to gain control over in the last quarter of the nineteenth century. Lichtenburg and Little Namaqualand were both rich sources of diamonds, with the former producing 4,691,000cts from 1926 to 1929, and the latter producing 1,200,000cts of high-quality gems from 1927 to 1929 (Lenzen 1970:176). The combined total of this output was worth approximately £14,700,000 (Chilvers 1939:188).

[83] The Consolidated Company was owned by Anglo-American. Anglo-American did not have a physical presence within the diamond-production sphere outside Consolidated, which is why Oppenheimer referred to this company alone when he spoke about the interests of the diamond trade.

In 1926, Solly Joel (quoted in Time Magazine 1926) prophesied the demise of the diamond industry if the alluvial output remained unregulated:

> Diamonds will become as common as artificial pearls if the present unrestricted output from 'independent' alluvial diggings continues. … Something must be done to alter the present situation. Why, the alluvial diggers are now actually selling more diamonds than the great producers! ... If this continues a collapse in the industry which provides the South African Government with £3,000,000 in taxes annually is sure to come, and the country will have to provide for thousands of starving diamond workers whom we now employ.[84]

In his hyperbolic outburst, Joel appears to have forgotten the negative impact De Beers' monopoly control had had on the marginalised, impoverished diggers in the town of Kimberly during Rhodes' reign, as outlined in Chapter Four. Further, Joel's concern that the diggers were selling more than the 'great producers' once again illustrates the fear possessed by the organised minority that competition would destroy their rents.

The group-relevant characteristics of the independent diggers, including their small size (which rendered each individual's share of the collective good as trivial vis-à-vis the clearly material costs of pursuing the collective interest) and the costs that would have been amplified by the administrative challenges of establishing collective action, clearly defined them as an unmobilised latent group (see Olson 1971:48). Thus, as Olson's (1971:9) theory predicts, rational self-interest dictated their approach to mining and selling diamonds; they sought to maximise their output to maximise their incomes: 'Much of this large quantity was sold by the diggers regardless of market conditions, with a consequent threat to prices' (Chilvers 1939:188). As Chairman of the New Syndicate, Oppenheimer responded initially by buying up the diggers' output to protect the collective good. By 1927, the New Syndicate had amassed an £8 million stockpile of diamonds (Chilvers 1939:189), which had grown to £10 million by 1929 (Lenzen 1970:178). That implies that roughly two-thirds of the output spike was prevented from reaching the market, suggesting that suboptimal rents were still achieved by the cartel during this period, although with a considerable concurrent rise in costs due to the massive absorption of stones into its inventories.

The absence of centralised control over exploration and discovery was something that had persistently troubled Oppenheimer (quoted in Gregory 1962:165): '*The danger to the security*

[84] The diamond industry was taxed once again after Rhodes' death.

of the diamond industry is not the discovery of a new rich diamond field, but the irrational exploitation of it' (italics original). The latent status of the diggers in the alluvial mines meant that Oppenheimer could not utilise his standard *modus operandi* of incentivising competitors to enter the cartel's fold, or pushing them out of the industry completely. However, the formation of small, fledgling mining companies in Little Namaqualand occurred soon after the first diamond discoveries (see Carstens 2001:Chapter 2), giving Oppenheimer the steady contraction of ownership, and thus interests, he needed to exert meaningful control over the region's diamond deposits. In February 1927, CAST became involved in financing the largest of the new combinations after acquiring 50 per cent of the ownership rights of 27 diamondiferous farms in agreement with George Scott Ronaldson (Carstens 2001:26). Based on the strength of the pre-existing relationship between CAST and Anglo-American, Chester Beatty then sold one-fifth of CAST's equity to Anglo-American, thus giving Oppenheimer an entry point into Namaqualand's diamond deposits.

Oppenheimer's preference for limiting competing interests in the diamond industry meant he soon moved to possess a controlling share of the combinations. In July 1927, Oppenheimer acquired Ronaldson's share, thus increasing Anglo-American's equity to 60 per cent. In 1928, Oppenheimer formed a new company, Cape Coast Exploration Ltd. (hereafter Cape Coast), of which he was installed as Chairman. Cape Coast incorporated the combination's assets, and quickly obtained further diamond interests across Namaqualand, bringing its total ownership to 166,000 acres of diamondiferous land. Oppenheimer appointed Anglo-American executives as directors of the board, and prevented CAST from influencing the operation of the company (Carstens 2001:39). Oppenheimer could thus control the Cape Coast's output. Further, akin to Rhodes' pre-emptive acquisition of 500,000 acres of land in the 1890s, this procurement enabled Oppenheimer to erect anticompetitive barriers to entry in the production sphere. This is an example of Oppenheimer borrowing a strategy from Rhodes; in this case, rent hedging.

Despite Cape Coast's sizeable holdings, independent artisanal diggers within Lichtenburg and in parts of Namaqualand were still maximising their outputs to maximise their incomes from mining. Unable to compel or encourage the fragmented producers into collective action, Oppenheimer turned to a tactic perfected by Rhodes during his leadership of the industry: bureaucratic rent seeking. In 1924, Oppenheimer had been elected to the Union of South

Africa Parliament as a Member for Kimberley, in the South African Party.[85] As had been the case with Rhodes' significant conflict of interest in simultaneously holding positions of power in both politics and business, Oppenheimer was able to use his parliamentary voice to influence the creation of legislation that was favourable to large mining companies. His career in politics was neatly summarised by Wheatcroft (1985:252): 'During his 14 years in parliament Oppenheimer spoke almost exclusively on mining matters, like other "Members for De Beers" before him'. In 1927, Oppenheimer affirmed the government's need to help the cartel to control the output of the atomistic diggers by amending a previous piece of legislation, the Precious Stones Act (also known as the Diamond Bill) (see Gregory 1962:174).

Oppenheimer claimed that, in amending this bill, he was not merely trying to protect the interests of larger producers over those of the small (see Gregory 1962:174). However, in clear acknowledgement of his bureaucratic rent-seeking efforts, in May 1927 Oppenheimer (quoted in Gregory 1962:173) wrote in a personal letter: '...I am using my standing in party and good relationship with Government to get Diamond Bill [Precious Stones Act] passed [sic]'. The amended Act was deliberately designed to restrain the activities of small producers—the very actors that Oppenheimer could not incentivise into collective action. It was instated in November 1927, and was unprecedented in terms of the powers it afforded the Union's Minister of Mines. Most significantly, the Act gave the government a *de jure* mandate to halt diamond production at alluvial sites if it saw fit. Further, the Act included provisions designed to constrain diggers, including via the maximum number of allowable claims, the maximum amount of allowable output and the minimum price that could be paid for diamonds (Lenzen 1970:178), to prevent undercutting of the Syndicate's inflated, anticompetitive prices.

The government's control over artisanal production collectivised the diggers by force, and thus significantly reduced the number of competing interests in the diamond fields. De Beers (1988:10) would later highlight the importance of this Act to the protection of the interests of the cartel:

> An event of considerable significance to the diamond industry was the promulgation of the Precious Stones Act, under which very wide powers were vested in the government to enable it, if necessary, to take steps to *prevent reckless*

[85] Oppenheimer held the seat until 1938.

> *overproduction and sales of alluvial diamonds regardless of the demands of the market* (author's italics).

In a further effort to control the alluvial deposits, in 1928 Oppenheimer negotiated the purchase of a large portion of Little Namaqualand's non-Cape Coast output, which was controlled by the Hans Merensky Association.[86] In addition, he negotiated with the Government to purchase £1,750,000 worth of diamonds from the state-controlled alluvial areas. These actions established relationships between Oppenheimer and the new producers, and prevented the government from entertaining the idea of selling the diamonds outside the cartel (Gregory 1962:197).

The Diamond Corporation and the Diamond Producers' Association

In 1927, Oppenheimer (quoted in Gregory 1962:176) clearly elucidated (in a letter to the then secretary of De Beers) his desire to see the diamond industry amalgamated under the control of De Beers:

> The diamond trade is passing through a very serious crisis which differs from all past depressions in the trade in that the cause is not a depression in 'world trade' but an overproduction of diamonds. In my opinion the problem facing the trade can only be solved by a single institution tackling the various problems instead of several as at present. De Beers is to my mind the one institution that should take the lead.

Oppenheimer's argument that external shocks (in the form of global depressions) were essentially secondary to the overproduction of diamonds supports this study's argument that he was not actually seeking 'stability' to protect the industry during economic downturns; instead, he was seeking to protect the cartel's anticompetitive prices. The continual overproduction of diamonds was at odds with Oppenheimer's ultimate goal of securing perpetual rents, as were the disjointed attempts to overcome this problem. Oppenheimer wanted De Beers to take control of the industry, thus unifying its direction, and interests, under one entity.

In the late 1920s, external production remained a problem for the cartel. In 1928, Oppenheimer introduced the idea of establishing an organisation within the cartel whose sole role would be to purchase and market externally produced rough. The cartel's political

[86] This output was worth between £7–8 million pounds.

influence was finite, and the threat posed by external deposits had to be neutralised; indeed, the deposits within the Congo, Angola, Lichtenburg and Little Namaqualand had pushed the production by external sources above that of the major cartelised producers (Lenzen 1970:189). To protect diamond prices, the Syndicate had little choice but to buy up the external rough: approximately £10.6 million worth of the total £15 million produced in the five years up to 1929 (Newbury 1989:297).[87] Oppenheimer suggested to the conference producers that the creation of a pool of funds would enable such purchasing practices, and he implored them to match the Syndicate's previous pledge of 50 per cent of the required funding (Lenzen 1970:178).

After two years of protracted negotiations, in 1930 Oppenheimer's brainchild, the Diamond Corporation Ltd. (hereafter Dicorp),[88] was officially formed. Dicorp, which had £5,000,000 in initial capital, was funded by participating producers and marketers, including:

1. De Beers Consolidated Mines Ltd.: £1,625,000
2. Barnato Brothers: £1,125,000
3. Anglo-American Corporation of South Africa: £625,000
4. Consolidated Diamond Mines of SWA Ltd.: £625,000
5. A. Dunkelsbuehler & Co.: £625,000
6. New Jagersfontein Mining and Exploration Co. Ltd.: £250,000
7. Johannesburg Consolidated Investment Co. Ltd.: £125,000 (Lenzen 1970:179).

The interests of producers and marketers were integrated more so than in previous instances of collective action, fostering an environment of ready communal sacrifice (Newbury 1989:313). Oppenheimer openly acknowledged the alignment of interests that he was deliberately fostering with the creation of Dicorp, and the selective incentives he used to encourage pro-group behaviours among producers. Oppenheimer gave the producers authority over Dicorp from inception onwards (Chilvers 1939:246), which helped to encourage their financial commitment to the funding of the scheme: 'In order to induce people to have these enormous commitments, it was really necessary to have a composite scheme' (E. Oppenheimer quoted in Gregory 1962:229).

[87] By the year 1929, and including only the alluvial production within South Africa.
[88] Later renamed the Central Selling Organisation [CSO].

Oppenheimer had been awarded the Chairmanship of De Beers a mere three months before the creation of Dicorp, in December 1929. According to Oppenheimer (quoted in Hahn 1956:168), he had been elected Chairman of De Beers because of his ‘clear ideas’ about how the diamond industry should be structured, a type of leadership that had been absent from the industry post-Rhodes. De Beers retained the right to appoint the Chairman of Dicorp, and in March 1930, appointed Oppenheimer to that role as well. Oppenheimer exercised complete control over the monopsony’s operations, electing ‘the right to take all the major decisions in the diamond trade’ (Hocking 1973:282). Oppenheimer (quoted in Gregory 1962:230) argued that the centralised control over the industry removed differing opinions from consideration and would ‘establish the trade once and for all on a sound basis’.

Dicorp’s contracts with diamond producers contained three main clauses, including mutual agreements regarding production volumes and prices, and an agreement that producers would sell their output exclusively through Dicorp. Regarding production volumes, Dicorp was contractually obligated to buy agreed minimums from the producers. However, if the market could sustain a supply increase, Dicorp could elect to purchase volumes of rough above the agreed minimum. These additional purchases were reviewed on a month-by-month basis, and were largely dependent on the previous month’s diamond sales. Dicorp thus ensured the world’s supply of diamonds was kept on a very short leash. The prices Dicorp agreed to pay diamond producers were based on its rough diamond sorting system, which consisted of up to 11,000 different categories for rough diamonds; market intelligence that Dicorp guarded closely. This system, and its secrecy, provided Dicorp with the ultimate means to judge and categorise the quality of producers’ output, and allowed the prices paid to the producer to be derived largely from precedents in the market. Finally, as aforementioned, producers were contractually obligated to sell their output only to Dicorp. The combination of rigidity and flexibility within these clauses enabled De Beers to obtain and maintain control over the world’s diamond supplies (Lenzen 1970:190).

After Oppenheimer’s instatement as Chairman of De Beers, he began to centralise, to a degree, the ownership of diamond producers (Koskoff 1981:27). This was initially achieved via De Beers’ gradual acquisition of controlling equity in several mining companies, including New Jagersfontein Mining and Exploration Company Ltd., Consolidated Diamond Mines of SWA and Cape Coast Exploration Ltd. in 1931. In 1935, De Beers also acquired Koffiefontein

Mines Ltd. outright. These moves expanded the firm's direct ownership of production and prevented the mines from falling into dangerous (self-interested) hands (Hocking 1973:146). According to De Beers, the series of amalgamations in 1931 demonstrated how Oppenheimer was following in the footsteps of Rhodes (De Beers 1988:11). Indeed, Oppenheimer had emulated his predecessor somewhat by taking advantage of the opportunities to complement collective action with direct (if not always outright) ownership. Akin to Rhodes' amalgamation of the production sphere in the last quarter of the nineteenth century, De Beers' acquisition of the abovementioned companies was designed to *permanently* limit the number of competing interests in the production sphere through controlling-equity ownership; a move that would help to sustain long-term collective action.

The Great Depression, which began in 1929, had an enormous impact on the diamond market. The main consumer market for diamonds, the US, saw real national income fall by 30 per cent, nominal national income fall by more than a half and the unemployment rate rise above 20 per cent (Schedvin 1970:Tables 2a and 3, pp. 44 and 46, Friedman and Schwartz 1993:229). In the years preceding the crash, from 1927 to 1929, the cartel had continued to create deliberate diamond shortages to institute inflated prices, which reached a peak of sh 80/8 per carat in 1928. Lenzen argues that, as the cartel exerted serious control over virtually every source of diamond supply, it was not instability in the diamond industry that caused it to suffer so greatly during the Depression. Rather, the cartel's inflated (rent-extracting) prices prior to the shock created a perfect storm for a particularly severe diamond market collapse once economy-wide income and employment crashed (Lenzen 1970:180).

With the cartel's actions enabling the realisation of diamond prices well above those that would have existed within a competitive diamond market, diamonds—expensive discretionary goods—were immediately shunned by consumers upon the collapse of the market (Lenzen 1970:180–1). From 1929 to 1932, the US saw a drop in diamond imports of more than 80 per cent (Lenzen 1970:181). Over the same period, real national product in the US fell by 70 per cent (Schedvin 1970:44), indicating diamond demand fell considerably more than the average. This suggests that Oppenheimer's (rent-extracting) price policy was self-defeating. This contradicts Oppenheimer's arguments that the cartelisation and vertical integration of the diamond industry were designed to *protect* it from market instability (see Gregory 1962:229–

30). In reality, inflated prices had the capacity to undermine the stability of the cartel during times of crisis if demand was sufficiently weak.

During the Depression, Oppenheimer lamented the government's refusal to allow the closure of all of the mines in South Africa. This proposition was rejected within parliament because of the social harms that would arise from shutting down what was then one of South Africa's major industries. Contrarily, Oppenheimer argued that the large diamond producers, including De Beers, would be destroyed if the mines were not closed (Hocking 1973:153–6), once again illustrating his focus on the narrow interests of the organised minority. By March 1932, the government acquiesced and the De Beers board ceased all production in its mines, thus assuming the burden of protecting the collective good. Several external producers were also asked to decrease their deliveries to the cartel drastically.[89] The Premier mine, which De Beers controlled, was shut down and flooded to prevent unauthorised mining.[90] During the Depression, Dicorp worked hard to maintain the cartel's inflated diamond prices; however, it was nonetheless forced to sell diamonds at lower prices, which it regarded as 'unsatisfactory' (see Gregory 1962:287).

In the early 1930s, Oppenheimer took measures to limit further the potential for competition to emerge within the diamond industry by initiating the establishment of a new cartel agreement. Oppenheimer's first intermediate goal remained a work in progress; however, the Union of South Africa proved hostile to Oppenheimer's attempts to control its alluvial output in Lichtenburg. Most significantly, the government demanded the right to suspend its contract with the Syndicate if major producer purchases (within the cartel) were less than £3 million per six-month interval (Gregory 1962:224). The Union Government had also established a domestic manufacturing plant in South Africa in the mid-1920s, to which it routed a portion of its diamonds to be cut and polished. The plant enabled the Government to exploit a clause in its contract with the Syndicate to partially avoid Oppenheimer's strict quotas, and the Syndicate's contracted prices. The diamonds the Government had manufactured within South Africa were outside the complete control of the cartel, thus creating a gap in Oppenheimer's otherwise closely aligned phalanx. If he wanted to obtain an optimised collective good,

[89] External producers were asked to stockpile their diamonds, and not sell them onto the market.
[90] Premier mine was not re-opened until 1946.

Oppenheimer could not allow the Union Government to continue to circumvent his centralised market control.

The trials Oppenheimer faced during this period again illustrate the challenges of successfully orchestrating collective action in an intermediate group. It took three years of often aggressive negotiations between Oppenheimer and the Government before the Diamond Producers' Association (hereafter DiPA) was officially formed in 1934 (see Gregory 1962:225–304). The DiPA was an expanded cartel agreement between seven producers (an increase from the original four) and Dicorp, who were each allocated a quota for production:

1. De Beers Consolidated Diamond Mines Ltd.: 30 per cent
2. Dicorp: 15 per cent for stocks, 16 per cent for external production
3. Consolidated Diamond Mines of SWA Ltd: 14 per cent
4. Union of South Africa: 10 per cent
5. New Jagersfontein Mining and Exploration Co. Ltd.: 6 per cent
6. Premier Mining Co. Ltd.: 6 per cent
7. Cape Coast Exploration Company Ltd.: 2 per cent
8. Koffiefontein Mines Ltd.: 1 per cent (Lenzen 1970:182).[91]

The DiPA was the realisation of Oppenheimer's first intermediate goal of collective action (cartel). Each member of the DiPA, including the Union of South Africa, was contractually obliged to '...sell no diamonds except through the Association' (De Beers 1988:11), thus inhibiting the Government's use of its domestic cutting centre. Under the terms of the DiPA, Dicorp assumed all external contracts, including those held with Angola, the Gold Coast and the Belgian Congo. The output of unorganised international producers, such as the alluvial diggers in Brazil, Venezuela and British Guiana, was regulated by Dicorp via agreements with local diamond buyers within those states. This system prevented at least a portion of fringe diamonds freely entering the market (Epstein 1982:98).[92] Dicorp subsequently agreed to *long-term* contracts with the DiPA because of the alignment of incentives fostered by its funding model (see Lenzen 1970:182). The extension of the time horizon in which producers considered their welfare was important to discouraging short-term self-interest.

[91] Dicorp was not a producer, and its 'stock' of diamonds was those it had already accumulated during preceding crises.
[92] It is likely that these agreements with local buyers were not watertight, and thus they may have sold some of their diamonds to entities other than the cartel.

Oppenheimer's foresight regarding incentive alignment had thus been proven accurate. The mutual obligation of these organisations meant that the diamond industry was now almost completely centralised (Gregory 1962:306), and thus close to devoid of competition.[93]

The Diamond Trading Company (DTC), a daughter organisation of Dicorp, was also formed in 1934, and it essentially replaced the function of the New Syndicate. The DTC was given the role of selling the DiPA's diamonds (as per the quotas agreed to by DiPA members) directly to an exclusive group of selected dealers, known as 'sightholders'. Sightholders were, and still are, diamond dealers and manufacturers who purchased rough diamonds from the cartel at 'sights', held every five weeks at the DTC head office in London. The DTC exploited its monopsony control of diamond distribution and exerted near-absolute control over its sightholders (Thompson 1983:32), thus destroying their consumer sovereignty. The DTC required sightholders to buy whatever diamonds the DTC offered them, as any rejections or quibbles over prices would result in the offending firm's permanent exclusion from the exclusive sightholder list. Such was the DTC's market power that the diamonds controlled by the DTC were the only diamonds that sightholders could buy on the market: '…buyers [sightholders] take what they can get, knowing that their customers will take what *they* can get' (Hahn 1956:251). The threat of exclusion from what was essentially the world's sole source of diamonds was thus a powerful incentive to comply with the DTC's rules.

The DTC also sought to prevent sightholders from engaging in activities that had the capacity to negatively impact the collective good, such as discounting diamonds prior to sale, or selling diamonds to clients with 'weak hands'.[94] Sightholders were also not allowed to stockpile diamonds, which could prove harmful to De Beers' perpetual rents should the market crash and they be forced to sell. As a condition of being a sightholder, the DTC would perform surprise audits to ensure sightholders were not misleading them. If sightholders deviated from the DTC's 'rules', they risked being struck off the sightholder list or being punished financially (Epstein 1982:11; Hahn 1956)—both of which were negative incentives designed to encourage obedience. That the DTC could influence sightholders' engagement with their own clients meant that members of the supply chain *beyond* the sightholders themselves were also directly affected by the control the DTC exerted over its buyers. The upstream supply

[93] These consolidated structures would remain the backbone of the diamond industry until the end of the twentieth century.
[94] Defined as clients who were likely to sell diamonds at reduced prices.

chain control enjoyed by Oppenheimer, as Chairman of Dicorp, was thus immense. In removing competition from the sale of diamonds, and creating a small group to whom diamonds would be sold, an oligopoly was created within the trading sphere. The moral dimensions of this monopsony market control, and the DTC's use of negative incentives to control the behaviour of sightholders, will be explored in the moral analysis section of this chapter.

Oppenheimer's Second Intermediate Goal: Vertical Integration

Unlike the board of De Beers after Rhodes' death, Oppenheimer was continuously taking measures to ensure his near-absolute market control was not threatened, and his perpetual rents were protected. The discovery of new diamond deposits continued into the latter part of the 1920s and throughout the 1930s; deposits were found in Cote d'Ivoire in 1929, Sierra Leone and Liberia in 1930, the Central African Republic [French Equatorial Africa] (CAR) in 1931 and Guinea in 1936. Each of these mines had the potential to threaten Oppenheimer's market control. Sierra Leone's diamond-mining and prospecting rights were actively pursued by CAST from 1931, and were eventually officially obtained by the firm in 1935. In 1933, South Africa's Deputy Prime Minister, Colonel Smuts, implored the British Colonial Office in Sierra Leone to take control of the deposits to prevent an abundance of diamonds from entering the market—a request that was declined (Greenhalgh 1985:51). In 1935, Oppenheimer was advised by De Beers' consulting engineer that Sierra Leone's output could surpass the combined output of Angola and the Belgian Congo, and thus represented 'a great menace to De Beers and the corporation [Dicorp]' (H.T. Dickson quoted in Gregory 1962:308).

However, Oppenheimer's pre-existing relationship with CAST (via Gold Coast's output) meant that the firm did not want to eschew the cartel. Instead, CAST deftly used its new acquisition as a negotiation tool to 'increase the production quotas available to colonial producers' (Greenhalgh 1985:51). By the end of 1935, Oppenheimer had successfully allocated a quota to CAST's daughter firm, the Sierra Leone Selection Trust (SLST), thus incorporating it into the cartel (via Dicorp).[95] CAST would continue to prove an important asset in the cartel's control over global diamond output, as the firm possessed significant

[95] CAST established the Sierra Leone Selection Trust (SLST) to mine the state's diamonds.

diamond-mining interests in West Africa, including in the Gold Coast, Sierra Leone and Guinea. CAST also helped Oppenheimer to maintain control over the production sphere by engaging in global diamond exploration to ensure that potential diamond deposits did not fall into the hands of actors disinterested in cooperating with the cartel. CAST and Oppenheimer are also said to have agreed to never compete, by avoiding encroaching on one another's diamond territories (Greenhalgh 1985:46–7).

In 1936, Oppenheimer created the Anglo-American Investment Trust Ltd., a subsidiary of Anglo-American, which acquired shares in several diamond-producing companies, including CAST (Gold Coast and Sierra Leone), De Beers, Beceka (Belgian Congo) and Consolidated Diamonds Mines of SWA. Oppenheimer wanted to eventually assert control over CAST, but in the meantime the Trust's share ownership in CAST provided him with board memberships for two of his brothers, Louis and Otto (Newbury 1989:320).[96] The year 1934 also saw the instatement of Oppenheimer's son, Harry, as a director of De Beers, establishing what would become a 77-year tradition of the Oppenheimers promoting male family members to the De Beers board.

The realisation of Oppenheimer's second intermediate goal, the vertical integration of the production and marketing spheres, gained traction after the formation of the DiPA. In 1935, De Beers acquired 60 per cent of the shares in Dicorp (and thus the DTC). This provided the diamond industry's largest producer with majority control over the cartel's contracts with external producers, and the operation of the industry's diamond monopsony. However, Oppenheimer's control over the marketing sphere was still not absolute. Accordingly, in 1939 De Beers arranged for the sale of 687,000 Dicorp shares to Consolidated Diamond Mines of SWA (Lenzen 1970:183). This meant that Dicorp, and thus the DTC, were directly owned by De Beers and Anglo-American's daughter companies, all of whom had Oppenheimer as their Chairman. The breakdown of ownership of Dicorp was as follows:

- De Beers Consolidated Diamond Mines (60 per cent)
- Consolidated Diamond Mines of SWA (23.1 per cent)
- Anglo-American Investment Trust Company Ltd. (16.9 per cent).

[96] Oppenheimer also personally renegotiated contracts with the producers within the Belgian-Congo and the Gold Coast, to include them in the new cartel agreement through direct sales to Dicorp, thus ensuring the continued curtailment of competition within the production sphere.

Thus, by 1939 Oppenheimer had achieved his second intermediate goal. This market structure would exist in the diamond industry for more than six decades, as will be detailed in forthcoming chapters.

By the late 1930s, with the world again on the verge of total war, industrial diamonds, or boart, had become essential to the manufacture of various technologies, including armaments: 'Without a continuing supply of diamonds, the war machine would rapidly slow to a halt' (Epstein 1982:88). De Beers consequently saw a significant growth in profit in the war years. For example, 1942 saw the sale of industrial diamonds equal £4,250,000, which was almost 40 per cent of the total annual trade in all diamonds (De Beers 1988:13). The growth in sales was despite the fact that virtually all diamond mines within the cartel, except for those in the Belgian Congo, had been shut down during the war. The Belgian Congo's average diamond grades were low, and thus industrial grade diamonds made up a large portion of its output. In addition, the stockpile of diamonds that Dicorp had accrued in the 1930s provided the cartel with a steady source of diamonds to sell (Gregory 1962:322).[97] The industry continued on an upward trajectory throughout the war, with record sales of £20.5 million and then £24.5 million achieved in 1943 and 1945, respectively (De Beers 1988:13). The formerly useless industrial diamonds had suddenly become highly profitable for the diamond industry.[98]

During the war period, Oppenheimer demonstrated his unwavering devotion to the protection of his perpetual rents. The US Department of Justice (quoted in Roberts 2007:109) noted the challenges the US faced in obtaining the diamonds it needed to support its war effort, declaring that the US was having 'a great difficulty in getting an adequate supply [of industrial diamonds] for war uses...'. In exploiting his near-absolute control over diamond supplies, Oppenheimer refused to sell the US the 6.5 million carats it required for manufacturing, and rejected its demands that the cartel re-open one of its mines to increase global supplies during

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[98] A further delineation between gem quality and industrial stones occurred in 1946 when the DTC was no longer used for the marketing of industrial-grade diamonds and was used solely for gem-grade diamonds. The Industrial Distributors Ltd. (now known as Element 6) was created, and given the sole task of marketing industrial grade diamonds. This separation of gem and industrial grade allowed for industrial marketing to continue irrespective of demand for gem grade, as was necessary, especially during times of war.

the war.[99] Oppenheimer (quoted in Gregory 1962:325) believed that the US's fear it would run out of boart for use in production was 'farcical'.

Oppenheimer's refusal to sell the US the diamonds it required was based on his belief that the state was attempting to create a strategic diamond reserve, which after the war would impede the cartel's ability to control diamond supplies (Epstein 1982:89). However, the lengths to which the US went during this time to re-open the Arkansas mine suggest that an inadequate supply of industrial diamonds was a genuine problem for the state. President Roosevelt saw Arkansas as a workable source of diamonds for the war effort (see Roberts 2007:106–7); however, the mine was never utilised as a commercial mining enterprise.[100] Roberts' (see 2007:105–9) research into the Arkansas mine strongly indicates that De Beers used its connections to ensure the mine was incorrectly categorised as a commercially unviable source of diamonds, and thus incorrectly branded as inadvisable to develop. That Oppenheimer would guard De Beers' control of diamonds to the point that the Allied war effort was seen as secondary demonstrates his unwavering determination to protect the cartel, and thus his perpetual rents, regardless of the costs consequently inflicted on society. As argued by Olson (1982), there are no limits to the costs that distributional coalitions are prepared to inflict on society in the pursuit of their narrow interests.

After the war ended in 1945, the US retaliated by charging De Beers, and other members of the cartel, with widespread antitrust violations. In this same year, an issue of Time Magazine (1945) spoke candidly about the impact of De Beers' rent extraction on the American consumer:

> Of all the world's tight trade combinations, the British-controlled diamond cartel is the best textbook example of how to control production and fix prices. U.S. businessmen have long been aware that if this cartel could be splintered, diamonds might become cheap enough to: 1) weigh down their wives' fingers; 2) drastically cut the cost of diamond drills, grinding wheels and other industrial tools.

It was thus well recognised within the US that the re-emergence of competition within the diamond industry would significantly drive down diamond prices and ultimately benefit consumers.

[99] By 1943, De Beers was unable to meet the demands for gem-grade diamonds out of pre-existing stockpiles and re-opened the Dutoitspan mine.
[100] Since the day it was discovered, the Arkansas mine has never operated as anything other than a tourist diamond park, in which, for a fee, tourists can come and dig for diamonds.

In outlining its case against the firm, the US Department of Justice referred to the advertising blitz Oppenheimer had initiated in the US in 1938. With supply under control, demand had become Oppenheimer's next focus (Epstein 1982:121). Oppenheimer sent his son Harry to the US to meet with the advertising agency N.W. Ayer to negotiate the key parameters of the campaign (Hocking 1973:412). Oppenheimer wanted to convince people that diamonds were both rare and customary. As a result of the subsequent campaigns, consumers were encouraged to view the 'valuable' diamonds as symbols of financial success: 'Promote the diamond as one material object which can reflect, in a very personal way, a man's ... success in life' (N.W. Ayer quoted in Epstein 1982:129). Further, an 'ancient tradition' of diamonds in engagement rings was invented to 'normalise' diamonds and propel them to the forefront of women's engagement ring desires (Roberts 2007:148). Oppenheimer's 'diamond myth' was thus created, the moral dimensions of which will be explored in the moral analysis section of this chapter.

Oppenheimer's deceptive advertising campaign was extremely effective. In 1941, sales of diamonds increased by 55 per cent (Epstein 1982:125).[101] In the next decade, more than half of all brides received diamond engagement rings, rising to almost 80 per cent in the 1960s (Kanfer 1993:272). It is important to recognise that consumers' beliefs, propagated at Oppenheimer's insistence, would have aided his extraction of perpetual rents. This is not only because consumers were consequently willing to pay more for diamonds, but also because diamond rings became customary in the marking of a milestone that is experienced by the vast majority of people in the Western world: the act of becoming engaged to be married. De Beers' advertising campaigns ensured diamonds became the only choice for brides: 'both advertising and pricing worked together to make diamonds a psychological monopoly despite the availability of other gemstones' (Sundie et al. 2008:179). The establishment of this tradition thus gave De Beers, and the rest of the diamond industry, a perpetual, inter-generational market for its product; a market that could not be taken for granted, given the vagaries of consumer demand for gemstones (see Misiorowski 2000, Carnevali 2011).

That diamonds were subsequently viewed as *mandatory* for engagements created a higher degree of price inelasticity in the demand curve; the (artificial) union forged between

[101] The phrase 'A Diamond is Forever' was coined by a N.W. Ayer copywriter in 1948, and became one of the most significant advertising slogans of the twentieth century.

diamonds and engagements meant that even when diamond prices increased, demand rarely dropped—the very definition of an inelastic demand curve (van Saldern 1992:47). Further, removing other gemstones from consideration as ‘substitutes’ for diamonds in engagement rings served to steepen the downward slope of the demand curve. The inelastic demand curve possessed by diamonds was extremely significant to De Beers’ rent-extraction efforts. Monopolies and cartels derive a significant portion of their market power from the inelasticity of their product/s’ demand curve (see Pindyck and Rubinfeld 1997:352–3).

Figures 5.1 and 5.2 collectively illustrate (in a very simplified form) the enormous potential for rent enhancement enabled by a marketing campaign that has materially steepened the demand curve, as the Oppenheimer campaigns did (as will be illustrated shortly). Figure 5.1 depicts the impact of a 50 per cent reduction in industry-wide supply from four units to two—something that effective monopolies and cartels might engineer—where the demand curve is relatively elastic. The result is an inward shift of the vertical supply curve on the horizontal axis. The new intersection between supply and demand indicates that the price has increased from 2 to 3. The industry’s revenue was 4*2=8 before the supply shock and 2*3=6 afterwards. Figure 5.2 takes the same supply scenario: a reduction from four units to two, but the demand curve has steepened appreciably to reflect the absence of substitutes and the ‘mandatory’ nature of the purchase given a certain condition—in the case of diamonds, becoming engaged. Here we see that at the original point of intersection (the higher level of supply), the industry’s revenue is 4*1=4. However, with the steep slope of the inelastic demand curve, the reduction in supply pushes prices up sharply, leaving revenues (2*4=8) well above where they were at higher supply levels. Before the steepening of the demand curve, to generate revenue of 8, twice as many sales were required.

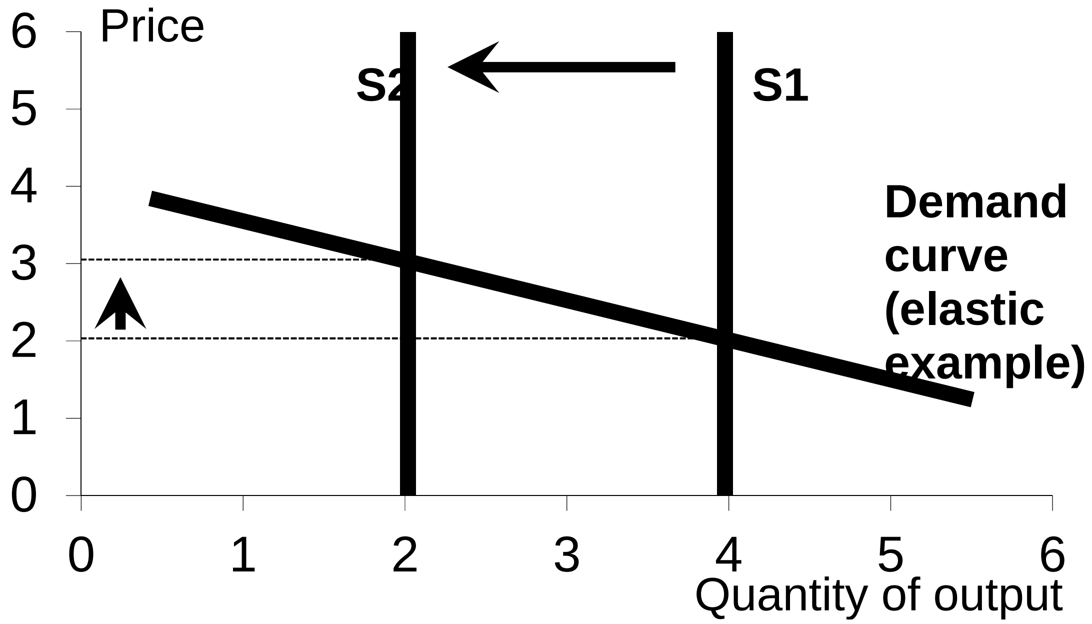

Figure 5.1: The price impact of a 50 per cent supply reduction with an elastic demand curve.

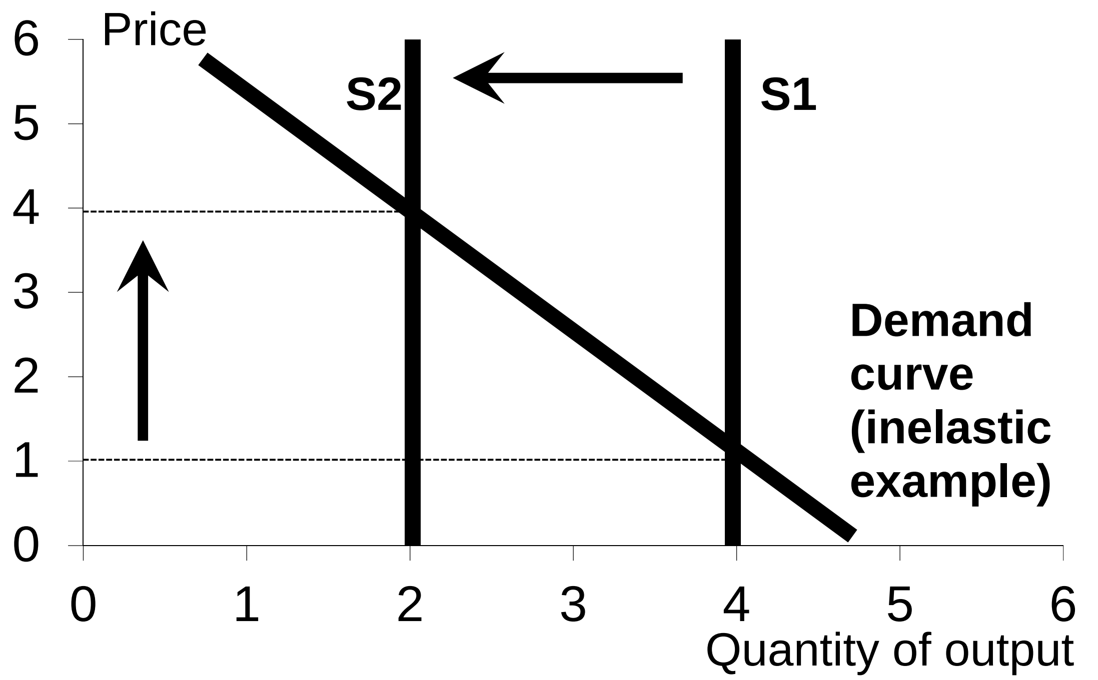

Figure 5.2: The price impact of a 50 per cent supply reduction with an inelastic demand curve.

This exercise shows how incredibly valuable it was to De Beers to originate and perpetuate the twin myths of scarcity value and historical custom. Its advertising campaign had reduced the acceptability of substituting other gemstones for diamonds and created a captive customer segment—the marriageable but unmarried portion of Western society—who were educated to believe that diamonds were a mandatory part of the engagement process. Both outcomes were symptoms of the wholly fabricated 'diamond myth', which steepened the diamond demand curve and placed enormous rent-extraction power in the hands of De Beers while soever it could maintain its control of the production sphere. Oppenheimer's creation of the diamond myth was thus central to the ongoing protection of his ultimate goal.

Spindler and de Vanssay argue that Oppenheimer's diamond advertising provided members of the De Beers cartel with a tangible financial benefit that was not accessible to fringe members of the industry, and was thus an incentive for collectivisation. They argue that the De Beers cartel can thus be classified as a 'demand-raising cartel' (Spindler and de Vanssay 2000:16). This is clearly incorrect. The demand-raising effect of Oppenheimer's advertising initiatives was not an exclusive private good. The diamond advertisements often carried the De Beers name or logo; however, they espoused the 'virtues' of *all* diamonds. As argued by Deily (2004:iii), 'All diamond producers, wholesalers and retailers benefitted from these ad campaigns, whether they were part of the cartel or not'. Therefore, the effects of De Beers' diamond advertising played no role in incentivising engagement with the cartel. Moreover, it would be more accurate for Spindler and de Vanssay to classify De Beers as a 'demand-raising firm', as it pursued its advertising initiatives independently from any other firm in the industry. Indeed, De Beers' advertising was a public good that the rest of the industry free rode on, something the firm would come to publicly lament and attempt to rectify in the twenty-first century (see Bergenstock 2004).

The Department of Justice's antitrust case against De Beers was initially dismissed because the US did not have jurisdiction over the cartel, which did not have a formal presence within the US.[102] The Department of Justice was recommended to appeal; however, it could not. The Government of the Belgian Congo advised the US that if it pursued this case it would be taking legal action against an ally, as the Belgian Congo's Minister of Colonies was the

[102] The central role played by industrial diamonds during WWII inspired Oppenheimer to separate the industrial and gem categories of the cartel. In 1946, Industrial Distributors Ltd. was created, which assumed all of the industrial grade diamond buying and selling previously performed by Dicorp.

President of Forminiere—a member of the De Beers cartel (see Roberts 2007:129). Thus, diplomatic sensitivities, in the wake of the modern world's most devastating war, delayed the US' pursuit of De Beers for antitrust violations. Chapters Six and Seven will explore the US Department of Justice's continued pursuit of De Beers from the 1970s to the 2000s.

Oppenheimer's Continuous Rent Protection

Throughout the 1930s and 1940s, Oppenheimer continued in his attempts to gain further control over the industry, and respond to the emergence of new competitors. In 1939, Oppenheimer saw another opportunity for the outright ownership of a producer; Oppenheimer convinced Chester Beatty to trade CAST's 40 per cent share of Cape Coast Exploration Ltd. for shares in one of Anglo-American's daughter companies, Anglo-American Investment Trust Ltd., thus giving Anglo-American complete control over Cape Coast. As a former CAST employee, C.A. Kidd (quoted in Carstens 2001:41), recalled about the trade: 'Oppenheimer was by then anxious to bring Cape Coast completely under his own control'. He succeeded in buying it outright in 1941. This acquisition was motivated by Oppenheimer's concern over De Beers' *direct* control of only 65 per cent of global diamond production (see Gregory 1962:373). As Rhodes had known, direct control over diamond production was necessary to guarantee control over output. In contrast, contracts between external producers and Dicorp had the capacity to be cheated by self-interested actors.

The episodic emergence of new producers always created periods of cartel unease, as their acquiescence to De Beers' demands for pro-group behaviours could never be taken for granted. In 1940, John Williamson, a former De Beers geologist, discovered Tanganyika's (Tanzania) first kimberlite diamond deposit, the Mwadui pipe.[103] It was a significant discovery, and by 1946, Williamson Diamonds Ltd. employed more than 600 miners and was producing over 100,000cts of high-quality diamonds annually. A second smaller mine, Alamasi, was also established close to the original pipe. Oppenheimer immediately recognised the threat posed by the Mwadui pipe and offered Williamson £2,000,000 for the outright purchase of the mine. However, Williamson declined Oppenheimer's offer (Epstein 1982:99). Williamson (quoted in Time Magazine 1952) recognised the rent-extracting nature of De Beers' inflated diamond prices, and was not afraid of undercutting the cartel: 'I could sell my

[103] Small alluvial deposits had been found in the state prior to this, but their output was negligible.

diamonds at 10 per cent under the syndicate's fixed price and still make a profit'. The owners of Alamasi were keen to sell to the cartel, but Williamson's refusal lessened Oppenheimer's interest in acquiring the smaller producer and he declined the opportunity (Knight and Stevenson 1986:428).

Oppenheimer responded to Williamson's rebuke by attempting to obtain the remaining diamond prospecting rights in Tanganyika for the cartel. This rent-hedging technique would have prevented Williamson from expanding his operations. However, the Williamson mine's size and predicted output dampened these efforts, as the local government instead focused on gaining the highest quota possible for the mine through Dicorp (Knight 1986:432). In 1946, the post-war fall in industrial diamond prices helped to facilitate Oppenheimer's renewal of the cartel agreement, which saw all producers remain within its confines (Hocking 1973:218).[104] In 1947, despite Williamson's initial hesitancy, he joined the cartel at the urging of the (British Colonial) Tanganyika Government. The cartel gave Tanganyika a total quota of 10 per cent of the Dicorp's annual net sales, 9.172 per cent of which was assumed by Williamson Diamonds Ltd. (Knight and Stevenson 1986:434). Williamson agreed to sell to the cartel only if it would pay the market prices he could otherwise achieve outside the Central Selling Organisation (CSO). In other words, Williamson was unwilling to sacrifice the profits he could make as a free rider for the benefits of having an assured buyer for his output. However, the cartel's near-absolute control of global diamond sales and thus, diamond prices, made it almost impossible for such prices to be transparently observed (Knight 1986:435–6).

In 1950, Williamson complained that the cartel had been underpaying for his company's diamonds for three years; a complaint that mirrored De Beers' behaviour in British Guiana in the 1920s (see Hyde 1960:200). Oppenheimer implicitly acknowledged these underpayments in a subsequent counter-offer, which was rejected by Williamson (Knight and Stevenson 1986:436). With no apparent resolution forthcoming, Williamson refused to sell any more diamonds to the cartel, and began stockpiling production. Williamson was at that time given the opportunity to eschew the cartel completely by selling his output to two American sightholders: Jacques Jolis, a well-known diamantaire; and Harry Winston, a well-known jeweller. However, a close associate of Winston claims that he quickly withdrew his offer for

[104] It was at this time that Oppenheimer oversaw the separation of gem and industrial diamond marketing, with the creation of Industrial Distributors Limited as a daughter company of Dicorp.

fear of chastisement from the cartel (Knight and Stevenson 1986:439). The sightholder status held by Winston (and Jolis) could have been jeopardised had he helped Williamson to eschew the cartel; the DTC could have retaliated by refusing to sell Winston diamonds, which, due to the cartel's near-absolute control of diamond sales, would likely have resulted in his company being forced out of the diamond industry. The issuance of this threat by De Beers to its sightholders is something Epstein (1982:100) claims the US Department of Justice was made aware of during this period.

Irrespective of whether such a threat was explicitly made, the withdrawal of Winston from a potential agreement with Williamson illustrates the negative incentives the cartel could generate through its all-encompassing control of the industry. Negative incentives did not even have to be explicit to be effective, although, based on the sightholder's behaviour, in this instance, implicit threats from the cartel were seen as highly credible.

As the dispute continued into 1951, Williamson Diamonds Ltd. began to face financial difficulties. In 1952, Harry Oppenheimer went to Tanganyika to negotiate with Williamson regarding his re-entry into the cartel. Williamson's financial situation had undoubtedly dented his stoicism and, according to Tanganyika's Commissioner of Mines, in the ensuing negotiations with Harry Oppenheimer, Williamson begrudgingly accepted a sales agreement with Dicorp that was almost identical to that of 1947. However, Williamson's concession was not enough for Ernest Oppenheimer; he sought to *eliminate* the threat posed by the totality of Tanganyika's diamond reserves by imploring its Governor to restrict the awarding of prospecting rights to Williamson alone until 1956 (Knight and Stevenson 1986:441), thus removing the short-term potential for another fringe producer to enter Tanganyika's production sphere.

Diamond prices for gem-grade stones were rising steadily in 1950, having increased by 20 per cent in only six months. Further, the onset of the Korean War (1951–1953) saw a 100 per cent increase in industrial diamond prices (Time Magazine 1951). Despite Oppenheimer's ongoing extraction of perpetual rents, during this decade external producers continued to threaten Oppenheimer's control over diamond supplies. The diamond-producing countries of Sierra Leone and Liberia both experienced diamond rushes in the early 1950s. In 1950, thousands of diggers swarmed the diamondiferous regions within Sierra Leone, reaching 30,000 by 1956 (Koskoff 1981:74). Oppenheimer believed that illicit diamonds emanating out of Central and

West Africa accounted for approximately 20 per cent of the diamonds produced within the regions (Pallister et al. 1987:114); it was rational for these diggers to maximise their outputs to maximise their incomes. These diggers introduced pockets of latency into the diamond industry, and forced Oppenheimer to rethink his approach to controlling fringe producers.

In 1956, the Government of Sierra Leone purchased back the majority of the mining rights it had awarded the SLST in the 1930s, leaving the firm with only two relatively small mining sites. The government wanted to establish a measure of control over diamond mining via licensing the formerly illegal miners (Koskoff 1981:75). This was a blow to De Beers' control over Sierra Leone's output, as the SLST was a conference producer (via CAST). However, the government subsequently established an agreement with De Beers that provided the firm monopsony rights over diamond exports out of the country via domestically located diamond buying agents owned by Dicorp. De Beers thus gained *de facto* control over the state's diamond output. Oppenheimer had again effectively collectivised the diggers by design, as he had done in Little Namaqualand and Lichtenburg.

However, illegal diamond mining (IDM) and illegal diamond smuggling (IDS) remained a threat to Oppenheimer's perpetual rents. His inability to negotiate with the free riding, latent diggers meant that he had to apply expansive negative incentives via alternate means. In 1953, Oppenheimer sought out the former head of MI-5, Sir Percy Sillitoe, to lead a ruthless mercenary unit that would deter IDS, not only in Sierra Leone, but also across the African continent. The resultant International Diamond Security Organisation (IDSO) consisted of a violent, and often lethal, team of agents who disincentivised diamond smuggling by privately policing known smuggling routes and attacking purported diamond smugglers (Kamil 1979, Pallister et al. 1987:114–5). Sillitoe's efforts were highly effective in disincentivising IDS, which, in turn, reduced the amount of diamond production that made it to the market outside the cartel's control (see Fleming 1960). The IDSO was disbanded two years after its creation.[105] The challenges IDM and IDS continued to pose to the cartel after Oppenheimer's death will be explored in Chapters Six and Seven.

Oppenheimer died of a heart attack in 1957. During his time in power, he successfully adopted and adapted Rhodes' intermediate goals to suit the nature of the rapidly evolving industry, and

[105] Anglo-American's security team was instead used to combat IDS.

achieved his intermediate goals of cartelisation and vertical integration. By emulating Rhodes' uncompromising market control (Lenzen 1970:158), extending it downstream and changing the basic parameters of the market by altering the shape of the demand curve, Oppenheimer was able to realise their mutual ultimate goal: the extraction of perpetual rents. The following section of this chapter will analyse the moral dimensions of Oppenheimer's *de jure* leadership of De Beers, and *de facto* leadership of the greater diamond industry.

Ernest Oppenheimer's Reign and Moral Rule Violations

Chapter Four demonstrated that Rhodes, in the pursuit and fulfilment of his intermediate and ultimate goals, violated the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat' in ways that rational, impartial moral agents would classify as 'unjustified', and thus immoral. It must be acknowledged that Oppenheimer was not the only actor in the post-Rhodes diamond industry who, in the pursuit of market control and inflated profits, violated these moral rules. Every member of the cartel was a perpetrator of these violations. However, this study is not concerned with those moral agents who violated the same moral rules as Rhodes; instead, it is interested in those who violated the moral rules to the same degree as Rhodes. Under Oppenheimer's leadership, De Beers controlled between 85 and 90 per cent of the world's diamonds (Bergenstock 2004:4), which was comparable to the level of control Rhodes had achieved for the firm (Lenzen 1970:158).

The following analysis makes a distinction between what this study terms Oppenheimer's 'augmented' and 'initiated' violations of the moral rules. 'Augmented' violations refer to instances in which Oppenheimer enhanced the violations that Rhodes had originally instated in De Beers' operations, as illustrated in Chapter Four. In contrast, 'initiated' violations refer to the moral rule violations that Oppenheimer personally ensconced in De Beers' operations, which were products of his deceptive diamond advertising campaigns and his violations of the Sherman Antitrust Act. This distinction is required for two reasons. Firstly, it prevents the unnecessary repetition of the moral rule analyses performed in Chapter Four; and secondly, it separates Rhodes' foundational violations from the violations that were unique to Oppenheimer's reign. This highlights the additions that Oppenheimer made to Rhodes' immoral legacy, and in turn aids the demonstration of the industry's moral decline at the hands of Oppenheimer. Chapters Six and Seven will show that Oppenheimer's augmented and initiated violations both became integral to the functioning of the De Beers organisation, and were adopted by his successors. Therefore, like Rhodes, Oppenheimer's impact on the ethical evolution of the diamond industry lasted well beyond his Chairmanship of De Beers.

The ensuing Gertian moral analyses will be structured as follows. Firstly, Oppenheimer's augmented violations will be assessed. It will be substantiated why Oppenheimer's violations are *the same kinds* of violations as were committed by Rhodes, and why rational, impartial moral agents would consequently categorise them as unjustified. The moral dimensions of Oppenheimer's deceptive advertising campaigns and violations of the laws of sovereign nations will then be examined. Oppenheimer's initiated violations will then be analysed using the moral system's two-step procedure to determine which classification rational, impartial moral agents would award them.

Augmented Violations: 'Do not Deprive of Freedom', 'Do not Deprive of Pleasure' and 'Do not Cheat'

Gert states that the objective of the two-step procedure is to illuminate the morally relevant features of a moral rule violation to determine what kind of violation it is. If a rational, impartial moral agent would publicly allow a violation, this means that he or she would publicly allow violations *of that kind* (Gert 2005:225–6). As shown in Chapter Four, moral rule violations of the same kind as Rhodes' would not be publicly allowed by rational, impartial moral agents; thus, Rhodes' violations were classified as unjustified.

Oppenheimer's violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat' were the same kind of violations as Rhodes'; Oppenheimer's violations were caused by his deliberate efforts to eradicate competition from the diamond industry to extract perpetual rents. The morally relevant features of the two men's violations are fundamentally the same. For that reason, each answer to the morally decisive question would also be the same. As a result, rational, impartial moral agents would not publicly allow Oppenheimer's violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat', which would be considered unjustified, and thus immoral. However, this study contends that Oppenheimer also *augmented* Rhodes' violations of these rules. Two reasons for this contention are given, both of which rely upon the same validating principle: that the number of people affected by a violation is a morally relevant consideration because it informs the amount of harm inflicted by that violation (Gert 2005:227).

The first reason that Oppenheimer's moral rule violations were an amplification of Rhodes' arises from the different mechanisms via which market control was *maintained* by the two Chairmen, which was, in turn, a product of the different group characteristics with which each contended. Once Rhodes had attained monopoly ownership of the majority of the world's diamond mines (the ultimate privileged group), the need to manage competing interests and ensure cooperation among producers was eliminated; Rhodes only had to take measures to restrict the freedom of would-be future producers and the four members of the Syndicate. In contrast, the intermediate nature of the production sphere during Oppenheimer's reign meant that, as this chapter has shown, he constantly had to guarantee the cooperation of firms other than his own in the continued cartelisation of the industry, and thus the successful pursuit of perpetual rents. This meant that Oppenheimer had to *perpetually* restrict the freedom of actors within the production sphere *and* would-be future producers. This resulted in an increase in both the number of entities negatively affected by Oppenheimer's anticompetitive actions, and the length of time for which they were affected. Therefore, compared to Rhodes' violations, more harm was inflicted because of Oppenheimer's violations of the moral rule 'Do not deprive of freedom'.

The second reason that Oppenheimer's violations exceeded those of Rhodes stems from the fact that there were more diamond consumers during Oppenheimer's reign, as a result of both organic growth in consumer demand (see Hackett Fischer 1996:186–90) and the demand that Oppenheimer intentionally cultivated via De Beers' ground-breaking diamond advertising campaigns (Epstein 1982:121). With more diamond consumers in the market, more people had their consumer sovereignty violated, and thus more people experienced the ill-effects of Oppenheimer's violations of the moral rules 'Do not deprive of freedom' and 'Do not deprive of pleasure'. In addition, an increase in consumers meant that more people funded Oppenheimer's extraction of perpetual rents. Consequently, a greater number of people experienced the ill effects of Oppenheimer's violations of the moral rule 'Do not cheat'.[106]

[106] De Beers' sightholders can also be classified as diamond consumers.

Initiated Violations

Oppenheimer's initiated violations were products of his deceptive diamond advertising campaigns, which created the 'diamond myth', and his violations of the Sherman Antitrust Act. Although Rhodes' monopoly control over the diamond industry had also violated the Sherman Antitrust Act, his violations arose solely out of the monopoly and cartel industry structures he had established. The following analysis will show that Oppenheimer, as Chairman of De Beers, oversaw violations of the Sherman Antitrust Act that had not been previously witnessed in the diamond industry.

The Moral Dimensions of Consumer Deception

Advertising is the most common medium used by companies to inform consumers about the products and services they sell. However, advertising is not always truthful; companies may employ deceptive advertising techniques to make their products or services more appealing to consumers and thus increase sales (Scanlon 1969–1970, Kertz and Ohanian 1990–1991, Kangun et al. 1991, Shabbir and Thwaites 2007). Companies have the ability to deceive consumers because they typically possess information about their goods or services that consumers do not. This is known as 'asymmetric information', and depending on whether it is exploited, its presence in a market may be harmless or harmful. Asymmetric information is harmful when vendors choose to utilise the information they possess about their product or service to take advantage of their comparatively ignorant consumers (see Akerlof 1970, Marshall and Marx 2012:58–9). Deceptive advertising may be the method vendors select to exploit consumer ignorance.

Within competitive markets, there are disincentives for vendors to misinform consumers via deceptive advertising. These disincentives arise out of consumers' ability to uncover the true nature of advertised goods or services either *ex-ante* or *ex-post facto*. In competitive markets, the power the vendor can obtain from asymmetric information can be mitigated by the consumer engaging in (prior to purchase) price and quality comparisons with competitor firms, or examining the product in person.[107] Consumers may also uncover the deceptiveness of advertisements after having made their purchases, when the product or service fails to meet

[107] Social science disciplines that rely on hard assumptions, like the efficient markets hypothesis of pure neoclassical economics, tend to 'assume away' asymmetric information.

expectations. This may result in affected consumers vowing to eschew all future purchases of goods or services from the offending company (Nelson 1974:730–1). This study will refer to these two disincentives as *ex-ante* and *ex-post facto* disincentives, respectively.

The *ex-ante* disincentive to deceive consumers is virtually non-existent in monopolised or cartelised industries. When competition is eliminated from an industry, price and quality comparisons become difficult or impossible for consumers to perform (Marshall and Marx 2012:83–4). Further, as argued in Chapter Two, in monopolised or cartelised markets, it is irrational for consumers to expend resources in seeking reliable product information; the marginal costs of seeking such information would be greater than the marginal gains they would stand to make (see McCluskey and Swinnen 2004:1233–4).

In such industries, the vendor's asymmetric information advantage is amplified, and thus their disincentive to engage in deceptive advertising is decreased. The lack of competition in an industry also affects *ex-post facto* disincentives to deceive consumers. This is because the monopolist or cartelist often has absolute control over the discourse surrounding their product. In monopolised and cartelised markets, consumers would struggle to determine the true value or quality of the product they have purchased. This lack of information would limit the likelihood that they would elect to eschew future purchases from the offending company. Further, if the good is characterised by an inelastic demand curve, consumers may have no choice but to purchase again from the same vendor.

If incorrect information is being provided to a consumer, whether via deceptive advertising or other means, the consumer is being encouraged to possess a false belief about the good or service in question. The moral rule 'Do not deceive' exists to prevent the creation of bogus beliefs: 'it prohibits both intentional and unintentional actions that cause someone to have a false belief' (Gert 2005:188). Whether that false belief arose from explicit deception or a lie of omission is irrelevant. As rational agents, people would not want to possess false beliefs (Gert 2005:188). People are more liable to experience harm as a result of deception, especially if that deception is wide-scale (Gert 2004:41). Numerous examples exist of justified deception, such as lies of omission given by journalists to their sources (Elliott 1991). However, it is difficult to imagine a realistic scenario in which it would be justified for a vendor to foster false beliefs among consumers about a product or service they are buying.

Oppenheimer and the Diamond Myth

As shown in this chapter, Oppenheimer initiated the creation of the 'diamond myth'. He did so to imbue diamonds with status and tradition, to boost diamond sales (Epstein 1982:121). More subtly, but no less profoundly in terms of ultimate harm to others, the diamond myth steepened the demand curve, which markedly increased the scale of rents that could be extracted while supply discipline was maintained. Oppenheimer's creation and promotion of the diamond myth violated the moral rule 'Do not deceive'. Oppenheimer created false beliefs about diamonds among comparatively ignorant consumers by exploiting the asymmetric information that existed in the industry. This asymmetric information was amplified by Oppenheimer's cartelisation of the diamond industry, and the corresponding absence of *ex-ante* and *ex-post facto* disincentives to mislead consumers via deceptive advertising.

The Two-Step Procedure

'Do not Deceive': Step One

The harms that were caused by Oppenheimer's violation of the moral rule 'Do not deceive' can be extrapolated from the logic that people are willing to spend more money on goods that they think are valuable. The same holds for products that have social expectations attached to them. Thus, because of the creation of these false beliefs, diamond consumers would have parted with more money for their diamonds in the belief that they genuinely warranted such a financial outlay, causing consumers to suffer a financial loss. The probability of these harms occurring is extremely high. Virtually every diamond consumer during this period—literally millions of people—would have been a victim of Oppenheimer's violations of this rule, and thus have been purchasing diamonds with the false belief that they were more valuable than they were, and that they were historically significant to love and marriage. The promotion of these false beliefs existed for as long as Oppenheimer's diamond myth was promoted as fact.

As rational actors, diamond consumers would not have wished to experience the harm caused by the financial losses that arose from their false beliefs about diamonds.[108] They would have wanted to possess accurate information about what diamonds were actually worth. Diamond consumers would have held the rational belief that their possession of false information about

[108] This is different to saying that they would have wanted the capacity to be fully informed about the diamonds they were buying, as it is often rational for consumers to possess only partial information about what they buy.

the inflated value and false tradition of diamonds would likely result in their willingness to pay more for the stones, causing them to suffer a (comparative) financial loss. The alternative option that rational, impartial actors would have advocated would have been Oppenheimer not initiating the creation of the diamond myth, but instead providing consumers with accurate information about the true value and history of diamonds. This would have prevented his violations of the moral rule 'Do not deceive'. However, it was Oppenheimer's intention to increase the size of the diamond consumer base and further reduce the inelasticity of the diamond demand curve by convincing consumers that diamonds were historically meaningful to marriage, and worth more than they actually were. This result would have been foreseen by Oppenheimer as, indeed, it was his goal. Thus, it can be said that Oppenheimer intentionally violated this moral rule.

Step Two

The second step in the two-step procedure applies the following question to the violations: 'What effects would this kind of violation being publicly allowed have?' (Gert 2005:236). The consequences of publicly allowing moral rule violations of this kind; that is, violations that are a result of a vendor using deceptive advertising to misinform consumers about his or her products to encourage them to pay more for said products, would be the widespread exploitation of asymmetric information through deceptive advertising by vendors. This would greatly increase the amount of harm suffered within society. Rational, impartial moral agents would see the harm that would arise from publicly allowing these kinds of violations, and would not make an exception for Oppenheimer. Thus, Oppenheimer's violations of the moral rule 'Do not deceive' would be classified as unjustified, and thus immoral.

The Moral Dimensions of Breaking the Law

As outlined in Chapter Three, the moral system requires all rational agents to abide by the moral rule 'Obey the law', unless violations of that moral rule can be classified as justified. The requirement for people to obey the law is based on the harm that would likely arise out of the anarchy that would otherwise exist within society. The existence of legal systems establishes order within society and reduces the likelihood that harm will be suffered therein (on the aggregate). Laws can only be disobeyed if there is reason to believe that such an action will prevent a significant evil. In such instances, violations of this rule would be classified as justified (Gert 2005:204). Further, if laws are demonstrably unjust, they can be justifiably violated (Gert 2004:47).

Oppenheimer and the Sherman Antitrust Act

This chapter has briefly referred to the antitrust case the US initiated against De Beers after World War II. In its case against De Beers, the US Department of Justice listed the violations of the Sherman Antitrust Act caused by the cartel's anticompetitive actions:

> According to the complaint filed by the Antitrust Division the illegal conspiracy consists of a continuing agreement between the defendants to:
> 1. Limit the production and supply of diamonds,
> 2. Restrict the quantity of diamonds imported into the United States,
> 3. Fix, stabilize and enhance the prices at which diamonds are sold in the United States,
> 4. Prevent dealers and consumers in the United States from purchasing diamonds from producers,
> 5. Prevent all sale or purchase of diamonds for export to the United States except through the Diamond Trading Co. Ltd., and,
> 6. Prevent all persons in the United States, except certain favoured brokers, dealers and cutters, from purchasing diamonds from the Diamond Trading Co. Ltd. (Department of Justice quoted in Roberts 2007:128).

This study's argument that Oppenheimer initiated the first violations *of this kind* of the moral rule 'Obey the law' is justified for three reasons. Firstly, in the abovementioned case against the cartel, the Department of Justice twice explicitly referred to the role played by the DTC in restricting trade in the industry—a company that was not only run by Oppenheimer, but also his own brainchild. Secondly, Oppenheimer *intentionally* targeted American diamond consumers when he initiated the deceptive N.W. Ayer advertising campaign. In doing so, it was his goal to increase the number of diamond consumers within the US, and thus target the citizens of a state that explicitly protected them against anticompetitive conduct (see Roberts 2007:152). Thirdly, the legal action taken against the firm in 1945 was a direct result of Oppenheimer's refusal to sell the US the industrial diamonds it required for the war effort, and the state's consequent realisation of the harm caused by De Beers' market power. The following analysis will be focused on the harms experienced by moral agents within the US because of the jurisdictional limitations of the Sherman Antitrust Act.

Obey the Law: Step One

The harms that were caused by Oppenheimer's violation of the moral rule 'Obey the law' in relation to the Sherman Antitrust Act arose from his anticompetitive actions' negative impact on consumers, competitors and would-be future competitors within the diamond industry.[109] These harms have already been extensively outlined in the moral analysis section of Chapter Four, and do not need to be repeated. The probability that these harms occurred is extremely high. Virtually every diamond consumer, current competitor and would-be future competitor during this period would have been affected by the harms that arose from Oppenheimer violating these laws (as the experience of the Arkansas mine attests). These harms would have been experienced for as long as Oppenheimer, as Chairman of De Beers, sought to stifle competition within the diamond industry, and for as long as diamonds were purchased and traded within the US. As rational actors, consumers, competitors and would-be future competitors within the diamond industry would not have wanted to experience the harm caused by these violations. Further, they would have held the rational belief that the violation of these laws would negatively affect them.

The alternative option that rational, impartial actors would have advocated would have been Oppenheimer complying with the Sherman Antitrust Act. However, it was Oppenheimer's objective to proactively stifle competition in the diamond production and marketing spheres, and thus impede the freedom of consumers, competitors and would-be future competitors. This result would have been foreseen by Oppenheimer; he was acutely aware that De Beers' operations violated the US' Sherman Antitrust laws, as correspondence from a former N.W. Ayer executive illustrates:

> Sir Ernest Oppenheimer says for us to at present have no contact with the customers of the DTC ... His main reason is that he does not want anyone to get the idea that we represent the DTC in any sort of sales capacity in the US (US Department of Justice report quoted in Roberts 2007:151).

Therefore, it can be said that Oppenheimer intentionally violated the moral rule 'Obey the law'.

[109] Although there is a debate as to whether the US antitrust laws protect competitors, this study operates from the assumption that if a law protects competition, it must therefore protect competitors.

Step Two

The only way to justifiably violate the moral rule ‘Obey the Law’ is to demonstrate that the law itself is unjust (Gert 1999:61). That is, obeying that law would increase the amount of harm suffered within society. The Sherman Antitrust Act can be classified as a morally just law because, if abided by, it reduces the amount of harm suffered by consumers, competitors and would-be future competitors (see Congress of the United States of America 1890:Section 7, Bork 1966). Therefore, it is not an unjust law. Indeed, as competition law aims to minimise harmful anticompetitive behaviour, which the Gertian analysis in this study has classified as immoral, it is not only just, it is a moral law. The consequences of publicly allowing moral rule violations of this kind would be the widespread violation of just laws. This would greatly increase the amount of harm suffered within society. Rational, impartial moral agents would see the harm that would arise from publicly allowing these kinds of violations, and would not make an exception for Oppenheimer. Thus, Oppenheimer’s violations of the moral rule ‘Obey the law’ would be classified as unjustified, and thus immoral.

Conclusion

This chapter has analysed the development of the modern diamond industry from the death of its founder, Cecil Rhodes, in 1902, to the death of his disciple, Ernest Oppenheimer, in 1957. During this time, Oppenheimer worked doggedly to overcome the dissipation of Rhodes’ erstwhile perpetual rents resulting from the re-emergence of competition in the production and marketing spheres of the diamond industry. To do this, Oppenheimer gained control of De Beers, adopted Rhodes’ intermediate goals of market control and adapted them to suit the needs of what was a palpably different industry. Using bureaucratic rent seeking and selective incentives, Oppenheimer overcame the challenges of realising collective action in an intermediate group. By 1950, he had complete control over all seven of the world’s kimberlite diamond deposits, cartel agreements (either direct or indirect) with every diamond-producing state in the world (Epstein 1982:157) and a reliable mechanism for mopping up any diamonds that made it into the hands of diamond smugglers. Oppenheimer achieved his intermediate goals of cartelisation and vertical integration. By emulating his predecessor’s uncompromising market control, Oppenheimer was able to achieve their mutual ultimate goal: the extraction of perpetual rents.

Ernest Oppenheimer’s impact on the ethical evolution of the modern diamond industry was profound. By successfully adopting and adapting Rhodes’ intermediate and ultimate goals, Oppenheimer overcame the competition that had emerged in the diamond industry in the post-Rhodes era. In doing so, Oppenheimer ended the comparatively moral competitive period and again gave perpetuity to the unjustified moral rule violations that were central to the realisation of his adopted goals, as originally demonstrated by Rhodes’ moral template. Further, the unparalleled control Oppenheimer obtained over the diamond industry resulted in the augmentation of Rhodes’ foundational violations. Oppenheimer also introduced two practices into De Beers that became integral to the functioning of the firm: the dissemination of the fabricated diamond myth, and the intentional violation of competition law in the US. These two practices violated the moral rules ‘Do not deceive’ and ‘Obey the law’ in ways that rational, impartial moral agents would classify as unjustified. Therefore, Oppenheimer had a significant negative impact on the ethical evolution of the diamond industry.

Chapter Six will analyse the leadership of Ernest Oppenheimer’s successor, his son Harry Oppenheimer, from 1957 to 1984. It will show that Harry Oppenheimer also adopted the intermediate and ultimate goals of his father, and thus the augmented Rhodesian and Ernest Oppenheimer-initiated moral rule violations that were central to their realisation. Harry Oppenheimer’s emulation of his father’s leadership ensured that the new moral nadir at which Ernest Oppenheimer had fixed the diamond industry remained unchallenged, and thus *unimproved* after his death in 1957. This ensured the continued retardation of the ethical evolution of the diamond industry.

Chapter 6: The Diamond Industry from 1957 to 1984: Harry Oppenheimer's Time in Power

Introduction

This chapter examines the major developments that occurred in the modern diamond industry from the death of Ernest Oppenheimer in 1957 to the retirement of his immediate successor and son, Harry Oppenheimer, in 1984. It will be demonstrated that Harry Oppenheimer adopted the ultimate goal of his predecessors; he too coveted the perpetual rents that only near-absolute market control could deliver. However, the changing diamond industry with which Harry Oppenheimer had to contend meant that he could not simply adopt, without alteration, the intermediate goals of Ernest Oppenheimer. If De Beers' perpetual rents were to be safeguarded throughout the second half of the twentieth century, significant changes had to be made both to the manner in which participation in the cartel was optimised, and to the scope of De Beers' downstream vertical integration.

The difficulties associated with maintaining collective action in an intermediate group remained ever-present during Harry Oppenheimer's time in power: every existing (non-De Beers) producer had the capacity to eschew the cartel or engage in cartel cheating; and every new discovery had the potential to result in free riding. However, new challenges also emerged. Large producers materialised who posed a tangible threat to De Beers' market power (Spar 1994:64); and the de-colonialisation of diamond-producing African states saw newly emancipated leaders seeking a more equitable share of their natural resources. With the dynamics of the intermediate group of producers permanently altered, Harry Oppenheimer was often forced to eschew the negative incentives preferred by his predecessors; instead using positive incentives to engender cooperation.

The emergence of large-scale producers also impacted De Beers' downstream control (Lenzen 1970:210–11). To ensure De Beers retained the capacity to regulate global diamond supplies, and thus protect its perpetual rents, Oppenheimer was forced to modify his father's second intermediate goal: the vertical integration of the diamond production and marketing spheres (Koskoff 1981:319). He elected to increase the firm's control over the diamond supply chain *beyond* the sightholders (Epstein 1982:221), thus extending De Beers' reach into the rough and polished diamond dealing and manufacturing centres of the industry. This was the furthest downstream than De Beers' direct presence had been felt. This chapter will show that Harry Oppenheimer's adaptations of his father's second intermediate goal gave him, as Chairman of De Beers, unprecedented control over the industry's total supply chain. More than at any other time in its modern history, De Beers *was* the diamond industry.

The moral analysis performed in this chapter will demonstrate that Harry Oppenheimer's adoption of the intermediate and ultimate goals of his predecessors ensured the perpetuation of the three unjustified moral rule violations that Rhodes' moral template had institutionalised in De Beers' operations (which Ernest Oppenheimer had re-institutionalised in the firm's mandate during his time in power). It will also show that Harry Oppenheimer embraced his father's initiated, unjustified violations of the moral rules 'Do not deceive' and 'Obey the law'. Further, like his father before him, Harry Oppenheimer *augmented* the abovementioned violations, causing a further moral decline in the diamond industry. Harry Oppenheimer's devotion to the goals of his predecessors, including the entire gamut of his father's augmented *and* initiated violations, ensured that the immoral trajectory of De Beers' behaviour was not redressed or improved by the change of leadership. A key task of this chapter is thus demonstrating how the absence of conflicting goals among De Beers' key leaders was vital to ensuring immoral consonance within the modern diamond industry across more than a century.

This chapter is structured as follows. The changes within the production sphere that threatened Harry Oppenheimer's first adopted intermediate goal, cartelisation, will be examined to illuminate the methods he used to protect the industry's collective action. The lengths to which Oppenheimer went to protect De Beers' market power via adaptations to his father's second intermediate goal, the vertical integration of the production and marketing spheres, will then be examined. This will be followed by the application of the moral system to the moral rule violations committed by Harry Oppenheimer as Chairman of De Beers.

Enter Harry Oppenheimer

Harry Oppenheimer served as a director of De Beers from 1934, before inheriting the Chairmanship of the company in 1957 after his father's sudden death. Harry Oppenheimer inherited the leadership of an entity that was at the apex of the diamond industry. Due to the vertical integration pioneered by Ernest Oppenheimer, during Harry Oppenheimer's early reign De Beers controlled 81 per cent of global diamond production via the CSO (formerly Dicorp). A significant portion of the remaining 19 per cent was also controlled by De Beers via informal methods; and CSO buying outlets had been positioned across the world to purchase fringe diamonds, including those emanating from Zaire, Angola and the Central African Republic (hereafter CAR) (Lenzen 1970:191). Harry Oppenheimer (quoted in De Beers 1988:4) did not take this market control for granted; he was acutely aware of each diamond producers' rational self-interest and its capacity to harm the industry's collective good: 'it's only human nature that producers, particularly when times are bad, should be inclined to seek advantages for themselves at the expense of their partners in the trade'.

The late 1950s saw the re-emergence of two potential threats to De Beers' control over the world's diamond supplies: Williamson Diamonds Ltd. in Tanganyika, and IDM and IDS in Sierra Leone. The death of Ernest Oppenheimer in 1957 had been quickly followed by that of John Williamson, the Williamson mine's sole owner and director. Williamson's brother Percy Williamson took control of the company after his death. However, unlike his brother, Percy Williamson had no interest in diamond mining, and thus no interest in operating independently. In the death of John Williamson, Harry Oppenheimer recognised an opportunity to remove a competitor permanently from the production sphere (Knight and Stevenson 1986:442). In 1957, he travelled to Tanganyika to negotiate the outright purchase of the Williamson mine with Percy Williamson, for which De Beers eventually paid £5,645,451.

Harry Oppenheimer had emulated both Rhodes and his father with his outright acquisition of the Williamson mine; it was the surest way to ensure De Beers' control over the mine's output and lessen the number of competing interests in the production sphere. However, Tanganyika was experiencing a period of political transition in the late 1950s as Britain sought to hand over formal sovereignty to local leaders. Independence was declared in 1961. Oppenheimer (quoted in Wannenburgh and Johnson 1990:144) recognised that the incoming government, led by the socialist Julius Nyerere, brought the potential for the state's nationalisation of the Williamson mine, which would have stripped De Beers of its newly attained control thereof: 'We had bought the mine from Williamson's heirs, but I was pretty sure that it was a position that couldn't be maintained'.

Future-President Nyerere (1961) was staunchly opposed to what he believed was the ‘haves’ exploitation of the ‘have-nots’. As an economically depressed state, Tanganyika belonged firmly to the latter category, and as a wealthy capitalist firm, De Beers represented the former. If Nyerere had nationalised the Williamson mine, as he later did to virtually all industries and foreign-owned firms with the 1967 Arusha Declaration (see Nyerere 1977), Nyerere’s political persuasion could have seen the state become a hostile competitor that completely eschewed the cartel in favour of operating the mine for the sole benefit of its people (as socialist states purport to do). To prevent this from occurring, Oppenheimer met with the incoming Nyerere Government. He offered the government an unprecedented deal: 50 per cent ownership of the Williamson mine (Kanfer 1993:268) and ultimate approval of the mine’s contract with the CSO. That Dicorp was the agreed sole buyer of the Williamson mine’s diamonds meant that Oppenheimer’s pre-emptive strike gave De Beers complete control over the Williamson mine’s output by 1958 (Knight and Stevenson 1986:442).

Oppenheimer’s use of positive incentives to facilitate the Tanganyika government’s cooperation was arguably essential to the realisation of successful collective action with the emerging socialist state. Aside from the ideological opposition De Beers may have faced from Nyerere, there was also the issue of whether it was rational for Tanganyika to cooperate with the cartel. As shown in Chapter Five, John Williamson had successfully demonstrated that greater profits could be made from diamond mining by an individual firm with a small market share if the De Beers cartel was eschewed. In other words, free riding was a potentially more attractive option, and thus the collective good alone was not necessarily enough to compel cooperation from the government (see Oliver 1980). Further, that Oppenheimer feared the Nyerere Government’s nationalisation of the mine suggests that the state was not concerned with angering De Beers. This in turn implies that the use of implicit negative incentives, such as a reminder of the punishments Ernest Oppenheimer had meted out on Williamson after he had defected from the cartel in the 1940s, would have done little to compel cooperation from the incoming Tanganyika Government.

In the late 1950s, Sierra Leone also re-emerged as a potential threat to the cartel. The SLST, a conference producer in Sierra Leone, argued that CSO was underpaying it for its quota production (see Roberts 2007:247–9)—a situation that mirrored De Beers’ treatment of the United Diamond Fields of British Guiana and Williamson Diamonds Ltd., as explored in

Chapter Five. A CSO sightholder, Lazare Kaplan, confirmed CSO's underpayment for the SLST's diamonds. Consequently, in 1961 the SLST did not renew its contract with the cartel, and instead marketed its output via Harry Winston, another CSO sightholder. The SLST's defection thus invigorated competition in both the production and marketing spheres of the diamond industry (Koskoff 1981:76).

Harry Oppenheimer attempted to reverse the SLST's defection via the application of negative incentives. He counselled the Sierra Leonean Government to legislate that all diamonds from the state must be sold through the newly created Government Diamond Office (GDO). The GDO was joint owned by the Sierra Leonean Government and De Beers, but was operated solely by CSO. The GDO's subsequent status as a government-guaranteed monopoly meant that the SLST was breaking the law by trading with Harry Winston. Oppenheimer also applied negative incentives to downstream actors. In 1961, Oppenheimer oversaw the removal of Harry Winston and Lazare Kaplan from the CSO sightholder list (Harry Winston was particularly well-acquainted with the ill-effects of De Beers' market control on the diamond-trading sphere; see Jolis 1996:Prologue). In doing so, Oppenheimer was reminding producers of the political influence enjoyed by De Beers in some diamond-producing countries—a clear disincentive to eschew the cartel—and showing sightholders that De Beers would not tolerate their direct engagement with independent producers (Koskoff 1981:76–7).

However, Oppenheimer's upstream and downstream punishments were short-lived. In 1962, the SLST was allowed to split the sale of its diamonds between CSO (50 per cent) and Harry Winston, Lazare Kaplan and Leon Tempelsman & Son. Harry Winston and Lazare Kaplan were subsequently reinstated as CSO sightholders. However, both Harry Winston and Leon Tempelsman & Son eventually sold their SLST allocations to the CSO, in turn reducing the number of Sierra Leonean diamonds (formally) sold outside the cartel to Lazare Kaplan's portion alone (Koskoff 1981:77).[110] Oppenheimer had thus managed to retain the cartel's dominant control over Sierra Leone's formal output; an arrangement that would last until 1984, when the Sierra Leonean Government began refusing to sell the state's diamonds to the cartel. The threat posed by Sierra Leone to the diamond industry's collective good will be explored in Chapter 7.

[110] That De Beers was known for punishing misbehaving sightholders by downsizing the contents of their boxes at each sight gives rise to the possibility that Harry Winston, in selling his SLST output through the cartel, was attempting to regain the support he had so dramatically lost from De Beers.

IDM and IDS in Sierra Leone, Ghana, Guinea, Liberia, the Ivory Coast and several South American countries also challenged De Beers' market control throughout Harry Oppenheimer's time in power. In particular, a greater number of 'informal' diamonds produced by diggers entered the market after the 1960s (see Greenhalgh 1985:Chapters 8–10). As an unmobilised latent group, Harry Oppenheimer was unable to include the diggers in the De Beers cartel. He could only employ *ex-post facto* responses to ensure their fringe production did not enter the market and destabilise De Beers' supply–demand equilibrium. Consequently, from the 1960s Harry Oppenheimer increased the number of CSO buying outlets in diamond-producing states, particularly in West Africa (Wannenburgh and Johnson 1990:144).

Diamonds in the USSR

While Harry Oppenheimer was contending with producers on the African continent, a much larger threat to De Beers' market control was emerging in Eurasia. In 1954, rich diamondiferous kimberlite pipes were discovered in Siberia, in the east of the USSR. After having relied upon sporadic trickles of smuggled boart from Liberia and Zaire for more than a decade, diamond exploration within the region had been motivated by the Soviet Union's wish to obtain a reliable source of much-needed industrial diamonds (Green 1996:45). In 1957, diamond-mining operations commenced in Siberia and the first of the state's output reached the market in that year, although large-scale operations did not commence until 1962. When these Russian developments became widely known, De Beers' share price plummeted from sh 114/6 to sh 82 (Kanfer 1993:269), illustrating the perceived threat posed by these new mines. Although the Soviet Union's initial output was minor, with estimates referring to only 95,000cts of annual output in its early years of production (Kempton and Levine 1995:89), it was the diamonds that remained within the USSR's kimberlite pipes that posed the biggest threat to De Beers' market control. It was the only producer capable of removing De Beers from the apex of the diamond industry (Kempton 1995:95).

Harry Oppenheimer was fully cognisant of the impact the Soviet Union's future production could have on both De Beers' market power and the cartel, and, by extension, the industry's perpetual rents. Oppenheimer (quoted in Kanfer 1993:269) saw the Soviet Union's cooperation with the cartel as the only way to protect the collective good of the industry: 'A single channel is in the interests of all diamond producers whatever the political difference between them may be'. Oppenheimer was correct to recognise the superficial ideological disjuncture of the communist USSR and the capitalist De Beers cartel; however, the manner in which the USSR and De Beers functioned was similar in several crucial ways. This was significant to the state's cooperation with De Beers, as a meeting of like-minded individuals is a key requirement for successful collective action. Actors attempting to cartelise must not only want to achieve the same objectives, but agree to the methods via which they will be achieved (see Marshall and Marx 2012:Chapter 2).

Spar (1994:41) argues that De Beers and the Communist Party were both authoritarian in the leadership of their respective territories, which aided their ultimate cooperation. This is true: De Beers had monopoly control over the diamond industry, and the pro-central planning Communist Party had monopoly control over the USSR (Simis 1982:23). The similarities also extended beyond this feature. De Beers relied upon its sightholders' and cartel members' knowledge of its reputation for punishing perceived infractions to (negatively) incentivise compliance with its objectives (Spar 1994:42); the Communist Party relied upon 'a whole body of unwritten laws' (Simis 1982:24) to disincentivise dissent among its citizens. Conference producers accepted (begrudgingly or otherwise) that, although they operated in collusion, it was De Beers that ultimately made the decisions as to the direction taken by the industry; the Supreme Soviet of the USSR possessed constitutionally mandated power, although all citizens knew that the Communist Party possessed (*de facto*) control over the state (Simis 1982:24).[111] The centralised control of De Beers' industry structures was thus potentially appealing (and far from a foreign concept) to the Government of the Soviet Union (Green 1996:155). More mischievously, given the ultimate financier of diamond industry rents were Western consumers, it is possible to hypothesise that the USSR felt little compunction in contributing to the perpetuation of such market structures.

The operational mandates of De Beers and the Soviets were also similar, particularly in relation to the measures each took to protect their respective power. For example, members of the diamond industry who cooperated with De Beers were welcomed into the inner sanctum and rewarded;[112] the ruling elite within the USSR was richly remunerated for unflinching

[111] The Supreme Soviet of the USSR consisted of deputies elected by the people.
[112] For example, sightholders were rewarded with rough diamond allocations that could be sold for very large profits if they were seen to be 'behaving'; that is, operating in a manner that was conducive to the protection of the collective good.

dedication to the Communist Party (see Simis 1982:Chapter II). The diamond industry was opaque due to the confidentiality De Beers deliberately established around its operations (Hahn 1956); industries within the USSR operated behind a veil of secrecy designed to maintain the misinformation spread by the Communist Party about their true nature (see Simis 1982:Chapter III). Both of these situations were products of the necessary concealment of each actor’s rent-seeking activities (Tullock 1989:21). Further, De Beers used clandestine measures to spy on members of the cartel to certify their allegiance, in both creed and deed (Epstein 1982:11); the Communist Party employed ‘professional informers’ to monitor emerging threats posed to monopoly rights, to protect the rents those entities extracted (Anderson and Boettke 1997:48–9).

However, the most important characteristic shared by the leadership of De Beers and the USSR was their common ultimate goal of the extraction of perpetual rents. As this study has demonstrated, the De Beers cartel was an industry structure that was established and maintained to enable its members’ extraction of rents in perpetuity (primarily from captive consumers). The ruling elite within the Communist Party also sought perpetual rents by exploiting (and protecting) the structure of the state: ‘the Soviet system was an elaborate device by which the autocrat transferred wealth to itself’ (Anderson 1997:38). Both leadership groups are textbook examples of the narrow interests possessed by organised minorities, and show how the extraction of rents benefits the few at a cost to the many.

The affinity between the USSR and De Beers was important to the future of the De Beers cartel. Unlike smaller producers who could frustrate the cartel if they preferred to operate independently (like Williamson), if the USSR did not subscribe to De Beers’ leaders’ intermediate and ultimate goals, the cartel would have been destroyed (Spar 1994:64). There are two reasons for this. Members of intermediate groups (oligopolies) are interdependent, and are thus influenced by each other’s actions. If the USSR had eschewed the De Beers cartel and reinvigorated competition in the diamond industry, the incentive for other producers to continue to engage in pro-group behaviours (and thus sacrifice their selfish desire to maximise their individual incomes) would have been diminished. The outcome of Soviet competition—an unoptimised collective good, in the form of diminished rents—would also have reduced the gains from the ongoing participation of other cartel members, and directly encouraged free riding behaviour (Olson 1971:42–3). This situation would have been compounded by De

Beers' corresponding reliance upon selective incentives to encourage and compel cooperation among other producers in its efforts to extract (the residual) suboptimal rents (Olson 1971:51) at a time when the firm's diminished market power would have limited its ability to employ such incentives, further increasing the likelihood of cartel defection or cheating. Chapter Seven will demonstrate how a major producer who came to abjure the intermediate and ultimate goals championed by successive De Beers Chairmen initiated the demise of the cartel in the 1990s.

The Soviet Union's position as a potential dominant producer meant that, in courting the state, Oppenheimer had to approach it as an equal, precluding use of De Beers' typically harsh treatment of competitors (Spar 1994:64) through the application of implicit and explicit negative incentives to compel cooperation. The precise details of the initial contract between De Beers and the USSR remain relatively obscure. However, it is known that it was first signed in 1957 after Philip Oppenheimer, Harry Oppenheimer's cousin and a De Beers director, went to the communist state at Harry Oppenheimer's behest. Harry advised Philip to propose that De Beers would purchase Siberia's entire output at *above* market rates (Pallister et al. 1987:103)—a clear positive incentive to cooperate with the cartel. However, in the terms of the final contract, two additional positive incentives were included: the Soviet Union was allowed to keep a small percentage (<10 per cent) of its rough output for domestic use (Spar 1994:67), and the state was also authorised to manufacture (cut and polish) a portion of its output to sell to the market outside the CSO (Bergenstock 2004:48).[113]

These positive incentives benefitted the USSR in three important ways. Firstly, it was able to enjoy the beneficiation that resulted from domestic diamond manufacturing. Secondly, the state was not wholly dependent on the cartel for its industrial diamonds, thus providing the USSR with a level of certainty it had never previously enjoyed regarding the supply of this commodity (see Green 1981:83–4).[114] Thirdly, the Soviet Union, in selling its own diamonds, was able to ascertain the actual market price for its diamonds and thus keep an informed eye on the CSO's contract prices, which no other producer in the history of the cartel had had the

[113] Russia's diamond output figures remained a state secret until 2011.
[114] The Soviet Union's industrial diamonds were often unusable in manufacturing, which meant that it was still somewhat dependent on the cartel for its supplies of industrial gems (Kempton and Levine 1995:89).

luxury of doing.[115] The genuine threat posed by the Soviet Union's diamond deposits, and the accommodating approach that was consequently required of Oppenheimer, was well illustrated by his unprecedented use of positive incentives to foster agreement between the state and the cartel (Spar 1994:68).

However, it is important to note that irrespective of the cultural and structural similarities of the Soviet Union and De Beers, it was first and foremost *rational* for the USSR to join the cartel. The Soviet Union's large diamond output, and thus its large share of the collective good, meant that its marginal costs of cooperation would have been outweighed by its marginal gains. Just as it was rational for Rhodes and Barnato to cooperate in the amalgamation of the De Beers and Kimberley mines in 1888, as dominant producers, De Beers and the USSR had the potential to cause one another significant losses if they competed in the intermediate production sphere (see Olson 1971:49–50). Further, upon the Soviet Union's entry into the diamond industry, it was primarily composed of a mobilised privileged group: the De Beers cartel. The cartel possessed pre-existing mechanisms via which the collective good was protected, including long-term relationships with external producers and a marketing monopsony: the CSO. Although De Beers feared the Soviet Union's establishment of its own cartel (Spar 1994:64), for a rent-seeking entity like the Soviet Union, cooperating with a functioning, established entity like the CSO was far simpler than attempting to overcome the challenges that typically fetter the creation of a new cartel agreement (see Marshall and Marx 2012:Chapter 2).

The contract between the USSR and the cartel was formally renewed annually from 1957 until the Sharpeville massacre of 1960, which forced the Soviet Union to publically chastise the Apartheid regime and declare a boycott of all South African companies.[116] The Apartheid era of South Africa commenced in 1948, with the election of the Nationalist Party.[117] The political

[115] Naturally, there are limits to the term 'actual market price', given De Beers' rent-extracting diamond prices were price leaders in the market. However, the Soviet Union was nonetheless able to determine if the prices paid by the cartel for its output were comparable to those that could be obtained on the market. The USSR sold both rough and polished onto the market outside the cartel, and was thus able to ascertain the market prices for both.

[116] The Sharpeville massacre was the boiling over point of the tensions that had arisen between the racially segregated whites and blacks during the Apartheid era in South Africa. On 21 March 1960, police opened fire on a black demonstration in Sharpeville, killing 69 people. The protestors were demonstrating against the law that required black people to carry 'pass books' at all times; a tool that had origins in the diamond fields and was used to aid the repression of black people in the state.

[117] Harry Oppenheimer was a Member of the opposition United Party from 1948–1958. He resigned after assuming the Chairmanships of De Beers, CSO and Anglo-American, because of his large workload. However,

situation within South Africa had inextricably linked the cartel's position to the globally reviled Apartheid system of racial segregation, with Oppenheimer himself supporting arguments against the 'One man, one vote' push for racial equality within the country (Kanfer 1993:283–4). Regardless, the Apartheid era in South Africa posed a tactical challenge for De Beers. Oppenheimer could not allow De Beers' control over the world's diamond supplies to be undermined by politics; thus, its relationships with external producers had to be more creatively managed.[118]

In 1963, Harry Oppenheimer (quoted in Newbury 1996:272) declared that the trade relationship between the Soviet Union and De Beers had ended: '...on account of the Soviet Union's support for the boycotting of trade with South Africa, our contract to buy Russian diamonds has not been renewed'. However, this was a lie. The USSR remained a contracted member of the De Beers cartel and traded its diamonds with the CSO via a complex web of subsidiary companies, including the London-based firms City East-West Ltd. (Kempton and Levine 1995:88), Hambros, Consolidated Gems (Pallister et al. 1987:103), Diamond Development Corporation and Mining and Technical Services Ltd. (Kanfer 1993:270). Harry Oppenheimer (quoted in Newbury 1996:271–2) was at pains to convey that these firms were not subsidiaries of De Beers:

> This unfortunate state of affairs has necessitated a considerable reorganisation of the Group's activities, and buying operations in the newly-independent African states are now, in every case, undertaken by companies registered and managed outside the Republic of South Africa and which are not subsidiaries of De Beers.

However, such statements were mere exercises in semantics, designed to obfuscate the trail via which conference producers' diamonds entered the CSO. The 'secret' agreement between De Beers and the Soviet Union lasted from 1963 to 1990.[119]

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as we shall see, he did not abandon bureaucratic rent seeking as a source of rent hedging and protection, at home in South Africa or abroad.

[118] Curiously, the (socialist) President of Tanganyika did not seek to distance himself from De Beers, nor renegotiate the terms of the agreement between his country and De Beers. Their agreement remained in place throughout the Apartheid era.

[119] It was only a secret outside the diamond industry; most actors therein were well aware of the Soviet Union's partnership with De Beers. From 1990 to 1995, a five-year 'public' agreement was made between the two entities.

New Deposits, Rent Hedging and Synthetic Diamonds

During the 1960s, Harry Oppenheimer continued to maintain De Beers' control over diamond supplies outside the USSR by acquiring new diamond deposits that had been discovered by third parties, again emulating the anticompetitive practices of Rhodes and Ernest Oppenheimer. The kimberlite pipe that would become the Finsch mine was discovered in 1961 by Alexander T. Finscham in South Africa (De Beers 1988:14). In 1962, De Beers bought the mining rights from Finscham for £2.5 million when it realised the deposit was a significant discovery (Hocking 1973:413), and thus a notable threat to its market control. Finsch became operational in 1965. In 1967, Rio Tinto Zinc bought the newly discovered Letseng-la-Terai (hereafter Letseng) diamond mine in Lesotho. However, Oppenheimer quickly acquired the mine after Rio Tinto Zinc sought to sell it, claiming that it did not contain a profitable source of diamonds. De Beers (1988:16) came to an agreement with the Lesotho Government in 1973, and the Letseng mine was opened in 1976. Oppenheimer also obtained exclusive diamond prospecting rights for De Beers in Swaziland and Rhodesia (Zimbabwe) during this time, which established barriers to entry for other diamond exploration companies.[120] These rent-hedging initiatives would have been instantly recognisable to both of Harry Oppenheimer's key predecessors.

Prospecting for marine (seabed) diamond mines was an additional focal point for diamond exploration companies in the 1960s. In 1962, Harry Oppenheimer acted on this growing threat off the coasts of Namibia and Namaqualand. The proximity of these mining areas to the flowing waters of the Orange River meant that they potentially held enormous, high-quality secondary diamond deposits in addition to primary deposits. Three non-cartel diamond-exploration companies, Sea Diamond Corporation Ltd., Marine Diamond Corporation Ltd. and Southern Diamond Corporation Ltd., possessed mining rights over the regions. De Beers (1988:14) initially entered into an agreement with Sea Diamond Corporation Ltd. to jointly fund the development of the two latter firms' mining operations. Then, in 1965, De Beers purchased Sea Diamond Corporation Ltd. and Marine Diamond Corporation Ltd. outright. This eliminated the threat of the marine deposits' output, while at that stage relatively small, being sold outside the cartel (Hocking 1973:412).

[120] Anglo-American was also looking for new sources of various minerals in these countries, and across Africa.

However, the discovery of new deposits was not the only threat to Harry Oppenheimer's control over the world's diamond supplies. In 1955, when Ernest Oppenheimer was Chairman of De Beers, the American firm General Electric (GE) formally announced the successful creation of artificial diamonds. The value of De Beers' stock plummeted after GE's announcement, while the value of GE's market capitalisation increased rapidly, in one instance by $US300 million in one night (Hazen 1999:133), which at the time was an incredible sum. Artificial diamonds were an obvious threat to De Beers' perpetual rents because they were (or, at the time were thought to be) the first reasonable substitute for natural diamonds to appear in the industry.[121] As argued in Chapter Two, the monopoly rents of an innovative firm dissipate when a reasonable substitute for its product appears on the market (Tollison 1982:575), an outcome that would also occur in a cartelised industry with a unique commodity (like diamonds). In both instances, the demand curve flattens as users of the original product become sensitive to the relative price of the substitute(s). The creative destruction (and thus loss of rents) that accompanies competition can originate in two forms: in a challenger to the commodity itself (a viable alternative) and/or in a change in the manner in which it is dealt (new firm/technology/industry structure). Synthetic diamonds manufactured by a *non-cartel* entity thus posed a double challenge to De Beers' monopoly power and its perpetual rents. Synthetic diamonds posed a threat both to De Beers' control of supply *per se* and to the potential amplification of rents facilitated by dissemination of the 'diamond myth' of their scarcity.

Although De Beers was telling consumers that synthetic diamonds were nothing more than a curiosity of science and were no replacement for the real thing, behind closed doors the company was acutely aware of its need to compete with the potential 'new source' of diamonds that synthetics represented. Accordingly, De Beers embarked upon an exploration of synthetic-diamond production itself (Kanfer 1993:273). One year before his death, Ernest Oppenheimer established the Adamant Research Laboratory, a firm tasked with discovering how to produce synthetic diamonds (Gregory 1962:xviii). Adamant's researchers did not achieve this goal until after Ernest Oppenheimer's death, with a public announcement of success in 1959. Harry Oppenheimer (quoted in Time Magazine 1959) stated that he did not wish to commence large-scale production of synthetics diamonds unless it became

[121] GE's diamonds were not actually gem-grade, and thus posed little short-term threat to the cartel. White synthetic diamonds that replicated gem-grade natural stones would not be successfully created until 2008.

‘economically necessary’ to do so; in other words, unless the firm’s absence from the synthetic market became irrational.

In 1960, GE sued De Beers after it discovered that Adamant had illegally copied its patented synthetic-diamond-making machines—an incident De Beers’ official history disingenuously refers to as ‘a long and expensive dispute over patent rights’ (De Beers 1988:15). The case between the two parties was settled in 1966, with De Beers being forced to buy limited rights from GE for the use of its patented technology, and to pay the company an estimated $25 million in royalties (Hazen 1999:180). In 1961, De Beers established a dedicated synthetic-diamond manufacturing firm, Ultra High Pressure Units Limited (UHPUL), which Oppenheimer declared would immediately mount a challenge to GE’s 30 per cent market share of industrials within the US (see Time Magazine 1961). That Oppenheimer was willing to admit to this goal publicly, and in an American magazine nonetheless, illustrates how little compunction he had regarding De Beers’ violation of US competition law—a clear emulation of his father’s *modus operandi*.

Despite their initial status as competitors, the US soon became concerned that De Beers and GE were colluding to drive up industrial diamond prices. The US Department of Justice had received an anonymous tip that De Beers was seeking to acquire control over a portion of the country’s industrial diamond manufacturers (Kanfer 1993:317), whose inputs, of course, came from the De Beers cartel. Harry Oppenheimer was seeking to obtain greater control over the industrial diamond supply chain via vertical integration—his first, and not last, attempt to augment his father’s second intermediate goal. In 1972, the Department of Justice convened a grand jury to examine evidence that De Beers and GE were illegally cooperating in the domestic industrial diamond sector, and that De Beers was attempting to monopolise the sector.

The Department of Justice found that in 1960 De Beers had secretly purchased 50 per cent of the US firm Christensen Diamond Products—a manufacturer of machinery imbedded with industrial diamonds. In less than 15 years, Christensen Diamond Products acquired majority ownership (>50 per cent) of the US’ oil drilling operations (Kanfer 1993:317)—an industry that relied heavily upon industrial diamond-embedded machinery. The US Department of Justice (quoted in Kanfer 1993:317) declared in its subsequent case against De Beers and its associates that they had participated in a ‘conspiracy ... to suppress competition ... to require and increase consumption of De Beers processed diamond drill [industrial] stones'. De Beers responded by dumping its share of Christensen Diamond Products, thus removing itself from the Department of Justice's jurisdiction, and averting its attempts to hold the firm to account for its illegal activities. The moral implications of Harry Oppenheimer's attempted monopolisation of the America's industrial diamond sector will be explored in the moral analysis section of this chapter. Chapter Seven will examine how the US finally punished De Beers and GE for their anticompetitive behaviour in the industrial diamond sector, albeit to an inadequate degree (in terms of both moral shaming and financial deterrence).

In 1967, De Beers began targeting Japanese consumers with its deceptive advertising campaigns. These advertisements were fundamentally the same as those that targeted American consumers insofar as they conveyed the falsehoods that diamonds were rare, justifiably expensive and 'traditional' in engagement rings. However, these advertisements also sought to convince Japanese men to adopt the Western tradition of buying rings (in particular, diamond rings) to mark engagements—a practice that had never been an element of Japanese courtship. This advertising campaign was an enormous success; within only 15 years, 60 per cent of Japanese women were receiving diamond engagement rings, up from virtually no Japanese women receiving engagement rings in 1966. Japan had become the world's second largest market for diamonds, after the US (Epstein 1982:9–10). In 1971, De Beers targeted 19 additional countries in a large advertising campaign, and employed the medium of television for the first time in advertising blitzes across the US and Japan (De Beers 1988:16).[122] In extending De Beers' deceptive advertising campaigns, Harry Oppenheimer had dramatically expanded the market for De Beers' diamonds and thus created a larger consumer base from which he could extract perpetual rents. The moral consequences of these actions will be explored in the moral analysis section of this chapter.

Botswana

In the early 1960s, Harry Oppenheimer initiated a new period of diamond exploration for De Beers. In 1967, De Beers discovered the Orapa kimberlite pipe in Botswana (then Bechuanaland).[123] As De Beers' former chief geologist would later note, 'It was … the first diamond mine that De Beers had ever found' (Jim Gibson quoted in Epstein 1982:30). This

[122] Television advertising of diamonds commenced in these countries in 1970.
[123] The Bechuanaland Protectorate became the Republic of Botswana in 1966.

observation highlights how the search for more diamond deposits was at odds with Rhodes' and Ernest Oppenheimer's desire to reduce the overall supply of diamonds on the market. However, Harry Oppenheimer's was motivated by his acute awareness of De Beers' steadily shrinking share of global output (Alfaro et al. 2005:7), largely because of the USSR's emergence as a diamond producer.

As this study has shown, De Beers' market power was partially derived from the comparative size of its diamond production; its direct control over the majority of the world's diamonds afforded the firm the financial and physical capability to apply positive and negative incentives (both implicit and explicit) to compel and encourage cooperation with the cartel: 'The position of De Beers as a major producer gave it … a basis for *persuading* other producers to cooperate' (Wannenburgh and Johnson 1990:151 author's italics). A decrease in De Beers' relative output would correlate with a reduction in its ability to optimise collective action, and thus extract perpetual rents. Further, the rapid growth in diamond exploration meant that competing interests could emerge within the production sphere. As such, new deposits in hostile or potentially weak hands would pose a threat to De Beers' tight control over the world's diamond supplies (Alfaro et al. 2005:7).

In 1967, Harry Oppenheimer created Debswana (De Beers Botswana Mining Company). Akin to his engagement with the Nyerere Government in Tanganyika, he personally negotiated a shared-ownership agreement of Debswana with the Botswana Government. It was agreed that Botswana would own 15 per cent of Debswana, and De Beers the remaining 85 per cent. However, the initial contract allowed a renegotiation of terms if the original assumptions about Botswana's diamond deposits proved inaccurate. In 1968, De Beers discovered the kimberlite pipes that would comprise the Letlhakane diamond mine, which would begin production in 1975. In 1969, it was also determined that the Orapa mine was richer than originally expected. However, it was the discovery of the kimberlite pipes of the future Jwaneng mine in 1973 that cemented Botswana's dominant position in diamond production, and necessitated a greater equality in its partnership with De Beers. The Jwaneng mine was an exceptionally rich diamond deposit, and was described by Oppenheimer (quoted in De Beers 1988:18) as 'probably the most important kimberlite pipe discovered anywhere in the world since the original discoveries at Kimberley more than a century ago'.

Oppenheimer's description of Jwaneng was not hyperbole. Mining commenced at Jwaneng in 1982, producing approximately 5 million carats per year at the outset (Levinson 1998:94). By 1984–85, Botswana's total output would account for 30 per cent of all diamond sales through the CSO (Harvey and Lewis 1990:121). Thus, prior to an agreement being reached, the state posed a considerable threat to the cartel. As in his engagement with the USSR, Oppenheimer had to eschew the preferred negative incentives of his predecessors in negotiations with Botswana. The Government of Botswana was also conscious of the power it wielded because of the richness of its deposits, and demanded direct and meaningful participation in any mining activities in the state (Wannenburgh and Johnson 1990:146). In 1978, Oppenheimer agreed to a 50/50 Debswana profit-share agreement with the Government of Botswana. The composition of the Debswana board was also changed to equalise the positions of De Beers and the Botswana Government. Henceforward, any decision had to be mutually agreed upon by both parties (Harvey 1990:125). Debswana was subsequently included in the cartel via its exclusive sales agreement with the Diamond Corporation Botswana (Dicorp Botswana), which in turn had an exclusive sales agreement with CSO.[124]

An African government's representation in such a joint arrangement was unparalleled, not only among developing diamond-producing states affiliated with the cartel, but also among most of the developing countries that had, up to that point, engaged with multinational corporations (Kempton and du Preez 1997). The lack of precedent for such a joint agreement demonstrates that not only was Oppenheimer willing to employ positive incentives to *initiate* cooperation between Botswana and the cartel, he also ensured the (revised) agreement was generous enough to ensure Botswana's *ongoing* cooperation with the cartel. He was thus attempting to prevent the future emergence of discontent in Botswana, as had been historically witnessed among other smaller producers who came to chafe at the cartel's constraints.

It is important to note that Botswana's short-term defection from the cartel was highly improbable. Botswana was a small, poor, uneducated state with few resources and a low-skilled workforce. Only one per cent of its secondary school-aged population attended school, and 90 per cent of its employed workforce toiled in subsistence agriculture. Its gross domestic product per head was only $US240 in 1970, making it one of the poorest countries in the

[124] The Botswana government was also allowed to have its own diamond valuer check CSO's classification of its diamonds prior to sale (see Wanneburg and Johnson 1990:146–7).

world (International Bank for Reconstruction and Development 1975). Unlike the USSR, Botswana did not commence diamond production independent of the cartel; the government's capacity to fund the capital required to develop and mine its kimberlite pipes was virtually non-existent, as was its ability to find a domestic workforce capable of designing, constructing and operating the new mines (and the required local infrastructure). Indeed, after an agreement was reached between the two entities, De Beers personally funded and oversaw the building of the necessary infrastructure in and around the mines, including water and power supplies, and the establishment of an adjacent mining town (Harvey and Lewis 1990:124).

Botswana's poverty positively influenced the rationality of its cooperation with De Beers. Akin to the USSR, the size and quality of Botswana's output meant that it had the (theoretical) capacity to destroy the cartel if it operated independently. The incentive to compete, not collude, would have been amplified among other producers if Botswana had eschewed the cartel.[125] While the resultant competitive prices would have benefitted diamond consumers, they would also have reduced Botswana's profit margins (and those of every other diamond producer). Botswana's unique dependence on diamonds to extricate it from poverty, dependence without equal among other diamond-producing states, compounded the significance of this profit loss. In 1971–72, Botswana's annual rate of growth hit 20 per cent, which was almost double that of the previous five years. This was almost exclusively due to the operation of the Orapa mine; exports of diamonds made up 34 per cent of total annual exports from 1971–73, second only to the state's meat exports (International Bank for Reconstruction and Development 1975:3). That Botswana never cheated the cartel, as the USSR regularly did (as will be explored shortly), suggests the government was cognisant of what the sale of its unregulated output would mean for the industry's collective good.

The shared-ownership agreement between De Beers and Botswana was not the only positive incentive used by Harry Oppenheimer to ensure Botswana's ongoing cooperation with the cartel. In 2010, a series of explosive investigative reports by the leading Botswana newspaper, the Sunday Standard, revealed that De Beers and Debswana had been financing plentiful slush funds for the Botswana Democratic Party (BDP), which had held government continuously since independence. The Sunday Standard Reporter (2010b) also found that De Beers had used

[125] In 1987, the Botswana government was also awarded a five per cent share in De Beers, and a seat on both the De Beers board and the board of the CSO. It was the only diamond-producing state to ever hold De Beers shares, or a seat on the board (Kempton and du Preez, 1997:589).

Swiss bank accounts to secretly transfer millions of dollars in purported election contributions directly to the BDP from the 1960s to the late 1990s.

Further, the Sunday Standard discovered that in 1984 De Beers, under the leadership of Harry Oppenheimer, had secretly paid tens of thousands of dollars to the company owned by Botswana's pro-De Beers President, Quett Ketumile Joni Masire (commonly known as Ketumile Masire), who was in power from 1980 to 1998. Prior to the 1984 election, Masire's company, GM Five, was in a perilous financial situation. If GM Five collapsed, Masire's presidency would have been scandalised, which may have caused the pro-De Beers BDP to lose the election. In an effort to ensure Masire's financial troubles remained hidden from the people of Botswana, De Beers secretly lent GM Five P805,910 ($US94,533 by today's rates) via a specifically created ghost company, Clairemont Corporation, located in Panama (Sunday Standard Reporter 2010a). De Beers' use of Clairemont Company to transfer the funds was an obvious attempt to hide the paper trail linking De Beers to GM Five. At the 1984 election, the BDP won and Masire remained President, thus ensuring that De Beers continued to have its well-paid allies in government.

It would appear that during Harry Oppenheimer's time in power, De Beers had employed bureaucratic rent seeking in the form of government corruption to encourage the Botswana Government's acquiescence to the firm's demands. As argued by Ades and Di Tella, bureaucrats have a significant ability to extract rents (bribes) when they exert control over a rent-extracting firm: 'When a firm under the influence of a bureaucrat enjoys rents, the value of his control right is high. Bureaucrats can reap some of this value by surrendering their control rights in exchange for bribes' (Ades and Di Tella 1995:983). The control enjoyed by the Botswana Government over Debswana—a firm with monopoly control over the state's diamond deposits—thus put politicians and officials in a strong position for seeking and extracting bribes in exchange for aligning their interests (regarding Debswana) with those of De Beers. Chapter Seven will examine how Ogilvie Thomson and Nicky Oppenheimer also employed bureaucratic rent seeking to ensure Botswana's ongoing commitment to the cartel throughout the 1980s and 1990s. The especially extreme nature of Nicky Oppenheimer's bureaucratic rent seeking in Botswana will be of particular focus.

Cartel Cheating and the USSR

The protection of De Beers' perpetual rents required the Soviet Union's ongoing cooperation with the cartel. As one researcher sagely noted, 'De Beers' continued control exists at the behest of the Soviets' (Koskoff 1981:318). However, the communist state would come to test and cheat the cartel on several different occasions during Oppenheimer's time in power. In the three decades following the establishment of their agreement, the Soviet Union engaged in both 'intra- and extra-contract' dumping (Bergenstock 2004:47), in which the state would sell vast quantities of diamonds either to the CSO, or to the market directly. The Soviet Union's intra-contract dumping was facilitated by the absence of a quota agreement between the USSR and the CSO; the CSO was contractually obligated to buy whatever diamonds the state produced. The state's extra-contract dumping was (in part) a product of the domestic manufacturing De Beers had allowed the USSR to perform, which enabled it to sell its polished diamonds direct to the market. This positive incentive concession enabled the USSR to establish trade relationships with members of the diamond-marketing sphere, which facilitated the state's extra-contract dumping whenever the need arose.

Discord between the Soviet Union and De Beers was predicted by Lenzen (1970:210), who argued that the ideological differences of the two entities could encourage the Soviet Union to seek non-cartel avenues for trade: 'owing to the tension between the East and the West it is quite unpredictable whether the USSR as a producer will always make use of the marketing channels of the cartel'. However, Lenzen's predictions regarding the motivations for the Soviet Union eschewing the CSO were wrongly attributed. The Soviet Union, due to its frequently unstable economic situation, relied upon diamonds for the foreign currency they funnelled into the state (Epstein 1982:186). At times, the USSR required more cash than its contract with the De Beers cartel could provide (Koskoff 1981:98). Thus, economic rather than political motivations were behind its periodic violations of the contract with the CSO. The irrelevance of the political divide between the two entities is evidenced by the fact that the communist USSR elected to cooperate with the capitalist De Beers in the first instance (Kanfer 1993:269–70, Bergenstock 2004:47, Even-Zohar 2007:427).

The Soviet Union's intra-contract dumping first occurred in the early 1970s, when it dumped millions of extra carats of rough diamonds on the CSO. The CSO was already inundated with diamonds from the USSR; by 1970, the Soviet Union's annual rough output had climbed to

7.85 million carats (Levinson 1998:97) and accounted for approximately 20 per cent of the diamonds sold at CSO sights. The CSO had no choice but to purchase the excess rough, lest it enter the market and impact diamond prices (Bergenstock 2004:48). De Beers initially sought to manage the USSR's increased output by trying to convince consumers to buy the type of diamonds that typified the USSR's output; that is, smaller, high-quality gems known as 'Silver Bears', by promoting a quality-over-quantity sentiment in the market (Kempton and Levine 1995:88).

However, by 1976, the Soviets were annually dumping approximately 2 million carats of additional gem-grade rough diamonds on the CSO (Epstein 1982:189). In an effort to further monetise (and offload) this excess production, De Beers created a new market for the USSR's output by inventing the 'eternity ring'; a ring consisting of a series of small diamonds, which was marketed as symbolising eternal love. This was a successful venture, and the eternity ring remains a standard gift for wives on first wedding anniversaries. However, De Beers continued to be challenged by the Soviets' enormous output (Spar 1994:69). De Beers stockpiled the diamonds it could not sell without affecting its supply–demand equilibrium, thereby protecting its perpetual rents at some significant short-term cost.

The USSR's extra-contract dumping also first occurred in 1970. The USSR had primed itself for an assault on the polished diamond sector by establishing sales offices in Antwerp, Zurich and Frankfurt in the previous year. It has been estimated that the Soviet Union sold 500,000 polished diamonds outside cartel channels in 1970; an amount that was large enough to cause serious consternation among polished diamond traders (Epstein 1982:195). Although De Beers publically denied the Soviets' extra-contract dumping (see Epstein 1982:196), the firm responded to the resultant oversupply by buying up large portions of polished diamonds on the market, and asking associates to do the same. By 1974, the Soviets were selling $US2 million worth of polished diamonds direct to De Beers' associates every month (Epstein 1982:197–8).

De Beers' reactive attempts to protect diamond prices by purchasing the USSR's 'dumped' output were perpetuating the communist state's self-interested behaviours. Just as it had been rational for Premier and GSWA to maximise their output in the first quarter of the 1900s because of De Beers' willingness to protect the collective good, the Soviet Union's behaviour during this time was a rational response to Oppenheimer's ardent desire to ensure De Beers' continued extraction of perpetual rents. As shown in Chapter Five, Premier and GSWA only recognised the benefits of collective action when diamond prices began to fall. Similarly, for as long as De Beers (and its associates) remained willing to buy whatever diamonds the USSR produced and put on the market, the communist state had no incentive, either financial or otherwise, to limit its production. Harry Oppenheimer may have chastised the USSR for its irresponsible behaviours (see Kempton and Levine 1995:35), but punishing the delinquent state with the application of negative incentives, as it had done to previous dissenters, was out of the question. To do so would have risked the USSR going rogue and destroying the cartel. De Beers instead elected to handle the USSR with kid gloves (Bergenstock et al. 2006:174).

The USSR was also aware of the inherent power its position in the diamond industry afforded it in its relations with De Beers (see Spar 1994:72–3). The USSR knew De Beers would buy its enormous output; to eschew this responsibility would have harmed Oppenheimer's perpetual rents. The Soviet Union also used its comparative size to continually alter its cartel agreement with De Beers to accrue additional concessions (Kempton 1995:95). However, ultimately De Beers' decision to purchase the additional dumped rough (and accede to the USSR's contract demands) was rational. De Beers' dominant share of the market (via CSO) justified its (continued) assumption of the role of protecting the diamond industry's collective good. Its marginal costs would have been exceeded by its marginal gains (see Olson 1971:34–5). The USSR's additional extra-contract dumping in the 1980s will be explored later in this chapter. Its extra-contract dumping in the 1990s will be examined in Chapter Seven, as will the hostility that emerged between the two entities and threatened the future of the cartel in the same decade (see Kempton 1995).

Weak Hands in the Supply Chain: Israel

Members of the production sphere were not the only actors in the diamond industry's supply chain who had the capacity to threaten De Beers' perpetual rents. In the mid-1970s, De Beers' control over the world's diamond supplies was endangered by the self-interested actions of thousands of members of the diamond-trading and -manufacturing spheres. These two sectors represented the middle tiers of the diamond industry's supply chain. In this decade, the world economy saw inflation rise, with the first oil crisis as the initial trigger, and accommodative monetary policy and a wage-price spiral fuelling this flame (see Hackett Fischer 1996:208–11). This coincided with Russia's estimated diamond output increasing from less than 10 million carats per year in the early 1970s to just under 20 million carats by 1979 (Green

1996:48–9). In Israel, the hyperinflation (>400 per cent) that was gripping the local economy meant that diamonds, with their abundant volume and artificially maintained prices, became highly coveted for investment purposes as a perceived store of value.

In 1976, Israel's diamond dealers began to engage in speculative behaviour, purchasing large volumes of rough with cheap loans from domestic banks, which were awash with recycled 'petro-dollars' and eager to lend. The dealers would stockpile the purchased rough with the bank, and then buy more on credit in a seemingly endless cycle (Boyajian 1988:138). Israeli dealers dominated the diamond trade, buying 82 per cent of the gem-grade rough sold by the CSO. By 1977, this figure climbed to 11.2 million carats, which was more rough than was actually produced globally that year (Green 1981:156–7).[126] The pro-cyclicality in the rough diamond sector and the wide-scale stockpiling that was taking place in Israel saw rough diamond prices rapidly increase. The price of a one carat D-colour Internally Flawless (D-IF) diamond had increased from $1650 in 1971 to $16,000 by 1978 (Boyajian 1988:140).[127]

Large stockpiles of diamonds began to accumulate in banks in Israel, which posed a threat to De Beers' control over global diamond supplies. The speculative bubble was also a serious threat to diamond price stability. Harry Oppenheimer implored diamond traders in Israel to eschew diamond speculation, declaring it was harmful to the stability of the industry (and thus, De Beers' perpetual rents) (De Beers 1988:17). De Beers attempted to reduce the perceived benefits of diamond speculation in March 1978 by imposing large surcharges (averaging 22.5 per cent) on boxes sold by the CSO for the four months from March to June. De Beers also increased its diamond prices (to sightholders) by 30 per cent in August, and again by 13 per cent the following September. However, diamond prices continued to climb, with one carat D-IF diamonds selling for $65,000 by 1980 (Boyajian 1988:139–40).

A deep global recession hit in 1980 as the impact of the second oil crisis resonated and central banks began to attack the inflation problem with restrictive monetary policies (see Hackett Fischer 1996:215–7). By 1981, banks in Israel had accumulated billions of dollars of gem-grade rough (Epstein 1982:260). In an already-depressed market, a stockpile of this magnitude outside the cartel's control was a serious problem. As diamond prices fell, many dealers were

[126] De Beers was selling rough from its own stockpiles to meet the demand.
[127] D graded diamonds are the whitest available, while Internally Flawless means the diamond does not have any inclusions under 100x magnification.

faced with loans they could not repay, and were forced into bankruptcy (Boyajian 1988:140). The banks were left holding rapidly depreciating diamonds, which were now fetching only around 20 per cent of their sale prices of a year earlier. De Beers saw its own annual profits fall by 46 per cent (Time Magazine 1982), pushing the firm into crisis mode.

In the early 1980s, approximately $5 billion worth of additional rough diamonds were on the market versus a normal year (Boyajian 1988:142), creating an oversupply that caused diamond prices to fall, for one of the few times in the industry's modern history. In an effort to restabilise supply, and thus protect the collective good, the CSO dramatically decreased the number of diamonds it sold in sights, sometimes by as much as 95 per cent (Epstein 1982:263). It also purchased excess rough off the market, in turn creating its own $1 billion diamond stockpile, double that of 1979 levels (Epstein 1982:266). Once again, De Beers was protecting the collective good at its own cost. These actions soon saw positive gains. In 1983, Oppenheimer declared to De Beers' shareholders that encouraging developments were occurring within the industry; indeed, De Beers' control over the world's diamond supplies was by this year without a 50-year precedent (see De Beers 1988:18). Oppenheimer had thus successfully protected De Beers' market power, and in turn, its perpetual rents.[128]

As the banks sold off their diamond stockpiles from 1981 to 1985, Oppenheimer oversaw the application of negative incentives designed to dissuade the re-emergence of the speculation that had overwhelmed Israel's diamond traders. De Beers permanently removed 40 of the worst offending sightholders from the CSO's client list. Many of these dealers would have been consequently forced to downsize their operations or exit the diamond industry altogether. To prevent the re-emergence of speculative diamond trading, De Beers also stopped sightholders from re-selling their boxes by demanding that they cut all of their own stones

[128] One may attempt to justify Oppenheimer's anticompetitive behaviour, and indeed that of all Chairmen of De Beers, in relation to his duty to meet shareholder obligations. However, as shown in Chapter Three, Gert argues that if a duty is classifiable as immoral (it requires the unjustified violation of moral rules to fulfil), there is no requirement for the actor to fulfil that duty (2004:51). If maximising returns required the unjustified violation of moral rules, as this study has argued, one cannot excuse any Chairman of De Beers for merely 'fulfilling his duty'. To argue that a chairperson must do whatever he or she can to maximise shareholder returns aligns with Milton Friedman's (1970) argument that firms have no social responsibilities beyond maximizing profits. Firms whose management have sought to maximise profits at all costs have been behind some of the largest and most harmful market scandals and financial disasters in history (for example, Enron, WorldCom, Tyco, Freddie Mac, Madoff Investment Securities LLC and Lehmann Brothers). This is because to maximise profits irrespective of social costs requires the violation of multiple moral rules. This may benefit a minority (often for only a short period), but if those violations are unjustified, the behaviours usually inflict an enormous amount of harm on society. This specific concept is beyond the scope of this thesis; however, it presents an excellent avenue for further research into the moral system and the business sphere.

(Pallister et al. 1987:115). These punishments served as an effective reminder of the company's prevailing power over the industry, and the costs that could arise for smaller players if they threatened Harry Oppenheimer's ultimate goal.

During the peak of the 1980s crisis, Zaire broke away from the cartel, becoming the first diamond-producing state to do so during Harry Oppenheimer's time in power. Harry Oppenheimer had successfully maintained the CSO's control over Zaire's official output, despite the indigenisation of mining enterprises in the state from 1973. However, in 1979 Zaire openly declared its resentment at what it believed were the inadequate prices De Beers was paying for its low-quality rough—a complaint mirroring that of the SLST in the late 1950s.[129] The head of Zaire's state-owned mineral marketing agency Sozacom, Citoyen Kakusa, accused De Beers of paying the state only $2 million for diamonds for which it had profited $19 million (Roberts 2007:199). Further, Zaire objected to the exorbitant 20 per cent commission on its sales it was paying to CSO (Pallister et al. 1987:115), which was 10 per cent more than the standard commission charged by the firm.

Zaire acrimoniously extricated itself from the cartel in 1980. The state subsequently marketed its diamonds through three small, non-cartel diamond dealers: the Industrial Diamond Company of London, and two Antwerp-based operations, Caddi and Glacol. Each firm paid prices for Zaire's rough that were well above those offered by the CSO (Spar 1994:62); thus, sustained pro-group behaviours were not justified because of the state's ability to obtain higher prices elsewhere. Zaire's new diamond marketers also planned to establish a domestic diamond-manufacturing factory in Zaire (Pallister et al. 1987:115), which would have enabled the state, for the first time, to enjoy domestic beneficiation from its diamond resources. It is unlikely that this additional benefit would have been offered to Zaire by De Beers because, as the firm wished to centralise and thus control all elements of the supply chain, further diversifying the already geographically dispersed manufacturing sphere would have been illogical.

Zaire's independence, despite the low quality of its output, was nonetheless a threat to Harry Oppenheimer's perpetual rents. Between 1981 and 1982, the CSO responded to Zaire's defection by dumping 1 million carats of near-gem diamonds onto the Indian market, which

[129] Recall the earlier observation that Zaire's output was largely industrial grade.

was the primary buyer of Zaire’s rough. The diamonds the CSO dumped—during a global recession nonetheless—were designed to compete with Zaire’s small near-gem output, for which the state could receive the largest profits compared to its low-value industrials (Thompson 1983:37). The CSO was deliberately targeting Zaire’s highest yielding diamonds to drive down prices, and thus the gains made by the state in eschewing the cartel. The CSO also cut the market price of industrial boart by almost 50 per cent, depriving Zaire of a significant portion of its income from industrials (Thompson 1983:37). The resultant short-term losses were readily worn by De Beers when reprimanding offending producers (Spar 1994:63, Bergenstock et al. 2006:174). As this study has shown, the key leaders of De Beers perceived short-term losses to be an acceptable feature of the credible application of negative incentives; incentives that enabled their protection of their long-term ultimate goal of the extraction of perpetual rents.

By 1983, a chastened Zaire had little choice but to re-engage with the CSO. The final blow to its independence was the failure of a somewhat half-hearted attempt to establish a cartel arrangement with the owners of the newly discovered Argyle mine in Australia (which will be explored shortly). Upon returning to the cartel, Sozacom tried to convince the CSO to accept only 40 per cent of Zaire’s output. However, De Beers wanted complete control over the state’s diamonds (Thompson 1983:38), which was a requirement for the protection of Oppenheimer’s perpetual rents. Further, as punishment for Zaire’s defection, De Beers’ new contract with the state offered only a fraction of the previous prices it had paid for Zaire’s diamonds (Spar 1994:63). The dramatic fall in Zaire’s revenue from diamonds over the previous two years meant the state had little choice but to accept the terms of the new contract and recommence its sales through the cartel (Thompson 1983:38–9). In 1983, Harry Oppenheimer (quoted in Pallister et al. 1987:116) openly admitted that De Beers was deliberately sending diamond producers a message via its treatment of Zaire:

> I can’t pretend that we are pleased that anyone breaks away. It’s a bad example. I think that you will find over the period ahead people who look at things carefully may come to the conclusion that the Zaire experience should be looked upon as a warning rather than an example.

Oppenheimer was clearly cautioning other producers to expect the same application of negative incentives if they chose to eschew the cartel.

Enhanced Vertical Integration: Diamond Trading and Manufacturing

In the wake of the USSR's emergence as a large-scale diamond producer, De Beers had less control over the diamond supply chain (Lenzen 1970:210–11). This was significant to Oppenheimer's protection of the industry's collective good. Supply restrictions had once been the ultimate negative incentive De Beers could use to compel pro-group behaviours downstream. However, the USSR's condoned independent marketing and condemned periodic bouts of extra-contract dumping lessened De Beers' direct and indirect influence over the supply chain. To ensure De Beers' continued market control, Harry Oppenheimer thus elected to make significant adaptations to his father's second intermediate goal of vertical integration (Koskoff 1981:319).

The rough diamond-trading sphere was Oppenheimer's first target. In 1964, De Beers established its first rough diamond-trading subsidiary, Diamdel, in Antwerp.[130] Diamdel was fully owned and operated by De Beers, and had the role to sell rough diamonds to those middle-tier diamond traders who were not large enough to become CSO sightholders. Diamdel was a sightholder, and was allotted rough by the CSO at each diamond sight. Diamdel was thus in direct competition with other CSO sightholders for favourable diamond allocations from the marketing monopsony. In contrast to the indirect control that De Beers' leaders had previously had over sightholders (via the application of negative incentives), the creation of Diamdel afforded De Beers *direct* control over a sightholder. This provided the firm with the ultimate ability to determine to whom Diamdel sold its stones, and for how much. The creation of Diamdel assured Harry Oppenheimer that there were fewer sets of potentially 'weak hands' in the supply chain. In 1979, De Beers established two sister companies of Diamdel: Diamdel of Tel Aviv and the Hindustan Diamond Company (HDC) in India, which further expanded De Beers' direct control over the sightholder sphere. The HDC operated as a distributor of De Beers' smaller rough diamonds, whose manufacture occupied over 300,000 workers in India (Epstein 1982:223), illustrating the size of the firm's rough allocations.

Like the original Diamdel, Diamdel of Tel Aviv and the HDC were De Beers subsidiaries, and thus shared the same organisational objectives. It is unlikely that they would not have received preferential treatment from the CSO (Koskoff 1981:320); for example, via assured access to

[130] De Beers originally claimed that Diamdel was an affiliate, but eventually admitted that is was a subsidiary.

favourable rough and/or preferential pricing, which would have advantaged these firms over other sightholders. As De Beers' rough dealers sold rough to smaller entities that would previously have sourced their diamonds from other sightholders or from the fringe diamonds of non-cartel producers, or smuggled diamonds, these subsidiaries were also reducing the available market for diamonds sold outside De Beers' control. The presence of Diamdel, Diamdel of Tel Aviv and the HDC in the rough sphere thus negatively affected the incomes of other sightholders and non-cartel entities and reduced the overall number of rough diamond dealers within the supply chain. This further enabled De Beers to minimise the number of 'weak hands' in the supply chain. However, most importantly, the size of these subsidiaries greatly increased manufacturers' reliance on De Beers, thus reinforcing De Beers' dominant position in the supply of rough diamonds (Koskoff 1981:319–20).

Oppenheimer's enhanced vertical integration was not limited to the rough diamond-dealing sector. Prior to 1975, De Beers had never had a notable presence in the diamond-manufacturing sphere. The first step taken by De Beers into diamond manufacturing was its establishment of a cutting factory in Lisbon in 1975, which manufactured Diamang's Angolan output. In 1976, a De Beers affiliated firm, Lens Diamond Industries (LDI), also began operating in Antwerp. With the establishment of LDI, De Beers could, for the first time, saw and cleave its own diamonds prior to sale. Its sightholders had previously struggled to find quick and reliable manufacturers at this stage of the supply chain, and De Beers claimed it was attempting to alleviate the 'bottleneck' this sometimes caused (Wannenburgh and Johnson 1990:169). However, this purported goal is at odds with the negative impact LDI had on competition within the diamond-manufacturing sphere.

LDI quickly became the largest diamond sawing firm in the industry, employing 545 workers (Epstein 1982:221–2). Being a significant competitor within the manufacturing sphere, its degree of infringement on other firms was significant. By the end of 1978, the number of diamond cleavers in Antwerp had dropped by one-third. That De Beers was able to provide pre-sawn diamonds to its sightholders meant that fewer sightholders needed the services of other cutting factories, which drove many of them out of the industry. The exodus of these factories from the manufacturing sphere, and De Beers' exclusive contract with LDI, in turn made it extremely difficult for other firms to have their rough diamonds sawn. This provided De Beers with both a partial cleaving monopoly and a mechanism via which to disrupt other firms' diamond manufacturing. The result was that manufacturers further downstream often had no option but to buy pre-sawn diamonds from De Beers (Koskoff 1981:321).

De Beers went on to open another cutting factory, Valdiam, in Tel Aviv in the late 1970s (Koskoff 1981:321), and to establish cutting factories in South Africa that became a *tour de force*. By 1980, they possessed one-fifth of the world's cutting machines. De Beers sold the output from its South African cutting factories to diamond manufacturers in Hong Kong, thus usurping the cutting factories in Israel, who were formerly the suppliers of choice for the key distribution hub in east Asia (Epstein 1982:222–3). Oppenheimer's adaptations to his father's second intermediate goal thus guaranteed the diamond industry's ongoing reliance on De Beers.

In the late 1970s, Oppenheimer extended De Beers' vertical integration efforts beyond the rough and manufacturing sectors, and into the polished diamond sector. De Beers established the polished diamond dealers Diatrada, Throgmorten Gems and Chichester in Antwerp, which were responsible for buying polished diamonds from manufacturers and dealers and selling them to the wholesale market. The establishment of an additional sister firm in Israel quickly saw it become the largest polished diamond dealer in that country, illustrating the relative size of these subsidiaries. In addition to dealing polished diamonds, these firms also (informally) assumed the role of CSO within the polished sector; just as CSO purchased and stockpiled excess rough, these subsidiaries mopped up superfluous polished diamonds from the market during any demand downturns (Epstein 1982:223–4). This provided De Beers with a mechanism via which the USSR's polished output could be comfortably controlled—something that the firm had previously been unable to do.

De Beers also used these polished dealers to extend the role of the CSO into the polished sector. Several of these companies held 'quasi-sights' for polished diamonds in which (non-sightholder) buyers would arrange visits to Lucerne, Switzerland to inspect their polished offerings (Koskoff 1981:322). These subsidiaries sold hundreds of millions of dollars of the manufactured stones direct to wholesale dealers in the late 1970s, with De Beers encouraging its clients to increase the amounts purchased from its subsidiaries significantly (Epstein 1982:224). By 1979, De Beers accounted for approximately 25 per cent of the world's polished diamond-trading market. Oppenheimer's enhanced vertical integration saw De Beers assume control over a portion of the market that had formerly been supplied by its own CSO sightholders (who were often polished manufacturers and traders); once again, De Beers was engaging in unfair competition against its own clients. Despite the size of De Beers' polished diamond sales, Harry Oppenheimer argued that the company's role within the sector was minor; he declared that the CSO affiliates existed only to provide De Beers with a 'listening-post' for ascertaining the state of the polished market (H. Oppenheimer quoted in Epstein 1982:224). However, the significant market share possessed by De Beers' polished diamond wholesalers fails to align with this purported purpose.

The increased control Oppenheimer had over the diamond industry's supply chain because of his enhanced vertical integration was conducive to the maintenance of De Beers' overall market control, and thus the protection of its perpetual rents. Significantly, Oppenheimer, as the Chairman of De Beers, had more opportunities to employ negative incentives because of his vertical integration efforts. For example, because of De Beers' partial monopoly over the cleaving sector, the firm '…could force manufacturers to buy its presawed [sic] diamonds, and it could cut off the supply from any cutting factory that failed to subscribe to its policy' (Epstein 1982:224). De Beers' enhanced downstream control thus had the effect of further restricting the 'sovereignty' of affected entities by both directly and indirectly limiting their options in the market. The moral implications of this unparalleled degree of control will be examined in the moral analysis section of this chapter.

Australia: The Argyle Diamond Mine

By 1980, De Beers' output, which totalled 14.7 million carats that year, constituted only 30 per cent of the world's total diamond production (Koskoff 1981:29). To ensure that De Beers' production did not slide further, from the 1960s to the 1980s, Harry Oppenheimer sent exploration teams into corners of the globe that Ernest Oppenheimer had never considered entering, including Canada and Australia (see Duval 1996:66–8). While during Harry Oppenheimer's reign, the firm had little luck (beyond Botswana); other diamond exploration companies found deposits where De Beers could not. In Australia in 1979, the Argyle diamond mine was discovered by the 60/40 partnership of CRA Limited (later known as RTZ-CRA, and then eventually as Rio Tinto Ltd.) and Ashton Mining Limited.

Argyle was the richest diamond deposit (by volume) known to date. However, despite its unparalleled size, Argyle's diamonds were of a predominantly poor quality. Over three-quarters were classified as industrial, according to De Beers' diamond standard, because of their tainted colouring and heavy inclusions. The colours of Argyle's diamonds, typically various shades of brown, or extremely rarely, pink, were caused by the presence of nitrogen within the lamporite rock (Zoellner 2006:151–3). Due to the lack of the customarily 'prized' white diamonds, merely 5 per cent of Argyle's output was of gem grade, and thus considered by De Beers to be suitable for jewellery (Louthean 1996:119). Yet, despite the poor average quality of Argyle's output, Harry Oppenheimer still required its inclusion in the cartel to protect De Beers' perpetual rents.

Oppenheimer first used implicit negative incentives to compel Argyle's cooperation with the cartel. He counselled the mine's owners to recognise the inherent disadvantage its output afforded it: 'because Australia's diamonds are not of top quality (80–90 percent industrials) it would be in Australia's interests to sell them in a way that doesn't invite a great deal of competition with other people' (Harry Oppenheimer quoted in Thompson 1983:36). Oppenheimer's implicit threat was that if Argyle's owners chose to operate independently, the quality of its diamonds would not provide it with the means to withstand the subsequent negative incentives applied by De Beers. Oppenheimer's treatment of Zaire had shown that these negative incentives would have likely been De Beers' targeted dumping of the type of low-value, low-margin diamonds Argyle was producing.

After commissioning a study into their diamond-marketing options in 1980, in 1982 CRA and Ashton Mining Ltd. agreed to cooperate with the cartel. Thompson argued that this decision was in part based on funding constraints: De Beers' monopolisation of market intelligence biased banks towards lending to producers affiliated with the CSO because of the firm's unique capability of allaying their concerns about how the diamond market operated (Thompson 1983:36). This suggests that De Beers' barriers to entry extended beyond the industry's supply chain and into the banking sphere, thus illustrating the comprehensiveness of its direct and indirect control over the actions of members of the diamond industry.

Commencing in 1985, the year the Argyle mine was due to come online,[131] the five-year contract between the CSO and CRA and Ashton Mining Ltd. stipulated that the CSO would purchase 4.5 tonnes of Argyle diamonds annually, 'trash and all' (Zoellner 2006:136).

[131] Prior to Argyle coming online, CRA and Ashton Mining Ltd. mined and marketed diamonds from small alluvial deposits in Smoke Creek and Limestone Creek, outside the cartel.

However, in negotiations, CRA and Ashton Mining Ltd. demanded that they retain 20 per cent of their output for their own marketing purposes. Harry Oppenheimer agreed to this positive incentive concession because of Argyle's enormous size and low-quality output (see Wannenburgh and Johnson 1990:148);[132] Oppenheimer knew that if Argyle were left to operate independently, it had the capacity to inject considerable competition into the diamond industry. Indeed, by 1988, Argyle was producing 34 million carats annually, making it the world's largest producer in terms of volume (Louthean 1996:119); however, the mine's low-grade (low-value) rough meant that its partial independence posed only a nominal threat to the high market prices that enabled De Beers' extraction of perpetual rents.[133]

The Australian Government was initially opposed to the agreement with the CSO. The then-Treasurer Paul Keating (quoted in Thompson 1983:37) lamented the possibility of Australia's resources being 'raped by the South African Group'. However, after De Beers launched a publicity campaign to counter the disapproving sentiment that existed in the country, Keating (quoted in Thompson 1983:37) later stated in 1983 that 'given the central role of the CSO in marketing ... there was no real commercial alternative'. Keating recognised that De Beers' stifling of competition in the diamond-marketing sphere had rendered compliance with the cartel as the only tenable marketing option. However, in reality, Argyle's owners did have an alternative to the De Beers cartel. In 1982, the Metals and Minerals Trading Corporation of the Indian Government offered to buy 20 million carats of Argyle's output annually, at a price that was allegedly well above what the CSO was offering. However, the owners of CRA and Ashton Mining Ltd. were unnerved by the negative incentives they believed De Beers would employ against them in the event of such an agreement being reached (Thompson 1983:37). De Beers' ruthless reputation, most recently substantiated by its severe treatment of Zaire from 1981 to 1983, was thus powerful enough to disincentivise what would otherwise have been economically rational behaviour for Argyle's owners in eschewing collective action and operating outside the CSO.

Tim Capon, the then Director of the CSO, argued that the Argyle mine's owners wanted to retain 20 per cent of the mine's output because they feared the US antitrust implications of cooperating fully with the cartel (Wannenburgh and Johnson 1990:148). However, learning

[132] The closest positive incentive concession De Beers had previously made was allowing the USSR to (formally) retain less than 10 per cent of its output.
[133] The owners of Argyle were allowed to keep only industrial and near-gem grade diamonds in their 20 per cent.

how to market diamonds was a self-professed key goal of the management of CRA and Ashton Mining Ltd. (see Louthean 1996:120). The market intelligence that underpinned diamond marketing was not publicly available on account of De Beers' deliberate monopolisation thereof: 'the Diamond Trading Company is the major authority on grading and valuation and possesses the information of world mining and marketing that is not available to any other institution on earth' (Thompson 1983:32).

De Beers' intellectual monopoly over the diamond industry's market intelligence created a further disincentive to producers to eschew the CSO: operating (independently) within the industry without fully understanding its fundamentals would not have been feasible for well-managed companies, particularly those answerable to shareholders. However, CRA and Ashton Mining Ltd. were able to gain direct experience in rough diamond marketing, which enabled them to penetrate a key sphere of the diamond industry that had previously been under the monopsony control of De Beers (via the CSO). Harry Oppenheimer's positive incentive concession thus undermined one of De Beers' key disincentives to eschew the cartel: its monopoly control of market intelligence. Chapter Seven will illustrate the significance of this concession to the eventual fracturing of the De Beers cartel. It will also examine the measures eventually taken by the owners of Argyle in the mid-1990s to challenge De Beers' marketing monopsony and prevailing diamond discourse, and recalibrate the diamond-grading standard to the benefit of the greater diamond industry.

Harry Oppenheimer resigned from the Chairmanship of De Beers in November 1984. Towards the end of his time in power, communist states around the world began collapsing, their people unwilling to tolerate the strict rationing that their flawed economic systems used to combat the hyperinflation that had emerged across the second and third worlds. Hyperinflation particularly plagued the Soviet Union (Hackett Fischer 1996:230–1), and in the early 1980s, it once again engaged in extra-contract dumping in an effort to increase its foreign currency reserves. By October 1984, the state had dumped $US242 million worth of large polished diamonds onto the market, up from a mere $US5 million in the same period of the previous year. Moreover, these diamonds were reduced in price (Spar 1994:71), illustrating both the short-sighted desperation of the USSR (driven in large part by the collapse in energy prices, which were its main source of 'hard' foreign currency) and its lack of regard for the industry's collective good. As the USSR's polished diamonds were more attractive to dealers than the rough diamonds emanating out of the CSO, De Beers' market share declined even further during this period (Spar 1994:71).

To prevent the USSR's continued dumping, Harry Oppenheimer was forced to address the root cause of the state's cartel cheating: its frantic need for hard currency. In late 1984, De Beers struck a deal with the Soviet Union in which it bought and immediately stockpiled virtually all of the state's remaining large polished stones. However, while De Beers' reactive measures may have afforded short-term protection to Oppenheimer's perpetual rents, they did nothing to disincentivise Russia's self-interested actions. Chapter Seven will examine the USSR's continued dumping throughout the post-perestroika 1990s, and discuss how the then-Chairmen of De Beers, Julian Ogilvie-Thompson (1985–1997) and Nicky Oppenheimer (1997–2012), dealt with this ongoing cartel cheating.

This chapter has examined how Harry Oppenheimer overcame the challenges of fostering collective action in an intermediate group to achieve his adopted intermediate and ultimate goals. The following analysis will explore the moral dimensions of Harry Oppenheimer's time in power, and the influence his leadership had on the ethical evolution of the modern diamond industry.

Harry Oppenheimer and the Moral Rules

Performing a Gertian moral analysis of Harry Oppenheimer's Chairmanship of De Beers is important in illuminating the moral trajectory taken by the firm, and as a result, the greater diamond industry, from 1957 to 1984. However, the moral analysis within this chapter will be different from the analyses contained within Chapters Four and Five of this study. The following moral analysis will be limited to performing two key actions: explaining why Harry Oppenheimer's violations of the five relevant moral rules are classifiable as *of the same kind* as those of his father; and justifying how and why Harry Oppenheimer *augmented* those violations, ensuring the further moral decline of the diamond industry during his reign of De Beers. During Harry Oppenheimer's time in power, he did not introduce into De Beers' operations any new business practices that violated additional moral rules. The following analysis will therefore focus solely on his adopted moral rule violations.

The Same Kind of Violations

This chapter has demonstrated that Harry Oppenheimer inherited from his father a diamond industry that was under the near-absolute control of the De Beers cartel. It was Harry Oppenheimer's aim, as Chairman of De Beers, to ensure the firm did not lose its market power, and thus its capacity to extract perpetual rents. To achieve this end, Harry Oppenheimer enthusiastically adopted his father's intermediate goals of cartelisation and vertical integration. Like his father, and Rhodes before him, Harry Oppenheimer used both positive and negative incentives to encourage and compel cooperation from members of the diamond industry to optimise the collective good. Harry Oppenheimer was successful in accomplishing his intermediate and ultimate goals: in protecting the De Beers cartel (and the firm's market power), he did not allow meaningful competition to re-emerge in the diamond industry, and thus he enabled De Beers' ongoing extraction of perpetual rents.

Like Rhodes and Ernest Oppenheimer, Harry Oppenheimer's protection of De Beers' near-absolute market control meant that the abuse of consumer sovereignty was both intended and unavoidable. In addition, to defend De Beers' market power, Harry Oppenheimer prevented diamond producers and marketers (both current and future) from successfully operating independently, in part facilitated by his application of both implicit and explicit negative incentives, as exemplified by his ruthless treatment of the SLST, Zaire, Harry Winston and Lazare Kaplan. As first illustrated in Chapter Four, the resultant constraint that would have been experienced by consumers and current and future producers and marketers violated the moral rules 'Do not deprive of freedom' and 'Do not deprive of pleasure'. Further, Harry Oppenheimer's anticompetitive conduct ensured De Beers' continuous extraction of perpetual rents from overpaying diamond consumers, which meant that he, like his forefathers, violated the moral rule 'Do not cheat' during his time in power.

Harry Oppenheimer's violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat' can be classified as the same kinds of violations as those of his predecessors. This immoral consonance is attributable to the moral rule violations committed by De Beers' key Chairmen being the product of the same fundamental objectives, requiring the same essential techniques. The moral dimensions of this market conduct did not change from Rhodes' time in power to Harry Oppenheimer's leadership of De Beers. The objectives that drove the violation of the associated moral rules were identical, and the methods via which they were violated were essentially the same. Ergo, the morally relevant features of Harry Oppenheimer's violations of these moral rules are fundamentally the same as those of Rhodes and Ernest Oppenheimer. For that reason, each answer to the morally decisive question would also be the same. Accordingly, rational, impartial moral agents would not publicly allow Harry Oppenheimer's violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat', nor would they make an exception for him. Thus, Harry Oppenheimer's violations of these moral rules would be classified as unjustified, and thus immoral. Harry Oppenheimer therefore ensured the 'immoral minimum' of his predecessors was maintained into the second half of the twentieth century.

In relation to Ernest Oppenheimer's *initiated* violations of the moral rules 'Do not deceive' and 'Obey the law', this chapter has shown that Harry Oppenheimer proactively disseminated De Beers' deceptive diamond advertisements across the globe, falsely informing consumers that diamonds were rare, valuable and the traditional choice in engagement rings. Thus, he also violated the associated moral rule 'Do not deceive'. In addition, Harry Oppenheimer, as the Chairman of a cartel, openly violated the Sherman Antitrust Act, thus violating the associated moral rule, 'Obey the law'.

Harry Oppenheimer's violations of the moral rules 'Do not deceive' and 'Obey the law' were *the same kind* of violations as Ernest Oppenheimer's, which Chapter Five has shown would not be publicly allowed by rational, impartial moral agents. The moral dimensions of propagating deceptive advertising and violating the just laws of a sovereign nation did not change from 1929 to 1984. The objectives that drove the violation of the associated moral rules were the same, and the methods via which they were violated were indistinguishable. Harry Oppenheimer's violations of the moral rule 'Do not deceive' were, like those of his father, caused by the intentional dissemination of misinformation to consumers about diamonds. This was carried out to increase total demand for diamonds, and thus augment De Beers' market power, its capacity to extract perpetual rents and the size of the consumer base from which it could extract those rents. Harry Oppenheimer's violations of the moral rule 'Obey the law' were, akin to his father's, a product of his intentional infringement of the Sherman Antitrust Act. This occurred as a direct result of the De Beers cartel's anticompetitive activities in the US, which negatively affected, at a minimum, the legally protected rights of diamond consumers within the state.

The morally relevant features of Harry Oppenheimer's violations of these moral rules are fundamentally the same as those of Ernest Oppenheimer; no substantial variation is evident between the answers to each relevant question that would vary the result. For that reason, each answer to the morally decisive question would also be the same: rational, impartial moral agents would not publicly allow Harry Oppenheimer's violations of the moral rules 'Do not deceive' and 'Obey the law', nor would they make an exception for him. Thus, Harry Oppenheimer's violations of these moral rules would be classified as unjustified, and thus immoral.

Harry Oppenheimer's Augmented Violations

Harry Oppenheimer did not merely ensure the perpetuation of his predecessor's violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure', 'Do not cheat', 'Do not deceive' and 'Obey the law' during his time in power. He *augmented* those violations. These augmented violations were a product of the increased number of people affected by De Beers' business practices during his time in power. As argued in Chapter Five, the number of people affected by a violation is a morally relevant consideration (Gert 2005:227) because it informs the amount of harm inflicted by that violation. Thus, the greater the number of negatively affected moral agents, the greater is the immorality of the related violation/s.

There are three simple reasons that the number of people affected by De Beers' market power increased during Harry Oppenheimer's reign. Firstly, there were more diamond consumers during his time in power, both as the result of organic growth in consumer demand, as well as due to demand that Oppenheimer intentionally cultivated via his broadening of the purview of De Beers' diamond advertising campaigns. With more diamond consumers in the market, more people had their consumer sovereignty violated, and thus more people experienced the ill-effects of Oppenheimer's violations of the moral rules 'Do not deprive of freedom' and 'Do not deprive of pleasure'. The increase in the number of diamond consumers—noting that this definition includes 'retail' and 'wholesale' consumers, such as sightholders—also meant that more people were funding De Beers' extraction of perpetual rents, and thus more people experienced the ill-effects of Oppenheimer's violations of the moral rule 'Do not cheat'.

The increase in diamond consumers leads into the second reason for Harry Oppenheimer's augmented violations; his aforementioned broadening of De Beers' deceptive advertising campaigns meant that more moral agents fell victim to his violations of the associated moral rule ‘Do not deceive’. Thirdly, there were more actors *within* the diamond industry during his time in power, because of its natural growth after 1957. This meant that more moral agents were affected by Harry Oppenheimer’s anticompetitive conduct (including his maintenance of the firm’s barriers to entry and his application of negative incentives) and the associated violations of the moral rule ‘Do not deprive of freedom’.

The increased number of affected entities was not entirely due to organic growth. The fourth reason for Harry Oppenheimer’s augmented violations is his expansion of De Beers’ downstream vertical integration. As this chapter has shown, this resulted in a greater market share for the firm, a greater asymmetry in market intelligence and an increase in the diamond industry’s aggregate reliance on De Beers, thereby exposing more actors to the firm’s anticompetitive conduct and associated violations of the moral rule ‘Do not deprive of freedom’. Finally, the fifth reason behind Harry Oppenheimer’s augmented violations is the fact that he increased De Beers’ control over the world’s total diamond supplies (via CSO) from 81 per cent in 1961 (Lenzen 1970:191) to 83 per cent in 1983 (De Beers 1988:18). He personally boasted that De Beers’ market control was without precedent within the previous half century (see De Beers 1988:18). It is logical that De Beers’ unprecedented market control meant that Harry Oppenheimer’s unjustified moral rule violations negatively affected a greater number of moral agents. Therefore, it is justifiable to argue that, during Harry Oppenheimer’s time in power, De Beers, and thus the greater diamond industry, experienced further moral decline.

Conclusion

As the Chairman of De Beers from 1957 to 1984, Harry Oppenheimer worked diligently to facilitate De Beers’ continued extraction of perpetual rents. To do so, he adopted the intermediate goals that had been established in the interwar period; namely, his father’s intermediate goals of cartelisation and vertical integration. Harry Oppenheimer faced multiple threats to the De Beers cartel from within the intermediate group of producers; some of which saw him remain true to the methods of his predecessors, while others forced him to embrace new approaches. The emergence of new, large-scale diamond producers meant that Harry Oppenheimer could not always maximise participation in the cartel by bullying producers via the application of negative incentives. Instead, positive incentive concessions often had to be applied to engender cooperation with the De Beers cartel. Harry Oppenheimer's new approach was successful, and the major new producers, including the USSR, Botswana and Australia, were brought into the De Beers fold, thereby ensuring the future of the De Beers cartel and its ongoing protection of the optimised collective good of the diamond industry. The adaptations Harry Oppenheimer made to his father's second intermediate goal of vertical integration also saw the firm obtain an unprecedented level of control over the industry's downstream supply chain. This further increased the diamond industry's dependence on De Beers, and ameliorated some of its lost productive power upstream.

During his time in power, Harry Oppenheimer successfully overcame every challenge to De Beers' market control with which he was presented. However, in adopting the goals of his forefathers, he also adopted their violations of the moral rules; violations that this study has shown were unjustified. Moreover, because of De Beers' unprecedented market control and the ever-increasing demand for diamonds, Harry Oppenheimer's violations negatively affected more moral agents than ever before. Consequently, over more than a century of existence, the modern diamond industry had developed consistently in the direction of causing greater harm to society. The De Beers that Harry Oppenheimer left to his successors was characterised by a new moral nadir even lower than that during the time of his father, which in turn was lower than that constructed by Rhodes. The industry's trajectory was thus biased, distinctly and inexorably, towards the immoral, with three distinct phases of moral decline under successive leaders who shared a common ultimate goal: to extract perpetual rents. Protecting and hedging the intermediate objectives those rents required led to deepening transgressions of moral rules as the twentieth century progressed. The following chapter will document how the fourth and fifth generations of the De Beers leadership tried, but eventually failed, to maintain the industry structures that supported perpetual rent extraction, despite their immoral willingness to do so.

Chapter 7: The Diamond Industry from 1985 to 2009: The Successive Reigns of Julian Ogilvie-Thompson and Nicky Oppenheimer:

Introduction

This chapter examines the key developments that occurred in the diamond industry from 1985 to 2009, covering the majority of the successive De Beers Chairmanships of Julian Ogilvie-Thompson (1985–1997) and Nicky Oppenheimer (1997–2012). After 1985, the ever-increasing size, instability and competing interests of pre-existing and emerging large-scale producers, and the explosion of self-interested and unorganised diggers in war-torn diamond-producing African nations, steadily eroded De Beers' market power. These developments challenged De Beers' leaders' successful application of positive and negative incentives, and adversely affected the rationality of producers' engagement with the cartel in the intermediate production sphere.

It will be shown that, despite the multiple upheavals that the diamond industry witnessed after 1985, Ogilvie-Thompson and Nicky Oppenheimer continued the De Beers tradition of adopting the intermediate and ultimate goals of their predecessors. Like the De Beers Chairmen before them, they too desired the perpetual rents that only near-absolute market control could provide, and thus cartelisation and single-channel selling (vertical integration) were their intermediate goals. Ogilvie-Thompson worked to ensure the ongoing optimisation of collective action in the diamond industry during his time in power. However, unlike his predecessors, Ogilvie-Thompson was unable to increase De Beers' market control. Indeed, the aforementioned endogenous factors began steadily to erode his capacity even to protect De Beers' *prevailing* market control, despite his best efforts to stem this loss of authority.

By the time Nicky Oppenheimer became Chairman in 1997, De Beers' market position was being seriously challenged on multiple fronts. This chapter will illustrate that the emergence of substantial, irrepressible competition in the diamond industry in the mid- to late-1990s rendered the prevailing ultimate goal of De Beers' successive leaders unattainable for the first time in 60 years. Like his father and grandfather, Nicky Oppenheimer had to adapt his goals from those he had inherited to account for the vastly different operating environment he faced. Cartelisation and single-channel selling remained Nicky Oppenheimer's intermediate goals as he fought to preserve the (markedly abbreviated) De Beers cartel in the wake of its partial disintegration. However, their *unoptimised* nature meant that his new ultimate goal necessarily became the extraction of mere *suboptimal* rents: optimal rents extracted in effective perpetuity were no longer possible by the opening of the twenty-first century. Nicky Oppenheimer's adapted intermediate and ultimate goals institutionalised a decline in De Beers' market power, which contrasts with the consistent increase in De Beers' leverage over the industry that characterised the leadership tenures of his father and grandfather.

The decline in De Beers' market power had major ramifications beyond De Beers' proverbial four walls. Nicky Oppenheimer's recalibrated intermediate and ultimate goals, and De Beers' decreased ability to employ selective incentives to compel or encourage cooperation among producers, reduced the incentives of other producers to continue to participate in collective action. In the late 1990s, producers began to recognise that their marginal costs of cooperating exceeded the marginal gains that they stood to enjoy as members of the no longer all-powerful cartel. Moreover, the demonstrated (independent) success of large cartel defectors showed, for the first time in the industry's modern history, that thriving outside the cartel was possible.

Oppenheimer struggled against the tide of change in the industry. Although he was temporarily able to accomplish his adapted intermediate and ultimate goals, the growing pro-independence sentiment in the industry rendered De Beers' continued assumption of responsibility for protecting the industry's (suboptimal) collective good uneconomic. Oppenheimer's eventual abandonment of De Beers' self-appointed role of 'custodian' of the diamond industry was the rational outcome of this realisation. However, it will be shown that Oppenheimer's unquenchable desire for rents, even on a suboptimal level, saw the De Beers cartel survive into the twenty-first century, until legal constraints imposed on the firm by extra-industry parties forced Oppenheimer's renunciation of his intermediate and ultimate goals.

An analysis of the post-1985 diamond industry is fundamental to this study for two reasons. Firstly, it contains a thorough examination, using the framework presented in Chapter Two, of how and why the industry structure that has been the principal focus of this study, the De Beers cartel, declined and eventually fell. Secondly, it employs the Gertian analysis introduced in Chapter Three to illustrate how positive moral change occurred in the diamond industry after 1985, despite the best spoiling efforts of the De Beers leadership.

Ogilvie-Thompson and Nicky Oppenheimer, in embracing the intermediate and ultimate goals of their predecessors, also violated the same moral rules. However, the degeneration of De Beers' market power witnessed during their leaderships caused a corresponding decrease in the harm suffered because of their business practices; as greater competition emerged in the diamond industry, the abuses and constraints endured by members thereof decreased. Therefore, this period of the diamond industry's history witnessed the first positive reversal (albeit partial) of its steady moral decline. This positive moral evolution was amplified by the emergence of producers with competing intermediate and ultimate goals to those of De Beers, and whose new operational paradigms rejected many of the moral rule-violating structures and practices of De Beers' successive leaders. These producers thus engineered the fundamental schism required to redirect the diamond industry's operations permanently back towards the moral, and away from the immoral norms of its history. This chapter clearly elucidates the reasons behind the positive ethical evolution of the diamond industry after 1985.

This chapter will be structured as follows. The major developments that occurred during the leadership of Ogilvie-Thompson will be explored, to determine the challenges he faced in maintaining the intermediate goals of cartelisation and single-channel marketing that he had adopted verbatim from his predecessors. Following this, an analysis of the reign of his successor, Nicky Oppenheimer, will take place, whereupon an analysis will be conducted of the adaptations Oppenheimer was forced to make to the intermediate and ultimate goals of his predecessors because of the dramatic, irreversible changes that had occurred in the diamond industry. A focus in this section will be to ascertain the impact of these adaptations on the future structure of the diamond industry. The chapter will then examine the additional significant developments that occurred both within the diamond industry and without. Following this will be a Gertian analysis of the reigns of Ogilvie-Thompson and Nicky Oppenheimer, and an examination of how both intra- and extra-industry forces contributed to the diamond industry's positive ethical evolution into the twenty-first century.

Enter Julian Ogilvie-Thompson

In 1985, Julian Ogilvie-Thompson succeeded Harry Oppenheimer as Chairman of De Beers. Ogilvie-Thompson immediately adopted Harry Oppenheimer's intermediate and ultimate goals, and aggressively sought to achieve them during his time in power. This continuity was not a mere product of De Beers convention. Like Harry Oppenheimer, Ogilvie-Thompson (quoted in Wannenburgh and Johnson 1990:151) was a passionate advocate of the market 'stabilisation' afforded by De Beers' market distortions: 'Given the inevitability of fluctuations in supply and changes in the stocks held by the trade, the need for the CSO … is as great today as it ever was'. His ideological alignment with his predecessors resulted in a seamless perpetuation of the goals and business practices espoused by De Beers' patriarchs: 'The shift to a non-Oppenheimer chairman appears to have had little impact on the company's business strategies' (Johnson et al. 1989:100).

It must be noted that Ogilvie-Thompson and Nicky Oppenheimer shared a degree of power over the diamond industry until Ogilvie-Thompson's retirement in 1997.[134] Simultaneous to Ogilvie-Thompson being appointed Chairman of the firm in 1985, Nicky Oppenheimer was instated as both Deputy Chairman of De Beers and Chairman of the CSO. Ogilvie-Thompson was thus the first Chairman of De Beers since Ernest Oppenheimer's immediate predecessor, P. Ross Frames, to not also chair the marketing arm of the cartel.[135] The symbiotic relationship between De Beers and the CSO—the former being the head of the cartel of producers and the latter being the single-channel selling mechanism via which the cartel's diamonds were sold—thus meant that the two men effectively shared the role of their predecessors. Nonetheless, it was Ogilvie-Thompson, as Chairman of De Beers, who had the final say as to how the company would operate.

Ogilvie-Thompson had inherited a De Beers that was recovering from the post-recession/diamond speculation era of the late 1970s and early 1980s. In 1984, the growth of Dicorp's diamond sales was a mere 1 per cent on the previous year, a figure that had grown to 13 per cent by 1985 (Wannenburgh and Johnson 1990:173). However, by 1987, De Beers had fully recovered, posting record sales of $US3.075 billion, an increase of 23 per cent from the previous year. The diamond industry's recovery enabled Ogilvie-Thompson to raise diamond

[134] Ogilvie Thompson retired to become a non-executive deputy chairman of De Beers.
[135] P. Ross Frames served as Chairman of De Beers from 1923 to 1926.

prices in 1988 for the first time that decade (The New York Times 1988). Despite the industry's revitalisation, the intermediate nature of the production sphere meant that De Beers' market control, and thus its ability to dictate the industry's diamond prices, could not be taken for granted by Ogilvie-Thompson. Every producer had the capacity to engage in cartel cheating or defection, and any and every new producer could elect to eschew the cartel and introduce competition into the diamond industry.

Botswana

De Beers' primary source of market power in the late 1980s was its relationship with Botswana, the world's second largest diamond producer (by volume). De Beers' own diamond mines had been superseded by the growing output of both Russia and Australia (to be explored shortly). Thus, the inherent market power De Beers had once enjoyed as the world's largest diamond producer could no longer be relied upon to incentivise cooperation with the cartel. Ogilvie-Thompson (quoted in De Beers 1988:2) was cognisant of the enormous significance of Botswana's continued participation in the cartel, noting its 'particular importance' to the industry structure at De Beers' centenary celebrations. In the early 1980s, Botswana had been asked to stockpile diamonds during the crisis to lift the burden on Dicorp. In 1984, Harry Oppenheimer suggested that De Beers assume a portion of Botswana's remaining stockpile, and pay for it with a 5 per cent share of De Beers (Wannenburgh and Johnson 1990:149). Harry Oppenheimer was thus advocating for Botswana to be the first nominally independent diamond producer in De Beers' history to hold shares in the firm. In 1987, Ogilvie-Thompson negotiated this unprecedented share trade. However, he expanded the proposition by also offering the Botswana Government, led by the BDP, two places on the boards of both De Beers and the CSO. Ogilvie-Thompson (quoted in De Beers 1988:2) declared that Botswana, given its enormous diamond output, 'should participate fully in the decision-making of De Beers and the CSO'.

This study has shown how Ogilvie-Thompson's predecessors engaged in bureaucratic rent seeking to align the interests of governments in diamond-producing countries with those of De Beers. Chapter Four demonstrated how Rhodes exploited his direct agency capture as Prime Minister of the Cape Colony to exempt the diamond industry from taxation. It was shown in Chapter Five that Ernest Oppenheimer used his position in parliament to ratify the Precious Stones Act, which forcibly collectivised the diggers in Lichtenburg and Little Namaqualand, whose unregulated output and competing interests threatened De Beers' market control in the 1920s. Chapter Six documented how De Beers transferred money to Botswana President Masire's debt-laden company to ensure his re-election in 1984. It also referred to the secret transfers of millions of dollars from De Beers to the BDP from the 1960s to the 1990s (Sunday Standard Reporter 2010b), a period that bestrides the careers of three successive Chairmen of De Beers: Harry Oppenheimer, Ogilvie-Thompson and Nicky Oppenheimer.

The secret transfers to the BDP, and Ogilvie-Thompson's decision to grant seats to the Botswana Government, indicate that Ogilvie-Thompson had embraced the methods of his predecessors in employing bureaucratic rent seeking to ensure Botswana's ongoing commitment to the cartel. However, the Botswana Government's possession and occupation of these seats was particularly significant because it effectively destroyed the barrier between the government and De Beers; no longer was the Botswana Government only intimately involved with ensuring the success of Debswana, it was also intimately involved with ensuring the success of De Beers. This lessened the likelihood that the Botswana Government would engage in activities or demand concessions that were beneficial to Botswana, but ultimately harmful to De Beers' market control, and thus the firm's bottom line—a situation that Botswana would later come to lament (see Magang 2008).

The five per cent share swap was also extremely significant to aligning the interests of the Botswana Government and De Beers. Robin Crawford (quoted in Wannenburgh and Johnson 1990:149), an executive of De Beers, argued that the swap was vital for ensuring Botswana's commitment to the cartel:

> This was advantageous to both parties and important for the long-term stability of the industry. It brought the Botswana Government into the central structure of the industry and, as a participant in the survival of the whole business, confirmed its long-term commitment to sell through the CSO.

However, the incorporation to which Crawford refers was more than organisational; the share swap created a direct, long-term link between Botswana's financial health and that of De Beers. If De Beers' share price fell, so did the value of Botswana's stake in the company, which was worth hundreds of millions of dollars. In this way, the share swap acted as a disincentive for Botswana to either cheat or leave the cartel, as, given the size and quality of Botswana's output, doing so would have had the capacity to initiate a significant downward trend in diamond prices and De Beers' share price. The rationality of Botswana's commitment to the cartel was thus enhanced by this share swap, just as the likelihood of it engaging in activities that were beneficial to Botswana but harmful to De Beers was reduced. Viewed in this light, the transaction was a rent hedge: a pre-emptory act to skew incentives in favour of cooperative behaviour before a problem actually emerged. Ogilvie-Thompson thus successfully employed bureaucratic rent-seeking methods to more closely ally the Botswana Government to De Beers. The extreme bureaucratic rent-seeking measures that an unnerved Nicky Oppenheimer employed to ensure the Botswana Government remained unshakably pro-cartel in the late 1990s will be examined later in this chapter.

Russia

In the mid- to late-1980s other large-scale producers were threatening De Beers' market control. In 1985, the USSR's output was almost 11 million carats (Levinson 1998:97), making it the largest diamond producer in the world (see Figure 2 Janse 2007:101). The state's manufacturing capabilities had improved markedly after the steady construction of domestic cutting and polishing factories throughout the preceding two decades (Even-Zohar 2007:433–4). This increased the volume of polished diamonds the state could trade outside the cartel, which, given its history of extra-contract dumping, was an ever-present threat to De Beers' market control during Ogilvie-Thompson's time in power. By 1990, the USSR had also accrued an enormous stockpile of polished diamonds, which it claimed was worth approximately $1 billion. As shown in Chapters Five and Six, the existence of diamond stockpiles *outside* the CSO was not tolerated by Ernest and Harry Oppenheimer due to their capacity to destroy the firm's carefully regulated supply–demand equilibrium. Assuring the USSR's ongoing commitment to the cartel was thus, by the 1990s, central to Ogilvie-Thompson's maintenance of his adopted intermediate and ultimate goals.

In 1990, De Beers underwent a major restructuring. The creation of De Beers Centenary AG (a firm with no *direct* association with South Africa) allowed the agreement between De Beers and Russia to be publicly renewed for the first time since 1963 (Henriques 1990).[136] De Beers Centenary AG was based in Switzerland, which enabled De Beers to operate away from the competition laws that had become more common in the European Union throughout the 1980s

[136] The restructuring superficially split De Beers into two entities: one that was located in South Africa, and one that was located in Switzerland. However, De Beers effectively remained a single entity.

and 1990s (Reneilwe 2010). By this time, the USSR's annual output was approximately 24 million carats (Janse 2007:101)—more than double its 1985 levels. The Soviet Union, aware of the increased bargaining power its growing size afforded it, demanded additional positive incentives in its new contract with the cartel, including the ability to sell more of its diamonds both to De Beers and on the open market (Kempton and Levine 1995:94). Ogilvie-Thompson found himself in a Catch-22 situation. If De Beers did not agree to this additional positive incentive concession, the USSR's established pattern of behaviour suggested that it would simply dump diamonds onto the market to access the additional income it desired. This would have required an *ex-post facto* response from De Beers to recalibrate its carefully maintained supply–demand equilibrium. On the other hand, if De Beers allowed the USSR to sell more diamonds, both within the cartel and without, the firm's financial obligation to protect the industry's collective good would markedly increase.

In 1990, De Beers conceded to the USSR's demands for larger diamond sales, and the new five-year agreement was finalised. As argued by Spar (1994:73), 'De Beers was simply absorbing the costs of cooperation.' The agreement contained provisions for the CSO to buy a total of $5 billion of rough diamonds from the Soviet state from 1990 to 1995. In an effort to gain control over the USSR's $1 billion diamond stockpile, De Beers also agreed to loan the USSR $US1 billion. A key condition of this loan was the expectation that the USSR maintain its stockpile of diamonds and refrain from intra- or extra-contract dumping (Stead 1990). De Beers was thus using its only available tactic—a positive financial incentive—to encourage the fragile, cash-strapped USSR to remain within the cartel and eschew short-term self-interest.

De Beers was limited to employing positive incentives in its relationship with the USSR for two reasons. Bergenstock et al. (2006) argue that De Beers was unable to use its standard negative incentive of targeted diamond dumping against the USSR (when it cheated the cartel) because the majority of the state's output was high-grade. Unlike De Beers' ruthless treatment of Zaire (and Australia, as will be explored shortly), which was a predominately low-grade producer, flooding the market with high-grade diamonds would have affected the stones with the industry's highest profit margins. This would have caused significant, wide-scale profit downgrades, which De Beers simply could not have borne (Bergenstock et al. 2006:174). Secondly, as argued in Chapter Six, De Beers' use of negative incentives was constrained by the reality that the USSR could have responded to such punishments by eschewing the cartel completely (Spar 1994:64). By the end of the 1980s, the leadership of the communist state had clearly demonstrated, on the world's political stage, its extreme hostility to acts of perceived aggression or threats against its interests (see Horelick 1964, Stares 1985, Morris 1988). A hasty, reactive defection by the USSR would have been fatal to De Beers' perpetual rents because of the sheer size of its (subsequently unregulated) output. De Beers thus had to work diligently to ensure the ongoing loyalty of members of the cartel (Spar 1994:73). Ogilvie-Thompson's capacity to disincentivise the USSR's cartel cheating was, nonetheless, significantly constrained by his inability to use negative incentives to do so.

The USSR's commitment to the cartel was also threatened by the growing political and economic turmoil inside the state. This disorder originated in the economic decline the USSR had experienced throughout the 1980s, which was largely a product of the dramatic fall in global oil prices in the aftermath of the second oil crisis of 1979. In 1985, the newly elected President Gorbachev had initiated a period of political and economic reform in the USSR known, respectively, as 'glasnost' and 'perestroika'.[137] This saw the partial decentralisation of state control over domestic trade and manufacturing and a reduction in the rent-seeking capabilities of the elite nomenclature.[138] The premise of perestroika was to enable demand to dictate production and thus draw the USSR closer, but not parallel, to the free market economic model communism had eschewed. However, by the late 1980s, the combination of declining revenues, prevailing socialist doctrine and inadequate free market infrastructure saw the struggling state become heavily reliant on foreign loans to meet its debt obligations (Gaidar 2003:28–30).

The Soviet Union collapsed in 1991, and was replaced by the Russian Federation. The collapse was due to the incomplete economic reforms Gorbachev had introduced in the 1980s (Mau 2003:31) and the path towards democratisation he had inadvertently placed the state upon (Åslund 2002:57–8). President Yeltsin was elected in 1991 and he immediately enacted a form of economic 'shock therapy', the intention of which was to fully break the economic constraints of the communist era and install free market infrastructure in the state. This was most prominently defined by a program of price liberalisation and privatisation. However,

[137] The direct translation of glasnost is 'publicity'; perestroika is 'restructuring'.
[138] This term was used to refer to people who held positions in the Communist Party and were privileged as a result of that association and the rent-extraction capabilities it provided.

Yeltsin's policies contributed to an economic collapse as Russia's fledgling free market economy struggled to cope with rapid decentralisation. A payments and debt crisis hit Russia, and the unregulated printing of bank notes contributed to the hyperinflation that once again gripped the ruble (Sinelnikov-Murylev and Trofimov 2003:68–73).

In 1992, De Beers opened an office in Russia, which was tasked with solidifying the relationship between the two entities and ensuring the perpetuation of Russia's commitment to the cartel (Bergenstock 2004:28). Yeltsin was hostile to De Beers, whom he believed had previously underpaid Russia for its diamonds, and he did not attempt to hide his disdain. In 1993, he cancelled, at the last minute, a scheduled meeting in Moscow with Harry and Nicky Oppenheimer. However, Yeltsin's leadership had nonetheless guaranteed that all of the diamond-producing regions of the former USSR were incorporated into the hastily formed Russian Federation. De Beers now had to negotiate with the newly created Almazy Rossii-Sakha (ARS, later Alrosa), which was responsible for liaising with De Beers regarding 80 per cent of Russia's diamonds, and Sakha Province, which retained the remaining 20 per cent of Russia's diamonds (Roberts 2007:278).[139]

By this time, Russia was firmly focused on its own survival—a position that would not prove conducive to perpetuating the diamond industry's collective action or long-term horizons for decision making. Russia's financial situation had worsened; in the depths of rampant hyperinflation, its leadership was desperate to access hard foreign currency. Alrosa and Komdragmet were instructed to engage in wide-scale extra-contract dumping, the eventual size of which was unparalleled in the industry's modern history. Between 1993 and 1995, Russia dumped several billion dollars of cut and polished diamonds onto the market.[140] Constrained by his inability to apply explicit negative incentives (such as targeted diamond dumping) to punish these actions, Ogilvie-Thompson (quoted in Green 1996:42) took the unusual step of publicly chastising the Russians by declaring that their dumping was 'detrimental to other producers and ... destabilising the market'. The sheer volume of Russia's unregulated output had severely undermined De Beers' supply–demand equilibrium, and De Beers attempted to alleviate the oversupply by reducing its own output by some three per cent

[139] Sakha Province was the geographical location of Russia's diamond mines. It sold its entire 20 per cent through the CSO.
[140] Cut diamonds are only partially manufactured.

(Shor 1995)—a far from optimal response given the relative size of the Russian supply impulse.

De Beers had lost a significant degree of control over the production sphere. Nicky Oppenheimer, as Chairman of the CSO, borrowed heavily from the methods of his forefathers in an attempt to regain a measure of control over the downstream supply chain. Sightholders that were believed to be trading Russia's stones, and thus aiding the state's cheating, were excluded from the exclusive CSO sightholder list (Roberts 2007:279). This negative incentive warned other clients to eschew non-cartel goods or risk the same fate. De Beers also attempted to buy Russia's estimated $5 billion diamond stockpile (the full extent of which Russia had deliberately hidden from De Beers in 1990) to obtain more control over the state's output and disincentivise its cartel cheating with a much-needed injection of cash. Russia's enormous diamond stockpile was recognised as a colossal threat, not only to De Beers' perpetual rents, but also to the industry as a whole: 'If marketed carelessly, this stockpile could depress or even shatter the international diamond market' (Kempton 1995:95). However, De Beers was unable to access the capital required to buy Russia's stockpile (Green 1996:52). The positive incentives De Beers had repeatedly used to shore up its market control and ensure Russia's ongoing cooperation with the cartel had been effectively exhausted.

In 1995, the CSO's Managing Director, Gary Ralfe (quoted in Even-Zohar 2007:435), declared in his speech at an international diamond conference that the industry structure that gave confidence to the diamond industry, the De Beers cartel, was being undermined by the excess of Russian polished stones on the market:

> These supplies threaten the equilibrium of the market and vitiate the major premise on which confidence in the diamond industry has been founded in the last 60 years, namely that the major producers will co-operate together in supplying the market through a single channel.

Ralfe was thus promoting the expectation that major producers would cooperate to optimise collective action and protect the inflated diamond prices (perpetual rents) to which members of the industry had become accustomed. Ralfe was essentially imploring Russia to recognise what would be lost if it continued to cheat the cartel.

Ralfe's (quoted in Even-Zohar 2007:435) declaration that 'major producers *will* co-operate together' (author's italics) was, moreover, a clear communication of what had been the steadfast goal of De Beers' successive leaders for over 60 years: to give diamond producers no option but to cooperate with the cartel. This study has shown that De Beers' leaders used a combination of positive and negative incentives to limit the non-cartel options available to producers, and had effectively done so since 1929. De Beers' application of incentives, whether positive or negative, was often aimed at rationalising what would often otherwise have been irrational participation in the cartel, tipping the balance in favour of cooperation (see Oliver 1980). Ralfe's statement suggests that by 1995 the cartel remained an industry structure that De Beers' executives felt comfortable promoting as *mandatory* for diamond producers. In reality, however, by the mid-1990s, in the face of Russia's unstoppable cartel cheating, De Beers' ability to compel or encourage compliance among producers via the use of incentives was, for the first time in the cartel's history, questionable. Fundamentally, the firm's ability to rationalise otherwise irrational cooperation was publicly in dispute. Thus, faithful membership to the cartel appeared to be discretionary.

In 1995, a desperate Ogilvie-Thompson employed De Beers' first explicit negative incentive against Russia, dumping low-grade rough on the market in an attempt to drive down prices and thus disincentivise the state's cheating (Roberts 2007:256). However, De Beers' aforementioned aversion to dumping higher-quality goods, which Russia predominately produced (Bergenstock et al. 2006:174), meant that this suboptimal negative incentive gave Russia little financial incentive to eschew extra-contract diamond dumping. Russia also engaged in intra-contract dumping from 1993 to 1995, which saw the state significantly increase the number of diamonds it sold to De Beers. While its previous cartel agreements with De Beers had been devoid of an explicit quota agreement, this was no longer the case. In 1990, it was agreed that the diamonds the CSO bought from Russia would account for no more than 26 per cent of its total sales—a generous proportion, yet one that Russia's intra-contract dumping exceeded between 1993 and 1995. Moreover, the diamonds that Russia was selling to the cartel were of a much lesser calibre than previous deliveries (Even-Zohar 2007:435), which suggests the state was retaining the diamonds with the highest profit margins to sell independently, in breach of its contract with the cartel.

In 1995, the cartel agreement between Russia and De Beers was due for renewal. However, Russia's future engagement with the cartel was far from assured. De Beers continued to criticise Russia's cartel cheating, and Russia had been openly questioning the fairness of the

1990 contract for several years. The Chairman of the Russian Precious Stones and Metals Committee (Komgragmet), Evgeny M. Bychkov, believed that the ARS was failing to act in the best interests of Russia in its negotiations with De Beers. Bychkov lamented the lack of transparency surrounding the prices for which De Beers sold Russia's output (Roberts 2007:278–9). It is therefore unsurprising that Komdragmet, which controlled Russia's stockpiled diamonds, was largely responsible for the state's extra-contract dumping (Shor 1995).

In 1995, Bychkov declared that Russia wanted to develop its own position within the diamond industry, outside the confines of the cartel. Bychkov established a diamond-trading centre in San Francisco, named Golden ADA. This company was tasked with marketing a significant portion of Russia's diamonds in direct competition with the CSO (Roberts 2007:282). Its existence was thus potentially an enormous threat to the future of the De Beers cartel. If the state eventually elected to eschew the CSO and sell all of its diamonds through Golden ADA, serious competition would have emerged in the diamond industry, with obvious negative connotations for rent extraction. De Beers would have been unable to (rationally) counter this sizeable competition to protect the industry's collective good, and De Beers' extraction of rents would have been seriously incapacitated. Significant competition in the industry, and the resultant suboptimal collective good, in turn would have fatally undermined the rationality of other producers continuing their engagement with the cartel (Olson 1971:42).

Unsurprisingly then, De Beers reacted immediately and forcefully to prevent Russia's independent diamond sales. In 1995, De Beers sought to have Golden ADA shut down by informing tax officials in the US that the company was attempting to avoid the additional customs duties associated with Russian imports by claiming that its diamonds came from the UK. Golden ADA was subsequently raided by tax officials, and later ceased operations (Roberts 2007:282). The swift disappearance of the new diamond trading company suggests that it was not a genuine threat to the CSO, and thus De Beers' market control. However, that De Beers responded so promptly and aggressively to its existence illustrates how intolerant Ogilvie-Thompson, as Chairman of the firm, remained towards potential independence among diamond producers.

In early 1996, Yeltsin fired Bychkov from his position at the State Committee for Gemstones and Precious Metals because of his involvement in the Golden ADA debacle.[141] Soon after, De Beers and Alrosa signed a new three-year contract, which assured the state $US100 million per month (Green 1996:44). The delay in signing the contract, and its shorter duration (they had historically been renegotiated every five years) signified the growing discomfort Russia felt in committing to the cartel long-term. Nonetheless, the agreement meant that by 1996 De Beers controlled 75 per cent of the world's rough diamond output (Green 1996:157). As shown in Chapter 6, towards the end of Harry Oppenheimer's time in power, De Beers controlled over 83 per cent of the world's diamond supplies (De Beers 1988:18). On paper, it thus appeared that Ogilvie-Thompson had ceded only a relatively small percentage of De Beers' market control during his Chairmanship of the firm. However, in reality, Russia's continual extra-contract dumping meant that the *prima facie* contractual control De Beers enjoyed over the world's diamond supplies was not being effectively replicated in the market.

In 1996, Russia dumped approximately $1 billion of diamonds on the market (Roberts 2007:282). Russia's extra-contract dumping accounted for such a significant portion of its output that its direct sales to De Beers were below the 26 per cent cap it had exceeded in the previous year (The New York Times 1997). Indeed, although Russia was contracted to sell De Beers $1 billion of diamonds each year, in 1996 it sold the firm only a portion of that amount, and once again allocated De Beers primarily low-grade stones (Roberts 2007:282). Russia's preference for extra-contract dumping over intra-contract dumping suggests that by 1996 the state could earn more for its diamonds *outside* the cartel. The rationality of Russia's continued engagement with the cartel was thus once again under question.

Namibia

At the height of Russia's political and economic turmoil, Ogilvie-Thompson was forced to acquiesce to the demands of a newly independent African diamond-producing state in an effort to protect De Beers' (sliding) market control. The cartel's close relationship with Namibia (formerly GSWA, then SWA) had been initiated in the 1920s when Ernest Oppenheimer's Anglo-American gained control of the state's production. Oppenheimer created the Consolidated Diamond Mines of SWA to conduct mining operations in GSWA,

[141] It was alleged that Golden ADA was used as a vehicle for the corrupt enrichment of Russian officials, depriving the Russian state of revenues.

and included the firm’s output in subsequent cartel agreements. As shown in Chapter Five, at the League of Nations’ behest, in 1919 SWA became the mandated territory of South Africa. Despite the United Nations’ repeated calls to South Africa from 1946 onwards to grant SWA independence, South Africa had refused to do so. South Africa weathered strong international pressure to withdraw from SWA, plus an armed indigenous uprising in 1966, to remain SWA’s formal administrator. However, in 1988, with the Apartheid regime approaching its downfall, South Africa finally agreed to decolonise SWA and withdraw its troops. In 1990, Namibia was granted its independence.

The renamed Consolidated Diamond Mines (CDM) was a wholly De Beers-owned company that possessed monopoly control over SWA/Namibia’s diamond deposits until 1994. Unlike Botswana, which initially owned a 15 per cent share of De Beers’ domestic diamond-mining operations and later 50 per cent of the mining company Debswana, Namibia had never owned any portion of CDM. Given De Beers’ South African origins, it is unsurprising that the Government of South Africa, as the administrator of SWA, would not force De Beers to concede its monopoly ownership of the country’s diamond resources to indigenous interests. The revenue Namibia received from the diamond mining conducted by CDM was instead gathered solely via taxation. However, in 1994, the Government of the newly independent Namibia, led by President Sam Nujoma, demanded a 50 per cent share in CDM. The government accused De Beers of engaging in resource exploitation throughout its time in Namibia (see Even-Zohar 2007:405–7); hostility had arisen towards De Beers’ presence in the state. In 1990, Nujoma had initiated a policy of wealth redistribution, in which white farmers saw their land given away to members of the state’s black majority. Nujoma now appeared keen to reverse the concentration of the state’s wealth among the privileged white minority—a category of which De Beers, and thus CDM, were emblematic.

If Ogilvie-Thompson had refused the Namibian Government’s demands for joint-ownership of CDM, it is likely that Nujoma would have withdrawn De Beers’ monopoly rights to the state’s diamond deposits, perhaps via the nationalisation of CDM. This would have removed the state’s output from De Beers’ direct control, and conceivably resulted in the state electing to eschew the cartel completely. As illustrated in Chapter Six, this exact scenario was deftly prevented by Harry Oppenheimer with the negotiation of shared-ownership of Tanganyika’s Williamson diamond mine with the socialist government in the 1950s. Kempton and du Preez

(1997) argue that, by the 1990s, De Beers' declining market power meant that the firm had to pay more attention to newly emancipated African producers like Namibia. This is true; Ogilvie-Thompson could not risk the additional loss of market control that Namibia's potential defection from the cartel would have caused. Ogilvie-Thompson thus agreed to the Namibian Government's demands for joint-ownership and, in 1994, the Namdeb Mining Corporation was established to replace CDM. Ogilvie-Thompson had thus successfully overcome an additional threat to De Beers' market control, at the cost of further dissipation of De Beers' dominance in strategic decision making.

The US Sherman Antitrust Act

The year 1994 also witnessed the re-emergence of a problem that had plagued De Beers since the 1940s. This study has already examined two instances of the US Department of Justice attempting to pursue De Beers for violations of the Sherman Antitrust Act. In the wake of Ernest Oppenheimer's refusal to supply the US with the industrial diamonds it required for armament manufacturing during World War Two, the Department of Justice pressed charges against the firm for its anticompetitive conduct. These charges were later dropped because of diplomatic sensitivities (see Roberts 2007:129). In the 1960s, during the reign of Harry Oppenheimer, De Beers was once again pursued by the Department of Justice for anticompetitive conduct in the domestic industrial diamond sector. However, De Beers simply sold its US domiciled interests to avoid prosecution.

In 1994, De Beers and GE were indicted for a second time on antitrust violations. The US Department of Justice alleged that the two firms had colluded from 1991 to 1992 to fix the price of industrial diamond in the US (see United States of America v. General Electric et al. 1994). It thus appears that, De Beers, under the leadership of Ogilvie-Thompson, was again demonstrating a blatant disregard for the laws of a sovereign nation-state. This was further evidenced by the fact that De Beers chose to simply ignore the indictment, refusing even to send lawyers to the trial hearings. This conduct demonstrated a complete lack of respect for the US's legal institutions. Although the case did not go to trial, the indictment against De Beers was not removed. De Beers thus remained unable to have a physical presence in the US, and its executives could not enter the state (in any capacity) for fear of being subpoenaed by the authorities. The 2004 plea deal reached between De Beers and the US Government for the firm's historical price fixing offences will be explored later in this chapter. The moral implications of De Beers' continued violation of just laws will also be considered in the moral analysis portion of this chapter.

Enter Nicky Oppenheimer

Nicky Oppenheimer was instated as Chairman of De Beers in 1997, after the retirement of Ogilvie-Thompson. In an effort to reduce the volume of diamonds being dumped by Russia, Nicky Oppenheimer demanded that the state fulfil its contractual obligations to the CSO. He also threatened that if this demand was not met, the contract would be cancelled (Roberts 2007:283). Russia ignored Oppenheimer's warning, causing De Beers to announce an end to the cartel agreement between the two entities in January 1997 (The New York Times 1997)—a clear demonstration of Nicky Oppenheimer's intolerance towards Russia's ongoing cartel cheating.

In an attempt to limit the non-cartel options available to the state, Oppenheimer again directed CSO sightholders to eschew Russian stones. As argued in Chapter Six, supply restrictions were the ultimate negative incentive De Beers could use to compel pro-group behaviours downstream. However, the rationality of sightholders abiding by De Beers' demands had been undermined by the increased competition in the market; it was openly acknowledged among De Beers' clients that those sightholders who ignored De Beers' threats and traded Russian diamonds made more money than those who did not (Roberts 2007:283). For example, Lev Leviev, a diamond trader who is often wrongly credited with breaking the De Beers cartel, gave up his CSO sightholder membership in the early 1990s to buy rough direct from Russia, helping to make him one of the richest men in Israel (see Chafets 2007). The competition Russia injected into the diamond industry thus returned a degree of consumer sovereignty to sightholders, of which De Beers had sought to deprive them. Accordingly, the threat of expulsion from the CSO was no longer as powerful a negative incentive as it had once been.

Russia continued to sell the majority of its diamonds to De Beers throughout this time. However, in 1997, Yeltsin hinted at the permanency of Russia's independent operations by legislating that domestic manufacturers were to have the first choice of Russia's output from that point forward (Roberts 2007:283). This would have permanently relegated the CSO to a mere second-grade buyer for the state's rough. Under the De Beers paradigm of the previous six decades, the template for Nicky Oppenheimer's response was typical: find a way to compel or encourage Russia to re-join the cartel and sell the vast majority of its output through the CSO, thus preserving the single-channel selling model established by his grandfather. However, by this time, Nicky Oppenheimer had recognised that the optimisation of collective action in the diamond industry had become impracticable; in the preceding seven years, the demand for greater freedom among diamond producers had become fixed.

In late 1997, De Beers agreed to a new two-year contract with Russia in which the state was obligated to sell only half of its annual output to the cartel (The New York Times 1997). De Beers also agreed to buy up to $1.25 billion worth of additional rough, irrespective of its grade, in the event that Russia could not independently sell it on the market. As Roberts (2007:283) noted, De Beers had effectively become 'the buyer of last resort' for Russia's diamonds, rather than the first and only real option as had historically been the case. De Beers' agreement with Russia was without precedent in the firm's history; never before had De Beers' leaders agreed to a contract in which the firm purchased such a small portion of a producer's output.

It is critical to recognise that, as a consequence of this agreement, given Russia's huge scale, the diamond industry's collective action can be formally considered 'unoptimised' from the point of signing forward. Therefore, although the De Beers cartel still existed, Nicky Oppenheimer had diluted his forefathers' first intermediate goal by institutionalising a cartel agreement that did not optimise collective action in the production sphere. As argued in Chapter One, if one's ultimate goal is the extraction of perpetual rents, the intermediate goal must be an industry structure that eliminates competition. Nicky Oppenheimer's new intermediate goal was unoptimised collective action, which meant that his new ultimate goal was the protection of an *unoptimised* collective good; in other words, the extraction of *suboptimal* rents. The meaning of the suboptimality of Oppenheimer's ultimate goal for the future of collective action in the diamond industry will be explored later in this study.

The cartel agreement between De Beers and Russia demonstrated three very important things about how the dynamics of the diamond industry had fundamentally changed by the late 1990s. Firstly, by this time, De Beers could no longer demand all, or even the majority, of a producer's output as a condition of its cooperation with the cartel. Non-De Beers producers had thus gained a previously unforeseen degree of power in the diamond industry. Secondly, Russia's desire to independently sell half of its own output showed that the attractiveness of the returns provided by the cartel had waned; it was no longer seen as financially preferable to cooperate fully with the cartel. In other words, the economics of producers' engagement with the cartel were less attractive in relative terms.

The third major change in the industry that this cartel agreement highlighted was that De Beers' ability to encourage and compel cooperation from producers had diminished. This study has repeatedly demonstrated that De Beers' leaders regularly used both positive and negative incentives to align the interests of producers with their own. However, Russia's incessant cartel cheating, and its ability to negotiate an agreement in which only 50 per cent of its diamonds were sold through the cartel, demonstrated that De Beers' leaders could no longer rely upon positive or negative incentives to deter producers from operating either completely independently or largely so. De Beers did not appear to have retained the capacity to align producers' interests with those of its own, and the firm's hegemony was consequently in doubt.

The game-changing 1997 cartel agreement between Russia and De Beers did not take place in isolation from the other major developments occurring in the diamond industry at the time. Nicky Oppenheimer's willingness to accept only 50 per cent of Russia's output was partially motivated by the loss of control over other diamond producers that De Beers had been experiencing throughout the 1990s, and the impending emergence of a new, potentially independent large-scale producer in the late 1990s. The fragile relationship between De Beers and CRA and Ashton Mining in Australia, and the civil wars in Angola and Sierra Leone, were the primary source of this loss of control; however, the rise of Canada as a diamond-producing country, as will be discussed below, was a further potential threat faced by De Beers.

The analysis that follows will explore the motivations behind CRA and Ashton Mining's defection from the cartel, and what their post-cartel success demonstrated to other diamond producers. Subsequently, the high rates of IDS during the civil wars in Angola and Sierra Leone will be examined to determine what the disorganised artisanal output meant for De Beers' market control. This will be followed by an examination of BHP's burgeoning presence in the production sphere, at a time when the incentives to act collectively in the diamond industry were already under serious stress.

Diamonds in Australia: Argyle

The most significant development in the production sphere of the diamond industry in the 1980s was the emergence of Australia as a major producer. The Argyle diamond mine came on line in 1984, but it did not reach its maximum operational capacity until 1986, when its annual output accounted for 40 per cent of global production by volume (Hart 2002:236). As shown in Chapter Six, in 1982 Harry Oppenheimer had successfully negotiated an agreement between Dicorp and ConZinc Rio Tinto Australia (hereafter CRA) and Ashton Mining, the owners of the Argyle mine, in which 80 per cent of Argyle's output was to be sold through the cartel.[142] Oppenheimer's agreement for CRA and Ashton Mining to retain 20 per cent of the mine's output to market independently was an unprecedented positive incentive concession, and one that enabled CRA and Ashton Mining to learn about diamond marketing personally and penetrate the marketing sphere of the industry, which had previously been under the monopsony control of De Beers (via the CSO).

Argyle's rough were predominately of a very poor quality and had low average 'mine gate' profit margins relative to the rest of industry. They had an average price of only $US11 per carat and cost approximately $US7 per carat to mine, partly due to difficulties associated with mining the harder rock within lamporite pipes (Treadgold 1996:24).[143] In comparison, Jwaneng's average diamond price was $US100 per carat (Hart 2002:236), and because of the location's kimberlite properties, extraction costs were lower than at Argyle. Further, the preponderance of highly included, small stones emanating from Argyle required manufacturing that was labour-intensive, shrinking margins further. Therefore, CRA and Ashton Mining needed manufacturers who could cut and polish their 20 per cent at a very low cost.[144] The two firms consequently developed strong relationships with diamond manufacturers in India, whose scale and low-cost labour were suited to output of Argyle's calibre.

[142] CRA initially owned 56.8 per cent and Ashton Mining owned 38.2 per cent. Northern Mining owned the remaining 5 per cent, which was marketed independently direct to Antwerp. However, Northern Mining quickly sold its share of Argyle to the two firms.
[143] Lamporite rock is harder than kimberlite rock. However, Argyle's ore grade—the degree of concentration of diamonds in the ore body—was high, which offset the disadvantages in extraction and quality to some extent.
[144] When diamonds are included it means that they possess inclusions, which are 'flaws' inside the diamond that are visible to the naked eye. They can be very small, pale and almost unnoticeable, or extremely large, dark and prominent. When diamonds are very small, the labour costs involved in their manufacture may exceed their market value.

Small-scale diamond manufacturing had commenced in India in 1947. In 1967, the CSO recognised the growth of this sector (see Berman 1971), and included Indian sightholder manufacturers on the firm's exclusive sightholder list (Wannenburgh and Johnson 1990:163). By the 1980s, India had usurped the traditional cutting and polishing centres of Antwerp, New York and Tel Aviv and was manufacturing the majority of the world's diamonds and almost all of its low-grade near-gem rough. The comparatively expensive labour in other diamond manufacturing hubs meant that the cost of manufacturing near-gem diamonds therein was often greater than the diamonds' market value. In contrast, in the 1980s, wages in the cutting centres of India averaged only $US2 a day, allowing India to cut and polish 'make-ables', or small near-gem diamonds, economically, in turn affording Argyle's low-grade diamonds the 'gem' status they would not have otherwise had (The Economist 1987:68–9). CRA and Ashton Mining were thus able to realise profitable returns on their low-grade 20 per cent.

In the agreement reached between De Beers and CRA and Ashton Mining, Dicorp assumed the role of sorting, grading and valuing the Argyle mine's output. CRA and Ashton Mining's lack of in-house valuers made this arrangement the most feasible for the firms in the short term (Norman 2010:204). A 20-person Dicorp team was installed in Australia to perform valuations of Argyle's output. From 1984 to 1986, this arrangement was deemed acceptable by the respective parties. However, in 1986 Argyle's owners began to question Dicorp's valuers' claims that the mine's diamonds were of a progressively lower quality the deeper mining extended into the lamporite pipe. The two firms decided to test the impartiality and accuracy of Dicorp's valuers by rearranging, without the valuers' knowledge, the sequence by which the Argyle mine's diamonds were sorted. This should have altered the valuers' opinions on the rough, but did not (Treadgold 1996:23). CRA and Ashton Mining also sought an objective third-party opinion in the form of an external diamond valuer, who disagreed with Dicorp's assessment that the quality of Argyle's diamonds was falling. When Dicorp was presented with this evidence, it did not confirm nor deny that it had been untruthful, but did chide CRA and Ashton Mining for testing its valuers (Treadgold 1996:23). The arrogance of this response is notable, as is the short-sightedness of the undervaluation strategy.

CRA and Ashton Mining's testing of Dicorp's grading of their mine's diamonds due to suspicions of being not paid a fair price mirrored the attempts made by Zaire, the United Diamond Fields of British Guiana and Williamson Diamonds Ltd. to obtain fair prices from

Dicorp for their rough, as explored in Chapters Five and Six. By 1985, the CSO was purchasing (and stockpiling as needed) the rough of all of the world's largest diamond producers, including the USSR, Botswana and Argyle. The experience of CRA and Ashton Mining suggests that, to lessen the financial burden on De Beers, Nicky Oppenheimer had adopted the deceptive methods of Ernest and Harry Oppenheimer, to take advantage of asymmetric information in the CSO's favour to underpay for Argyle's diamonds. However, in response to CRA and Ashton Mining's findings, Dicorp withdrew its valuing team from Australia, to be replaced by CRA and Ashton Mining's own in-house valuers (Treadgold 1996:23–4). Dicorp consequently lost its absolute control over the valuation of the Argyle mine's diamonds.

Despite the distrust of De Beers that this episode fostered in CRA and Ashton Mining, the two Australian companies remained faithful to their agreement with the cartel. In 1991, the contract between De Beers and CRA and Ashton Mining was renewed, but with a supplementary positive incentive concession—CRA and Ashton Mining were allowed to retain an additional 5 per cent of Argyle's output to market independently, bringing the total to 25 per cent. This concession suggests that Ogilvie-Thompson was taking measures to ensure CRA and Ashton Mining's ongoing commitment to the cartel, akin to his concessions to both Botswana and the USSR in the same period. CRA and Ashton Mining gave no indication of discontentment with the cartel at this time. Argyle's executives openly praised De Beers for its protection of the industry's collective good: 'People thought that when Argyle came on line, there would be a real problem of oversupply. There wasn't. De Beers gives confidence to the market' (A. Murray quoted in Teitelbaum and Anderson 1991:170). However, De Beers soon began to engage in behaviours that would eventually undermine the rationality of CRA and Ashton Mining's ongoing participation in the cartel.

The absence of a production quota in the contracts between De Beers and the Australian miners meant that Dicorp had to buy whatever diamonds Argyle produced. Initially, this was not a problem for De Beers; when Argyle first came on line in 1986, it was annually mining 3.2 million tonnes of ore. A typical tonne of Argyle's ore was 0.0001 per cent diamonds (Shigley et al. 2001:27), with a total average of seven carats per tonne (Norman 2010:205). However, by 1991, 6 million tonnes of ore was being extracted from the mine annually. Argyle's diamond output dramatically increased, from 29.2 million carats in 1986 to 42.8

million carats by 1994 (Shigley et al. 2001:26–34). CRA and Ashton Mining argued that because of the low-profit margin on Argyle's rough, hefty production levels were necessary for the realisation of a respectable return on the mine. In contrast, De Beers, who were now feeling the financial burden of their self-appointed task of protecting the diamond industry's collective good increase exponentially with Argyle's expansion of production, claimed that CRA and Ashton Mining were taking advantage of the absence of a production quota in the cartel agreement (Treadgold 1996:26). This is possible. Just as it had been rational for Russia, in view of De Beers' unwavering protection of the industry's collective good, to engage in intra-contract dumping due to the absence of a quota agreement between itself and De Beers, it was rational for Argyle's owners to extract and sell as many diamonds as possible within the terms of their contract.

De Beers' behaviour from 1992 to 1995 thus suggests that it was attempting to disincentivise what it perceived as Argyle's 'excessive production', to eliminate a portion of this liability. In 1992, De Beers exploited a clause in the contract to force Argyle to stockpile 25 per cent of its production. This meant that the more diamonds Argyle produced, the more it would have to stockpile personally. As discretionary stockpiling is an expensive exercise, Argyle realised an overall financial loss as a result of this requirement (Treadgold 1996:26). Therefore, De Beers can be seen as trying to reduce the rationality of Argyle's overproduction of diamonds. As mentioned, in 1993 De Beers employed low-grade diamond dumping, using Argyle's low-grade rough, to disincentivise Russia's ongoing extra-contract dumping. However, by driving down prices in this tier of the market it was inevitable, and entirely foreseeable, that De Beers' actions would also negatively affect Argyle's bottom line, which angered CRA and Ashton Mining (Roberts 2007:256).

In 1995, with the renewal of the cartel agreement between De Beers and CRA (hereafter Rio Tinto) and Ashton Mining only one year away, De Beers introduced a market-wide 11 per cent price reduction of the near-gem diamonds that Argyle predominately produced (Treadgold 1996:26).[145] This had an immediate bearing on the value of the Argyle mine's output, which in turn reduced Dicorp's financial obligations to Rio Tinto and Ashton Mining. These price decreases, and the aforementioned flooding of the market, would also have affected De Beers' bottom line: the CSO still possessed a monopsony control over the world's rough (including

[145] CRA merged with the Rio Tinto Zinc Corporation in 1995.

low-grade) diamond sales. However, as shown throughout this study, De Beers' leaders' were willing to accept short-term losses to apply negative incentives to misbehaving producers, particularly when these were low-grade producers (see Spar 1994:63, Bergenstock et al. 2006:174). The impact of De Beers' actions on the Argyle mine's profitability was swift, with its profits declining by more than 70 per cent between 1993 and 1996 (Treadgold 1996:26).

Ogilvie-Thompson was attempting to convey several messages to Rio Tinto and Ashton Mining with the above actions. Firstly, intra-contract dumping would not be passively absorbed by De Beers. Secondly, De Beers still wielded enormous power over the diamond industry and remained in control of diamond prices. Thirdly, continuing to cooperate with the cartel was preferable to the punishments that De Beers would inflict on misbehaving, self-interested producers, such as Russia. These were effectively intra-cartel negative incentives, insofar as they were not merely reactive measures taken after a producer's defection; they were a proactive stratagem designed to discourage producers like Rio Tinto and Ashton Mining from thinking they were invulnerable to De Beers' market control. Each message was designed to raise the credibility of De Beers' threats to mobilise negative incentives to enforce cooperation. However, in the case of these two Australian firms, the use of intra-cartel negative incentives ultimately backfired. On 30 June 1996, after 10 years of 'stormy marriage' (Treadgold 1996:22), Rio Tinto and Ashton Mining announced their decision not to renew their marketing contract with De Beers. The collectivised industry structure that had dominated the diamond industry since 1934 was thus dealt an extremely serious blow—never before had the De Beers cartel lost a member of Argyle's size. Collective action in the diamond industry was subsequently far from optimised.

This study makes a clear distinction between the loss of optimised collective action to which Nicky Oppenheimer acquiesced in 1997 when Russia committed to marketing only 50 per cent of its output through the cartel, and Rio Tinto and Ashton Mining's decision to leave the cartel absolutely in 1996. As previously argued, Nicky Oppenheimer, in agreeing to the contract with Russia in 1997, *indirectly elected* to alter the intermediate and ultimate goals of his forefathers. In contrast, after Rio Tinto and Ashton Mining left the cartel in 1996, Ogilvie-Thompson, and later Nicky Oppenheimer, worked diligently to force the two companies back into the cartel, as will be explored shortly. Thus, prior to the 1997 agreement with Russia, neither of the two Chairmen gave any indication of accepting a new status quo in the diamond industry; they both remained intent on optimising collective action therein to continue to extract perpetual rents.

Despite Rio Tinto and Ashton Mining being independent producers in a largely collectivised diamond industry, it would be wrong to classify them as free riders because of their actions in 1996. This is because it was not their intention, by leaving the cartel, to free ride off a collective good that others were protecting. This can be extrapolated from the fact that Argyle's enormous output could not have been simply controlled by De Beers *ex-post facto*, as was the cartel leader's typical response to free riding. The management of Rio Tinto and Ashton Mining would have been aware that their defection would introduce considerable competition into the diamond industry, particularly in the lower-grade tiers of the market. They would also have been cognisant of the fact that this competition had the potential to affect the industry's collective good. Therefore, it can instead be argued that Rio Tinto and Ashton Mining were intentionally introducing competition into the diamond industry in their pursuit of competitive profits; they were rejecting De Beers' leaders' common intermediate and ultimate goals of cartelisation and perpetual rent extraction. This is extremely significant. The management of Rio Tinto and Ashton Mining were embracing competition and eschewing collective action; in doing so, introducing *competing intermediate and ultimate goals into the diamond industry*. The moral implications of this structural break from the past will be explored in-depth later in this chapter.

Rio Tinto and Ashton Mining possessed unique characteristics in the diamond industry that made their repudiation of De Beers unsurprising. Unlike the majority of their peers in the cartel, the two firms were primarily driven by sound economic imperatives (Treadgold 1996:26). Phil Plaisted (quoted in Shor 1996), the head of the diamond division of CRA Mining, argued that in companies like CRA, De Beers was dealing with competitors who knew how to act in their own best interests:

> Corporate mining operations take a much more rigorous approach to the business than governments such as Botswana and Russia. We're accountable to our shareholders and have to maximise revenue and control costs to keep profits. Governments don't think that way. De Beers has to adjust to our way of thinking or simply become one of several major players in the diamond market.

As diversified, experienced mining companies that were accountable to shareholders, Rio Tinto and Ashton Mining knew that they could not continue to wear losses akin to those of 1993 to 1996 as collateral damage in the pursuit of someone else's ultimate goal; that is, De Beers' inflated profits, of which they were being deprived.

Plaisted's statement clearly shows that competitive profit seeking had become a more attractive option for Argyle's owners; De Beers had diminished the rationality of Rio Tinto and Ashton Mining's participation in collective action. The rationality of individual engagement in collective action is primarily dictated by the actor's marginal costs not exceeding his or her marginal gains (Olson 1971:48). As this chapter has shown, De Beers' conduct had caused a reduction in the two firms' share of the collective good. Based on the significant profit increases that Argyle realised after Rio Tinto and Ashton Mining's defection from the cartel, as will be explored shortly, it can be judged that the firms' marginal costs of collective action were higher than their marginal gains; thus, their continued cooperation with the cartel was irrational. Indeed, due to De Beers' market conduct, Argyle had become something of a black sheep in the diversified commodity portfolios of both Rio Tinto and Ashton Mining (Treadgold 1996:26). By 1996, cooperating with the cartel had become bad business for Rio Tinto and Ashton Mining.

De Beers' conduct from 1992 to 1995 also eliminated two of the additional benefits that initially accompanied Rio Tinto and Ashton Mining's cooperation with the cartel: an assured buyer for their output, and stable diamond prices. This further corroded the rationality of the firms remaining in the cartel. Of secondary significance was the fact that De Beers' use of severe intra-contract negative incentives against Rio Tinto and Ashton Mining had undermined the implicit threat of future negative incentives if they *left* the cartel (extra-contract negative incentives). Rio Tinto and Ashton Mining's rapidly declining share of the collective good meant that extra incentives were particularly important to securing their ongoing participation in the cartel (see Oliver 1980). Yet, by the mid-1990s, the two firms had faced intra-contract price decreases, dumping and forced stockpiling—anticompetitive business practices that this study has shown were regularly used by De Beers' leaders to punish defectors and limit their non-cartel avenues for trade. For Rio Tinto and Ashton Mining, extra-contract negative incentives no longer possessed the influence they once had.

There was an additional reason that, by 1996, leaving the cartel had become rational for Rio Tinto and Ashton Mining. As argued in Chapter Six, the management of CRA and Ashton Mining had a strong desire to learn about diamond marketing from the commencement of Argyle's mining operations (see Louthean 1996:120), indicating that ongoing cooperation with the cartel was never their long-term goal.[146] CRA and Ashton Mining's initial cooperation with the cartel had been rationalised in part by the fledgling nature of their diamond-mining enterprises and De Beers' monopolisation of market intelligence (Treadgold 1996:26). However, by 1996, the two firms had significant experience in diamond marketing, with sales offices in Mumbai since 1989 and Antwerp since 1985. In 1994, Rio Tinto and Ashton Mining established the Indo-Argyle Diamond Council (IADC), which was tasked with further strengthening the relationship between India and the Australian producers, and aiding the development of India's manufacturing sphere. The strong working relationships Rio Tinto had developed with traders and manufacturers in India formed the basis of its post-1996 diamond-marketing operations. Therefore, it is arguable that if Rio Tinto and Ashton Mining had never gained personal experience in the diamond-marketing sphere, eschewing the CSO in 1996 would have been an unattractive option for the firms' management. Harry Oppenheimer's positive incentive concession had thus come to backfire on De Beers.

After leaving the cartel, Rio Tinto and Ashton Mining recognised the potential for much more than 5 per cent of Argyle's output to be manufactured into wearable 'gems' (Zoellner 2006:137). However, because of the preponderance of brownish-coloured diamonds within Argyle, this could only be achieved by mounting a serious challenge to De Beers' white-centric diamond grading standard, and enamouring consumers to the formerly scorned brown coloured diamonds. In the early 1990s, Rio Tinto and Ashton Mining had rebadged the Argyle mine's near-gem diamonds as 'champagne' and 'cognac' diamonds—alluring monikers that covered the dominant Argyle colour spectrum of light to dark brown (Zoellner 2006:154). However, they had not aggressively marketed these diamonds while they were members of the cartel. As shown in Chapter 5, the promotion of white coloured diamonds as the most desirable gem category was first introduced by De Beers in the first post-Rhodes cartel agreement of 1914. This was the foundation of the subsequent D to Z grading system, devised by the founder of the Gemological Institute of America (GIA), Robert Shipley, which

[146] Rio Tinto later stated that its initial foray into diamond marketing had enabled it to learn the operational basics in its newest industry *and* monitor the prices De Beers paid for its rough (Rio Tinto 2013).

classified diamonds according to their absence of colour (Florian 2002). In 1996, Rio Tinto and Ashton Mining contracted the services of a small US-based jewellery marketing company called Market Vision, which resulted in a pioneering diamond marketing campaign that promoted to consumers the beauty and desirability of champagne and cognac diamonds. Rio Tinto and Ashton Mining ignored De Beers' white-centric paradigm to create a diamond grading standard of C1 to C7, which denoted, respectively, colour gradients from 'Light Champagne' to 'Fancy Cognac'.[147]

John Robinson (quoted in Roberts 2007:256), an executive of Ashton Mining, claimed that De Beers believed Argyle's champagne diamonds were 'cannibalizing the white end of the market'. Roberts (2007:256) interpreted Robinson's statement to mean that De Beers feared Argyle's new campaign turning consumers away from the white diamonds that came out of its own mines. However, De Beers' fear of Argyle's coloured diamonds was somewhat more nuanced and multifaceted.[148] The promotion of Argyle's coloured diamonds challenged De Beers' market control and perpetual rents in four key ways. In its advertising campaigns, De Beers promoted white diamonds as the most desirable. The pervasiveness and success of these campaigns in turn gave the firm the capacity to control what constituted a desirable diamond; namely, a white one. This was an additional tool available to De Beers to restrict diamond supplies artificially, as only a small percentage of the world's diamonds were, according to De Beers' standard, 'gem grade', and thus worthy of conspicuous consumption. Therefore, Rio Tinto and Ashton Mining, by increasing the number of (unregulated) gem-grade diamonds on the market by redefining that paradigm, threatened the carefully calibrated supply–demand equation that Rhodes had first introduced into De Beers' operations in the fourth quarter of the nineteenth century.

The second way in which Rio Tinto and Ashton Mining's promotion of champagne and cognac diamonds challenged De Beers was that these stones provided consumers with *cheaper substitutes* for white diamonds. This was a two-tiered assault: the Argyle mine's diamonds were both *cheaper* than white diamonds, and reasonable *substitutes* for white diamonds. Concerning the latter point, white diamonds were a product for which there had never been a

[147] In the De Beers orthodoxy, D was the whitest, or most colourless grade, while Z was very dark yellow. The word 'Fancy' in diamond terminology refers to the intensity of the colour that is present in the stone; only those with the deepest colourings are classified as 'fancies'.
[148] Further, not all of the diamonds coming out of De Beers' mines were white.

comparable substitute available on the market. As illustrated in Chapter Five, this granted the product a steep demand curve that was extremely advantageous for rent extraction through supply rationing. As argued in Chapter Six, De Beers feared synthetic diamonds because of their status as potential diamond substitutes. While polished near-gem diamonds had been sold in less expensive jewellery for years, Rio Tinto and Ashton Mining's new diamond paradigm was the first time consumers were being told that brownish diamonds were as beautiful, and as covetable, as white diamonds.[149] Argyle's diamonds provided new options for consumers in the market, thus successfully challenging one aspect of the diamond myth—the primacy of white diamonds—and the rents that had been associated therewith.

The third challenge posed by Argyle's diamonds came in the form of pricing. Champagne and cognac diamonds were at least 30 per cent cheaper than their white diamond equivalents. Due to De Beers' constant price increases and near-absolute monopoly control of global diamond supplies, diamond prices had remained relatively constant for half a century—the only mineral commodity in the world to enjoy such price stability. In fact, it has been estimated that diamond prices had increased by an accumulated 1800 per cent from 1948 to 1990 (Voss 1998:42), with just one material setback in the early 1980s. That compares to a 328 per cent accumulated increase in the US producer price index over the same 42 year period—a number arrived at by splicing the wholesale manufacturing price index in the National Bureau of Economic Research (2013) Macrohistory Database to the manufacturing producer price index reported in the Organisation of Economic Cooperation and Development's (2013) Main Economic Indicators database.[150] Since Argyle's diamonds were cheaper than were their white counterparts, overall diamond price declines were unavoidable.

Fourthly, as argued in Chapter Five, De Beers derived a portion of its market power from the inelasticity of its product's demand curve. More precisely, the inelasticity of the demand curve for *white* diamonds, as an elite product cultivated by De Beers with its diamond standard and Ernest Oppenheimer's deceptive advertising campaigns, contributed to De Beers' market power. Argyle's champagne and cognac diamonds, which gave consumers a cheaper alternative to white diamonds, threatened the demand curve of white diamonds by undermining De Beers' capacity to raise diamond prices without experiencing a concordant

[149] De Beers did market brownish diamonds in the 1930s, but this campaign was very short-lived.
[150] Underlying data available upon request from the author.

decline in consumption. Therefore, Argyle's champagne and cognac diamonds eroded a portion of the firm's market power. In summary, the Argyle mine's champagne and cognac diamonds undermined De Beers' supply–demand equilibrium, reduced diamond prices (in the aggregate), dissipated De Beers' monopoly rents and eroded the firm's market power.

Rio Tinto and Ashton Mining's defection from the cartel also exposed consumers to a new diamond pricing regime, which reduced consumers' acceptance of De Beers' inflated, rent-extracting diamond prices. In 1991, the Executive Director of the CSO, Tim Capon (quoted in Teitelbaum and Anderson 1991:171), had boasted that inflated diamond prices were of little concern to consumers: 'Lowest possible price is not what people have in the foremost of their mind when they buy a diamond'. However, Capon's defence of De Beers' high prices was only legitimate in an industry in which consumer sovereignty was largely unmolested.

In the pre-1996 diamond industry, during which period consumer sovereignty was effectively non-existent, consumers were ignorant of whether they were being overcharged. There were three reasons for this. Firstly, as argued in Chapter Four, competition in a market enables consumers to engage in price and quality comparisons (Marshall and Marx 2012:83–4). The absence of competition in the diamond industry deprived consumers of the freedom to shop-around, eliminating their capacity to determine whether they were being overcharged. Secondly, as argued in Chapter Two, consumers often possess a degree of rational ignorance regarding the characteristics of the goods they buy (Tullock 1989:21). As argued in Chapter Four, this rational ignorance is particularly exploitable in non-competitive industries (see McCluskey and Swinnen 2004:1233–4), such as the diamond industry. Thirdly, as shown in Chapter Five, De Beers' deceptive advertising campaigns espoused the false 'rarity' of diamonds to justify the firm's rent-extracting diamond prices. Consumers were encouraged to possess false beliefs about both the prevalence of diamonds, and their inherent value.

In view of this, the emergence of competition in the diamond industry in the mid-1990s had an enormous impact on the amount of money consumers were willing to spend on diamonds. As Shor (1995) argued, consumers became increasingly price resistant. From 1990 to 1999, consumers in the US steadily bought more lower-priced diamonds as cheaper diamonds became more socially acceptable. The average price of retail diamond sales in Japan and Hong

Kong also fell by almost 50 per cent during this time (Treadgold 1999:58).[151] Despite Capon's assertions, consumers did care about how much their diamonds cost.

Rio Tinto's pioneering diamond sales model also challenged the CSO sightholder system that had dominated the diamond industry since 1935. After leaving the cartel, the firm initiated a 'Market Direct' program, which, as the name suggests, eschewed the middle man and sold diamonds straight to the diamond market (via its sales office in Belgium). This was the first sales program, operated by a major producer, of its kind in the diamond industry. The USSR independently marketed the small portion of the rough it retained in the same way that the CSO sold the cartel's diamonds. The USSR had exclusive sightholder-like buyers who were obligated, as a condition of being invited to 'sights' in the communist state, to buy whatever diamonds they were presented with. Like De Beers' clients, these buyers were unable to reject allotments or negotiate diamond prices (Epstein 1982:195–6). Thus, the USSR's independent diamond sales did not challenge the prevailing industry standard of De Beers' marketing practices.

Unlike De Beers' exclusive sightholder system, the Market Direct sales program did not require the creation of an oligopoly of diamond buyers.[152] Rio Tinto instead sold the Argyle mine's diamonds competitively to a non-exclusive clientele. As argued in Chapter Five, the sightholder system was a tool that enabled De Beers to exert greater downstream control over the supply chain, primarily via the application of positive and negative incentives. In establishing the Market Direct program, Rio Tinto was not seeking to create marketing structures via which it could exert control over its clients. Thus, Rio Tinto had no capacity, or desire, to employ positive or negative incentives to curtail its clients' market conduct, nor affect its competitors' ability to freely trade diamonds. De Beers criticised Argyle's sales model, claiming that it 'spoiled' diamond buying clients (Treadgold 1999:59). In reality, however, Argyle's sales model, by respecting the consumer's right to choose what they bought, maintained the sovereignty of their clients.

Rio Tinto's sales model was also unique insofar as it catered to market demand. Rio Tinto's clients were under no pressure to buy diamonds that they did not want or could not afford. As

[151] The Asian economic crisis in 1997 also contributed to this fall in diamond sales. In 1998, De Beers asked members of the cartel to stockpile 26 per cent of their outputs to reduce the financial burden on De Beers.
[152] It must be noted that Rio Tinto sold its extremely rare fancy coloured diamonds separately from its other output, at invitation-only auctions.

Argyle's managing director, Gordon Gilchrist (quoted in Treadgold 1999:59), declared: 'There is no compunction to buy what we offer. We try to meet genuine demand, and if a customer cannot take what is available it is offered to someone else'. By allowing buyers to reject diamonds based on price, the market, for the first time in 60 years, was able to dictate acceptable diamond prices for a significant portion of the rough on the market. Rio Tinto thus sacrificed the ability to ensure that the prices for Argyle's rough did not fall. This further supports the argument that the management of Rio Tinto and Ashton Mining possessed the ultimate goal of obtaining competitive *profits*, not rents, which tend to fluctuate cyclically in the commodity business. The moral implications of the increase in consumer sovereignty in the diamond industry in the 1990s will be explored in the moral analysis section of this chapter.

Rio Tinto and Ashton Mining's refusal to contribute to the protection of the diamond industry's collective good after 1996 earned swift retribution from De Beers. Ogilvie-Thompson and Nicky Oppenheimer remained intent on pursuing the intermediate and ultimate goals of their predecessors, despite the dramatic changes that had occurred by the mid-1990s. Ogilvie-Thompson, as the *de facto* head of an oligopoly group of producers, was required to employ incentives to compel Rio Tinto and Ashton Mining back into the cartel's fold, and, in turn, once again *optimise* participation in the industry's collective action. From June to October 1996, Ogilvie-Thompson oversaw the application of two audacious negative incentives that were designed to hinder the 'recalcitrant' firms' ability to survive outside the cartel. As noted by Treadgold (1996:22) at the time, Rio Tinto and Ashton Mining's continued existence (within the diamond industry) was against the odds: 'No company (or country) has ever thumbed its nose at De Beers and survived for long'.

Ogilvie-Thompson's first negative incentive was the dumping of $US200 million of low-grade rough on Indian manufacturers, some of which was output from Argyle that De Beers had previously stockpiled (Treadgold 1999:59). This was comparable to releasing six months-worth of Argyle's average output all at once (Treadgold 1996:25). Akin to Harry Oppenheimer's treatment of Zaire in the early 1980s, this targeted dumping was designed to oversupply the market for diamonds of Argyle's average calibre, drive down their prices and hinder the mine's profitability. This was effective: near-gem prices were reported to have dropped approximately 25 per cent as a result of this oversupply. The aforementioned narrow profit margins on Argyle's rough meant that the mine's viability was consequently called into question (Treadgold 1996:24).

Ogilvie-Thompson's second negative incentive targeted the Indian diamond manufacturing and trading spheres—the home of Rio Tinto's largest clients. In mid-1996, De Beers (quoted in Treadgold 1996:25) released an intentionally pointed statement in which it lamented Rio Tinto and Ashton Mining's defection from the cartel and stated that huge losses would consequently be realised on the diamonds already held by Indian companies:

> News of the termination of the Argyle contract was received with grave concern in India … It is now felt that Argyle's decision to market independently will inevitably cost the industry substantial inventory write-downs.

De Beers also claimed that many Indian manufacturers would subsequently fail, due to the forecast $US500 million losses in the sector (see Treadgold 1996:25). The ultimate objective of De Beers' statement was to influence the perceived risk profile of Indian diamond manufacturers and traders, to discourage banks from lending to them. If the availability of working capital was reduced significantly, Rio Tinto and Ashton Mining's non-cartel avenues for trade would have been severely reduced, which could have forced them back into an agreement with De Beers.

In October 1996, Rio Tinto and Ashton Mining launched a counter attack on De Beers' campaign of misinformation. Executives from the two firms spoke directly to key members of India's diamond manufacturing and banking sector at a specially convened conference in Mumbai. As Gilchrist (quoted in Treadgold 1996:26) reflected on the event, 'They [Argyle's clients in India] were very grateful for the data we provided'. This data showed, among other things, a predicted rapid increase in demand in the US for lower-grade polished stones of the kind manufactured in India. The day after the conference, arguably in a demonstration of faith in the future of India's diamond-manufacturing sector, Gilchrist attended the opening of a new cutting factory in Mumbai. The executives' efforts in India were particularly well received by the domestic banking sector, who credited Argyle with the growth of diamond manufacturing in the state (Treadgold 1996:26). The strong relationships that Rio Tinto and Ashton Mining had cultivated in the Indian manufacturing sphere prior to leaving the cartel meant that the opinions of their executives were respected enough to dispel De Beers' unnecessarily negative sentiments about the diamond market.

As Chapters Four, Five and Six have illustrated, De Beers' leaders' use of negative incentives had always been sufficient to compel 'wayward' diamond producers back into the confines of the cartel. However, this chapter has revealed that by the 1990s, De Beers' ability to employ incentives successfully to compel or encourage cooperation had been challenged by Russia's unstoppable cartel cheating. De Beers' atrophying muscle in this field was again demonstrated in 1999, when Gilchrist declared that, despite De Beers' negative incentives, Argyle's rough would never again be sold through the CSO (Treadgold 1999:58). Rio Tinto and Ashton Mining would thus remain independent of the cartel, and competition would be the new status quo within the diamond industry. Consequently, irrespective of Russia's future relationship with De Beers, *optimised* collective action in the diamond industry was finished,[153] as was De Beers' near absolute control over the diamond industry, and in turn, its capacity to extract perpetual rents from overpaying consumers.

Rio Tinto and Ashton Mining's post-cartel success in the diamond industry highlights the fallacious nature of some of the justifications used by De Beers' leaders and their advocates to defend their anticompetitive conduct. For example, it was often argued that competition in the diamond industry would cause devastating profit losses and ultimately the demise of the industry (see Gregory 1962:229, Lenzen 1970:155, De Beers 1988:19, Rotberg 1988:182). However, in 1998, Argyle's profits grew 76 per cent to record levels, while De Beers' declined by 39 per cent (Treadgold 1999:58).[154] The implications of De Beers' declining profits for the future of collective action in the diamond industry will be explored later in this chapter. As for Argyle, its owners found that after leaving the cartel and the distorted market signals it had come to entail, demand for its diamonds exceeded their ability to supply them, which caused a *natural* shortage in the market. This enabled Rio Tinto to raise its diamond prices slowly. As Gilchrist (quoted in Treadgold 1999:58) boasted, 'We are one of the few producers able to increase prices because what we are doing is demand-driven'. Rio Tinto had thus shown that a *demand-driven* diamond market could result in *price increases*, which was an outcome that De Beers' leaders had traditionally seen as impossible.

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[153] Rio Tinto, which would go on to open three more diamond mines (Murowa, Diavik and Bunder), would never again sell its diamonds through the CSO.
[154] The year 1998 was no ordinary year. It featured the further spread of the Asian financial crisis, Russian debt default and the near failure of the enormous US hedge fund LTCM, which brought about a dramatic easing in US interest rates. Pertinently for the profits of Argyle, the Australian dollar also declined in value in this year.

The market dynamics of this period are fascinating. Argyle was simultaneously increasing the value of its own diamonds by marketing them as gem grade, which produced a reverse effect on the value of stones already in that category. What was profitable for Argyle was destructive for cartel rents. In effect, as the distorted perceptions of the De Beers orthodoxy were eroded, choice expanded and there was a partial convergence between the prices achieved by white and coloured diamonds. Consumer sovereignty was consequently on the rise, a point that will feature heavily in the moral analysis at the end of this chapter.

War-Torn Africa: Angola and Sierra Leone

Large-scale producers were not the only threats to De Beers' market control during Ogilvie-Thompson's time in power. The emergence of civil wars in two diamond-producing states—Angola (1975–2002) and Sierra Leone (1991–2001)—introduced large pockets of disorganised supply into the industry, the scale of which had not been seen since the discovery of alluvial deposits in Lichtenburg and Little Namaqualand in the 1920s.[155] The war in Angola had commenced in 1975, and was primarily motivated by competition to control the state's diamond deposits (see Hodges 2001, Le Billon 2001). The war was particularly bloody from 1992 to 1994, when fighting between the two rebel groups, the People's Movement for the Liberation of Angola (MPLA) and the National Union for the total independence of Angola (UNITA), gained momentum after a failed federal election. The civil war in Sierra Leone, which commenced in 1991, was partially motivated by the Revolutionary United Front's (RUF) desire to control the state's diamond deposits. The RUF received support from neighbouring Liberia, who, under the leadership of Charles Taylor, wished to access Sierra Leone's diamond deposits (see Smillie et al. 2000).

The nature of the diamond deposits in Angola and Sierra Leone and the motives that underlay their extraction and sale, posed an enormous challenge to De Beers' market control in the 1990s. Angola and Sierra Leone's alluvial diamond deposits were relatively easy to mine using artisanal methods and produced readily saleable rough, making them very attractive to people seeking a source of fast cash, thus attracting hundreds of thousands of diggers to these

[155] As shown in Chapter Five, Ernest Oppenheimer was responsible for securing Angola's participation in the cartel. Angola marketed its output through the CSO up until 1985, when it defected from the cartel. Ogilvie Thompson was unable to convince the government to reconsider its defection, and thus De Beers was forced to employ *ex-post facto* measures to control Angola's diamonds. However, Angola's defection was short-lived; in 1989, Angola decided it preferred the financial certainty of belonging to the cartel and re-engaged with it for the marketing of its diamonds (Hodges 2001).

countries in their pre and intra-war periods. As unconscious members of an unmobilised latent group, it was rational for these diggers to maximise their current output to maximise their short-term incomes (Olson 1971:48).[156]

The artisanal diamond miners in Angola and Sierra Leone thus posed a serious threat to Ogilvie-Thompson's realisation of his adopted intermediate and ultimate goals. He could not seek to include them in the cartel due to their lack or organisation, nor apply incentives to curtail their production. The political and economic turmoil within these states also meant that encouraging the governments therein to forcibly collectivise the diggers with legislation would likely have failed due to an absence of the will and resources required to enforce such a law. Therefore, the only response available to De Beers was post-extraction supply absorption to keep it from reaching the market on terms other than those of De Beers. To that end, in the early 1990s De Beers established strategically located buying offices in and around war-torn states like Angola and Sierra Leone that were tasked with buying whatever smuggled diamonds they could to prevent them from reaching the international market (Green 1996:40).

During this time, non-governmental organisations released investigative reports into De Beers' pivotal role in funding the ongoing fighting by buying the conflict diamonds emanating from Angola (see Human Rights Watch 1994, Global Witness 1998). Largely in response to the global outcry that accompanied these reports, in June 1998 the United Nations Security Council passed resolution 1173 which, among other things, prohibited the buying or selling of UNITA-controlled diamonds (United Nations Security Council 1998). Some have argued that such trade embargos on fringe diamonds emanating from war-torn regions were a coup for De Beers. As these embargos legislated against the trade of diamonds that were outside the control of the cartel, they effectively ensured that De Beers' market share was less impacted by the unregulated supply (Epstein 2000, Jolis 2010). It is undeniable that such laws would have assisted De Beers' leaders in maintaining their control over the world's diamond supplies.

By establishing buying outlets in and around these war-torn regions, De Beers was knowingly buying diamonds that were funding the rampages of murderous rebel groups. Saunders'

[156] It is easy to see that in a wartime environment, the time discount applied to future income by a rational individual will be considerable, and possibly 100 per cent. Therefore, even if the diggers had organised, which they did not, the idea of foregoing income today for rents tomorrow was unlikely to have been perceived as an attractive proposition.

(2000) comprehensive legal analysis of De Beers' role in these wars led her to argue that the company should have been charged with crimes against humanity and complicity in war crimes. This study concurs with Saunders' findings. However, a Gertian analysis of De Beers' actions would still be valuable, primarily because it would allow for the distinction between 'knowingly' violating a moral rule and 'intentionally' doing so. The moral implications of the knowledge De Beers' leaders possessed regarding the firm's financial role in these wars is extremely significant to illuminating their ultimate *moral*, not merely legal, culpability. However, this topic is beyond the scope of this study, which focuses primarily on the industry structures that were sought and maintained by De Beers' leaders to enable their extraction of perpetual rents, and the moral rule violations associated with those intermediate and ultimate goals.

When Nicky Oppenheimer was installed as Chairman of De Beers in 1997, the production sphere possessed more intermediate group characteristics than at any other time since the competitive interregnum that characterised the post-Rhodes pre-Ernest Oppenheimer era. The defection of Rio Tinto and Ashton Mining, Russia's incessant cartel cheating and the ongoing diamond-fuelled civil wars in Angola and Sierra Leone had introduced an unparalleled number of competing interests into the production sphere. Rio Tinto and Ashton Mining wanted to compete, Russia wanted to cheat and the atomistic diamond diggers and smugglers in war-torn Africa wanted to maximise output to maximise income. In 1997 alone, De Beers, in its ongoing capacity as protector of the industry's collective good, stockpiled approximately $US5 billion worth of excess diamonds (Voss 1998:38). This was five times the value of diamonds Harry Oppenheimer had stockpiled during the diamond speculation crisis of the early 1980s (Epstein 1982:266). De Beers' self-appointed role as protector of the industry's collective good had thus become an enormous financial burden on the company by the late 1990s. It is in this context that the emergence of BHP as a new large-scale diamond producer must be understood.

BHP and Canada

Diamond exploration had first commenced in Canada in the 1960s, when Harry Oppenheimer initiated De Beers' foray into North America (see Duval 1996:66–8). Canada in some ways epitomised De Beers' declining status in the diamond industry. By the 1990s, the firm was but one of three major mining companies searching for viable diamond deposits in the state.[157] In 1991, the partnership of mining junior Dia-Met Minerals and mining giant BHP discovered economically viable kimberlite diamond deposits at Point Lake in Lac de Gras—the first diamondiferous kimberlite pipes ever found in Canada.[158] While this deposit was later found to be financially unviable, it nonetheless encouraged the two firms to continue looking for diamonds in Canada (Duval 1996:68). Additional diamondiferous kimberlite pipes discovered by Dia-Met Minerals and BHP eventually became the Ekati diamond mine. BHP owned 51 per cent of Ekati, Dia-Met Minerals owned 29 per cent and geologists Charles E. Fipke and Stewart L. Blusson owned 10 per cent each.

BHP was predicted to become a major diamond producer. The Ekati mine's annual production, when it came online in 1998, was expected to equal some 4.5 million carats, or 6 per cent of the world's total output, with an average carat price of $US87 (Hart 1997). That price implies that the majority of the output was gem grade on the traditional standard, making it substantially higher quality than Argyle's output, but not quite as valuable as the average output controlled by Debswana. BHP's impending appearance in the production sphere was a further major challenge for Nicky Oppenheimer in the very early stages of his Chairmanship of De Beers. Balazik (1997:3) postulated that if De Beers continued to assume the role of protecting the industry's collective good in 1998 (that is, post-Ekati), it would realise considerable losses: 'If the CSO continues its 1997 restraints on diamond supplies to stabilize prices and restore market confidence, its rough diamond sales will fall significantly'. Balazik recognised that De Beers' attempts to control the world's diamond supplies would only be successful if it reduced its own diamond sales to counter the unregulated sale of external diamonds. One mining analyst went so far as to declare that De Beers could be forced to *cease* its own production of diamonds at that time to protect the supply–demand equilibrium that enabled its artificially high (rent-extracting) diamond prices (see Voss 1998:38). In other words, the protection of the single-channel selling mechanism established by Ernest Oppenheimer in the 1930s could have been De Beers' sole responsibility if perpetual rents remained Nicky Oppenheimer's ultimate goal.

[157] De Beers, BHP and Rio Tinto.
[158] BHP (Broken Hill Proprietary) was established in 1885 in Australia. In 2001 it merged with Billiton to become BHP Billiton to form the world's largest diversified resources company.

Balazik's prediction was proven correct. In 1998, as mentioned above, De Beers' profits declined by 39 per cent. At the same time, Argyle's grew by 76 per cent (Treadgold 1999:58). As argued by Olson, the largest member of a privileged or intermediate group will contribute independently to the protection of the collective good until its marginal costs exceed its marginal gains (Olson 1971:25). That De Beers' profits were *declining* in the late 1990s, but not disappearing, suggests that its marginal costs of protecting the suboptimal collective good had not yet exceeded its marginal gains. Nonetheless, as De Beers' profits fell, so did the rationality of its ongoing protection of the collective good through bearing costs independently. However, despite the dramatically changing landscape of the industry, upon assuming the Chairmanship in 1997, Nicky Oppenheimer apparently remained intent on fulfilling his adopted intermediate and ultimate goals, despite paying a hefty price to do so.

In an attempt to disincentivise BHP's potential future autonomy, Nicky Oppenheimer employed implicit negative incentives to counsel all incoming producers against eschewing the cartel. In his 1997 Chairman's report, Oppenheimer (quoted in De Beers 1997) stated:

> The current upheavals offer opportunity for all in the industry to reflect both on the lessons of the past and on whether and how we can shape a future in which all can continue to benefit—from producing countries, many of which are critically dependent on the sound management of this resource, to the cutting centres, retailers and the consumer herself. It is De Beers' hope that recent entrants in the field will recognise the sense of single-channel marketing and will not be tempted to undermine the very factor—predictable and stable prices—which attracted them into the industry in the first place; nor that they will commit the cardinal error of assuming that De Beers will act against its own interests and the interests of its shareholders in a competitive world. The experience of the last few years at the bottom end of the market where three major producers competed for market share illustrates the dangers inherent in that assumption.

Oppenheimer's statement contained three negative incentives aimed at new diamond producers; that is, namely BHP. Firstly, Oppenheimer was warning new producers to consider the potential loss of stable (rent-extracting) prices prior to eschewing the single-channel selling mechanism provided by the CSO. Secondly, Oppenheimer was discouraging external producers from free riding by suggesting that De Beers could not be eternally relied upon to independently protect the industry's collective good. Thirdly, Oppenheimer was encouraging producers to view in a poor light the competition that had emerged in the industry's lower tiers, largely because of Rio Tinto and Ashton Mining electing to eschew the cartel and sell their diamonds based on market demand.

In relation to the first warning, Oppenheimer was lamenting the ‘upheaval’ that he believed the emergence of competition in the diamond industry had caused. As first argued in Chapter Four, De Beers’ leaders stifled competition because of the creative destruction it fosters in industries (Schumpeter 1942:82), and the loss of monopoly rents that consequently result (Olson 1982:59). Oppenheimer’s desire to protect the stable prices afforded by the cartel was motivated by his feared loss of optimised and perpetual rents. In seeking to convince producers to cooperate in the realisation of the intermediate and ultimate goals of his predecessors, Oppenheimer had clearly not yet come to recognise that the centrifugal forces operating in the industry would soon force him to downgrade his ultimate goal to suboptimal rents.

Oppenheimer’s advice to new producers to abstain from free riding was an attempt to counter the sentiment that existed among producers that free riding or cartel cheating was desirable because De Beers would always take measures to counter such potentially destabilising conduct. This study has repeatedly shown that De Beers, as the self-appointed custodian of the diamond industry, had never allowed the self-interested actions of members of the diamond industry to reduce diamond prices. This was a key reason that Russia continuously cheated the cartel. However, Oppenheimer’s intimation that new producers should not take De Beers’ market restabilisation for granted suggests that the firm’s capacity to perform this role was approaching maximisation by 1997; in other words, its marginal costs were close to exceeding its marginal gains. As other producers realised that De Beers’ ability to absorb new supply was becoming increasingly finite, the credibility of its threats declined, with an associated dissipation of De Beers’ ability to engender collective action.

Oppenheimer was also advising new producers that De Beers would not simply let competition emerge in the diamond industry without repercussions. By using the word ‘danger’ to describe the activities witnessed in the lowers tiers of the diamond industry, Oppenheimer was alluding to Ogilvie-Thompson’s ruthless negative incentives against the cartel defectors Rio Tinto and Ashton Mining in 1996, as previously explored in this chapter. Oppenheimer was thus threatening new producers to expect the same punishments if they refused to cooperate with the cartel. Each of Oppenheimer’s three negative incentives was designed to contribute to the fulfilment of one ultimate objective: to reduce the rationality of new producers eschewing the cartel. Nicky Oppenheimer, as the newest Chairman of De Beers, was thus demonstrating his continued allegiance to both the methods and the goals of his De Beers predecessors.

In 1998, the Ekati diamond mine was about to go online. However, despite Nicky Oppenheimer's warnings in 1997, BHP's management was undecided as to whether it would sell its output through the cartel. The President of BHP Diamonds, James R. Rothwell (quoted in Voss 1998:39), declared: 'The market options range from selling to the cartel to selling all independently or somewhere in between'. Rothwell's statement illuminates the significant structural shift that had occurred in the diamond industry by the late 1990s. There were three striking features of this shift. Firstly, as this study has shown, every other major diamond producer had either quickly cooperated with De Beers upon the commencement of their mining operations (Russia and Botswana), or had perceived an inability to completely eschew the cartel (Argyle). BHP was the first major diamond producer in the industry's modern history to identify that it would be possible to remain independent of the cartel from the commencement of its diamond-mining operations. Secondly, Rothwell's elucidation of the varying degrees of potential engagement with the cartel demonstrates that De Beers' had lost the ability to dictate the percentage of diamonds sold through the cartel, indicating how little control De Beers retained over producers by the end of the twentieth century.

The third major change in the diamond industry highlighted by Rothwell's statement is the fact that by the late 1990s large producers no longer automatically viewed cooperating with the cartel as rational. Specifically, large producers did not believe, despite De Beers' sizeable market share, that they could earn more profits by cooperating with the cartel and thus contributing to the protection of the industry's collective good. The suboptimal rents that Nicky Oppenheimer was left pursuing in the wake of Russia's merely partial cooperation with the cartel, and Rio Tinto and Ashton Mining's outright rejection thereof, no doubt lessened the attractiveness to BHP of cooperation with the cartel. That the soundest economic option for producers was not necessarily engagement with the De Beers cartel demonstrated how greatly the diamond industry had changed by the late 1990s.

The suboptimal rents that resulted from Rio Tinto and Ashton Mining's defection from the cartel was not the only impact the firms had on the economic rationality of BHP's cooperation with De Beers. BHP's liberal perspective on its future in the diamond industry may also have been influenced by Rio Tinto and Ashton Mining's post-cartel success, which had demonstrated three previously unknown facts about independent diamond production. Firstly, for the first time in the modern industry's history, large-scale producers could thrive after leaving the cartel. Secondly, producers' fear of De Beers' retaliatory behaviour had less merit than in earlier eras: post-cartel failure was no longer inevitable for 'rogue' diamond producers, in turn affecting De Beers' ability to rationalise otherwise irrational engagement with the cartel via the application of negative incentives. Thirdly, it was possible to build a successful diamond-marketing platform that was more profitable and efficient than the CSO's sales model. Rio Tinto and Ashton Mining's post-cartel success thus effectively undermined the arguments that had influenced their own decision to cooperate with the cartel in the 1980s, as outlined in Chapter Six.

In 1998, BHP established a diamond sales office in Antwerp and retained the diamond trader IDH Diamonds as a consultant (Voss 1998:39). This indicated that the firm's management was keen to market at least a portion of its own diamonds independently for at least a period of time. In 2000, BHP signed an agreement with the De Beers cartel in which it contracted to market 35 per cent of its rough through the CSO. That cooperation was not greater was primarily a product of the antitrust concerns of BHP's management. BHP's pre-existing physical presence in the US meant that cooperation with the cartel, with its cavalier approach to violating the competition laws of sovereign states, and the US's Sherman Antitrust Act in particular, posed a genuine legal problem for the firm (Voss 1998:39). Despite this, BHP's partial cooperation with the cartel was motivated by the same concerns that had plagued CRA and Ashton Mining in their initial foray into diamond mining. Being new to the industry, BHP lacked knowledge in the sphere of diamond marketing and wanted first-hand experience therein. However, as will be explored later in this chapter, this agreement only lasted a few years before BHP elected to sell all of its diamonds independently.

In 1998, De Beers finalised a new agreement with Russia, in which the firm would buy $US550 million of diamonds each year. By this time, De Beers (via the CSO) nominally controlled 70 per cent of the world's diamonds (Voss 1998:38), thus retaining enormous control over the diamond industry. However, as this chapter has shown, since 1985, its dominance had nonetheless steadily declined, and centrifugal forces in the industry were becoming increasingly evident. In October 1997, one month after De Beers' unprecedented cartel agreement with Russia, Gary Ralfe announced that De Beers would no longer be protecting diamond prices in the lowest tiers (see JCK Staff 1998). This was the first time De Beers had ceded complete control of diamond prices since the post-Rhodes pre-Oppenheimer era of the early twentieth century. This compelled some to postulate that the diamond industry would henceforth have a selling channel dedicated to gem grade and a selling channel dedicated to near-gem grade, with De Beers offering no price stability to the latter (Sevdermish et al. 1998). However, the reality was that the old model of concentrating elements of the market under a single entity was outdated. Competition, in all diamond grades, was the inevitable outcome of the declining rationality of cooperation in *any* kind of collective action.

By this time, Nicky Oppenheimer had become so desperate to stem the loss of market control witnessed in the previous years that he began seeking cooperation with diamond producers whose annual outputs were less than 500,000cts (Green 1996:158); comparatively small-scale producers that would have typically received mere *ex-post facto* responses from his De Beers predecessors.[159] However, attempting to gain control over the output of small producers in the wake of large-scale complete or partial cartel defections was akin to fighting a factory fire with a water pistol. De Beers' market power had always resided in its control of the world's largest diamond mines. Smaller producers cooperating with the cartel could do little to ameliorate the loss of this hegemony. Despite claims in the late 1990s that producers would cooperate with De Beers because it was in their best interests to do so (see Green 1996), by the end of the twentieth century, the diamond industry had become more hostile to De Beers' intermediate and ultimate goals that at any other time in the industry's modern history.

Back to Botswana

Once its output was surpassed by that of Russia and Argyle, Botswana became the backbone of De Beers' market control. By the late 1990s, ensuring Botswana's continued cooperation was not just important to the future of the cartel: it was absolutely necessary.

This thesis has already detailed the bureaucratic rent-seeking efforts of Nicky Oppenheimer's successors. It has been demonstrated that De Beers' leaders employed bureaucratic rent

[159] Via the buying up of excess rough from the market.

seeking to advance, protect and hedge the firm's interests. Chapter 6 also briefly referred to the secret millions that De Beers transferred via hidden bank accounts to the BDP from the 1960s to the 1990s, to ensure their support. De Beers' additional bureaucratic rent-seeking efforts in Botswana while Nicky Oppenheimer was Chairman of De Beers will now be documented.

It has been well-established that bureaucratic rent-seeking minorities can distort the development of the economies of nation-states (Murphy et al. 1993, Ades and Di Tella 1995, Lambsdorff 2002). However, it is rare, if not unknown, that bureaucratic rent-seeking multinational corporations go so far as to influence who will govern the countries in which they operate. Chapter Six has shown how De Beers paid for a scandalised President, Ketumile Masire, to remain in power in 1984 after the dire financial situation of his company, GM Five, threatened his tenure. Masire remained an ongoing problem for De Beers. In 1987, during the leadership of Ogilvie-Thompson, the P805,910 that De Beers had originally lent the President's private company GM Five was reduced, at the borrower's request, by P500,000, even though no repayments had ever been made on the original sum. De Beers thus wrote-down almost two-thirds of the loan. De Beers also agreed to new terms in which GM Five was not required to repay the loan for five years, after which time repayments were to be made over a five-year period (Sunday Standard Reporter 2010a). However, by the time two five-year periods had elapsed, GM Five had failed to repay any of the loan.

In 1997, with a federal election in Botswana fast approaching, De Beers secretly retained the services of Professor Lawrence Schlemme from the University of Natal to conduct an investigation into the likelihood of the pro-De Beers BDP winning the 1998 election in Botswana. Schlemme subsequently advised De Beers that the BDP's victory would be more likely if Masire were no longer President. In other words, if Masire remained President, the pro-De Beers BDP, which had been in power since 1965, could be voted out of office, rendering them impotent in the promotion of De Beers' interests. In response, De Beers sought to 'facilitate' Masire's 'transition' out of the presidency. However, Masire's financial troubles remained a problem for the President. Despite De Beers' previous financial assistance (which remained unrepaid), GM Five was again on the brink of financial collapse and could not obtain any more bank loans. Masire refused to leave the presidency while GM Five remained insolvent because he believed that his creditors would be more easily able to pursue him once he was out of office (Sunday Standard Reporter 2010a).

De Beers was desperate to ensure that the BDP remained in power in Botswana. As this study has shown, the decline in market power experienced by De Beers throughout the 1990s was fatal to the intermediate and ultimate goals of Nicky Oppenheimer's predecessors. In his pursuit of suboptimal rents, Botswana remained Nicky Oppenheimer's strongest asset. De Beers could not afford to have a government in power that was not inclined to promote the firm's interests. Thus, De Beers chose to bail out GM Five again, to facilitate Masire's resignation of the presidency. De Beers again used its ghost company in Panama, Clairemont Corporation, to transfer P3,700,000 ($US432,160 by today's rates) to GM Five. This transfer was 'masked' by a fabricated sale of shares between the two entities, in a further effort to obfuscate the intended goal of the funds (Sunday Standard Reporter 2010a).

Masire resigned from the presidency in 1998. This outcome was a *direct consequence* of De Beers' desire to see him leave the role, and of De Beers' decision to give GM Five the money that enabled the firm to repay its debts. Thus, De Beers had effectively bought a President out of power, and by doing so, prevented the people of Botswana—the citizens of a democratic nation-state—from deciding who would lead their country. Three months after Masire resigned from the presidency, he attended a GM Five board meeting in which it was agreed that Clairement Corporation would receive 3,700,000 one pula shares in GM Five ($US434,010 at 2013 exchange rates). As noted by investigative journalists as the Sunday Standard, Outsa Mokone and Spencer Mogapi, this deal was designed to further disguise De Beers' financial bail-out of GM Five (Mokone and Mogapi 2010).

Following the retirement of Masire, with the assistance of Louis Nchindo, Debswana's then-Managing Director, De Beers arranged for Festus Mogae to assume the presidency, with Lt. General Seretse Khama Ian Khama (most commonly known as Ian Khama) retiring from the army to become Mogae's Vice-President (Mokone 2010). Khama was the son of Seretse Khama, Botswana's first President from 1966 to 1980. Seretse Khama was in power when De Beers first discovered viable kimberlite pipes in Botswana, and his government negotiated the first contract with De Beers. The Khama family had thus had a long relationship with De Beers, and De Beers undoubtedly sought out Ian Khama because of this association.

In 1998, as the academic consultant Schlemme had predicted, the BDP won the national election. This win, coupled with the succession plan Nchindo and De Beers had engineered, ensured that a pro-De Beers party remained in power in Botswana.[160] As argued by Buchanan (1980:7–8), if a successful bureaucratic rent seeker loses favour from the person in power, the associated rents are vulnerable. De Beers, by establishing a two-generational succession plan of pro-De Beers men, was engaging in long-term rent protection. In doing so, the firm sought to ensure that Botswana's rich diamond output remained under De Beers' control, thus protecting the market power the state's output afforded De Beers, and eliminating the potential for even more rent-dissipating competition to emerge in the diamond industry.

The unwillingness of Botswana's ministers to promote the state's interests in the operation of Debswana, particularly in relation to domestic beneficiation, was, according to David Magang, the Minister of Mineral Resources and Water Affairs (1994–1997), both palpable and exceptionally harmful to the development of the state's economy (see Magang 2008).[161] Estimating the impact of De Beers' acts of bureaucratic rent seeking on the long-run economic and democratic development of Botswana is beyond the scope of this study. However, this topic is strongly deserving of further research.

Bain & Co. and De Beers' 'Custody' of the Diamond Industry

By the late 1990s, De Beers' assumption of the role of protector of the industry's collective good was increasing untenable because of the marked rise in competition witnessed in the preceding decade, fundamental alterations to the demand curves for white and coloured diamonds, and the rise of substantial competing interests. In 1998, in an unprecedented move, De Beers contracted an external consultancy firm, Bain & Co., to evaluate every aspect of the company and to advise it on future strategy (Bergenstock 2004:4–5). Bain & Co. recommended to De Beers that it should conclude playing its self-appointed role as custodian of the diamond industry; it had become economically irrational for De Beers to continue its protection of the diamond industry's (suboptimal) collective good.

In 2000, as per Bain & Co.'s advice, De Beers ceded its role as independent protector of the industry's collective good. The CSO would no longer manage the industry's supply–demand

[160] Ian Khama was elected President in 2008, and remains in office as of 2013.
[161] David Magang was an elected Minister in Botswana from 1979 to 2002.

equilibrium: a mandate that stretched back to Rhodes. The cessation of this role rendered redundant the structures that had been vital to De Beers' market manipulation. Between 2000 and 2004, De Beers sold off its diamond stockpile, which was the key physical symptom of its historical methods. It also closed down the strategically located buying offices that had swept surplus artisanal diamonds off the market for decades (Bates 2010). De Beers thus dismantled the costly structures that had underpinned the execution of its self-appointed role.

Charles Wyndham (2007), the former head of diamond sorting at the CSO, has argued that the industry that emerged after the CSO surrendered its custodial role resembles the pre-Rhodes era, in which competition reigned in the production sphere. This comparison is imperfect, as the production sphere, while intermediate, had more privileged group characteristics in 2000 than it ever had prior to Rhodes' monopolisation of the Kimberley producers, as the analysis in Chapter Four clearly demonstrates. Nonetheless, Wyndham's argument does demonstrate how De Beers' relinquishment of its self-appointed role was perceived by other members of the diamond industry. Indeed, Bain & Co.'s recommendations embodied an outright rejection of the supply–demand equilibrium that Rhodes had first introduced into De Beers' operational mandate, and that had been embraced and defended by each of his key successors until the beginning of the twenty-first century. The CSO's cessation of this practice meant that diamond supplies would not be artificially constrained by stockpiling. The moral implications of this development will be considered in the moral analysis section of this chapter.

It must be recognised that despite the profundity of Bain & Co.'s advice, the consultancy firm did not recommend a dismantling of the De Beers cartel. Although De Beers was no longer custodian of the diamond industry, it was still the head of a cartel of diamond producers, which included Russia and BHP. Accordingly, Nicky Oppenheimer, as Chairman of De Beers, was still seeking to limit competition in the diamond industry, and thus he still desired rents, albeit suboptimal ones. However, in 2002 BHP announced that it was leaving the cartel.[162] Akin to CRA and Ashton Mining's motivations for joining the cartel in 1984, BHP's initial partial cooperation with De Beers was to enable it to gain much-needed experience in the marketing sphere. By 2002, it had accrued sufficient diamond-marketing experience to leave the cartel. Further, BHP believed it could make greater profits by personally marketing the 35 per cent it had previously sold direct to De Beers (see Bates 2002). Thus, by the early 2000s,

[162] In 2001, BHP had bought out Dia-Met to obtain complete control over the Ekati mine.

even partial cooperation with the cartel was perceived as economically irrational by diamond producers with any independent marketing ability. Owing to BHP's decision, the cartel's only large-scale producers were De Beers (including Debswana) and Russia. More competition existed in the diamond industry at this time than at any other period in its history. However, as they were large members of an intermediate group, the collusion between Russia and De Beers still had a significant impact on the competitiveness of the diamond industry.

As this study has shown, De Beers' leaders were no strangers to the discretionary violation of the laws of sovereign nations. After a stalemate of 10 years, in 2004 De Beers reached a plea deal with the Department of Justice in which it was fined $US10 million for price fixing charges, first laid against the firm in 1994 (see United States of America v. General Electric et al. 2004). In an effort to finalise all of the civil suits brought against De Beers by diamond consumers over the preceding decade, arising from the firm's anticompetitive practices and inflated diamond prices, De Beers also agreed to an amalgamated civil settlement, called the Sullivan Agreement, which was finalised in 2006 (see Sullivan v. DB Investments Inc. 2011). The damages De Beers agreed to pay all parties totalled $US300 million (which claimants eventually received in 2013). However, the Department of Justice did not demand that De Beers cease cooperating with Russia, which meant that Nicky Oppenheimer's intermediate and ultimate goals remained unmolested by this legal action.

The European Commission and the Demise of the De Beers Cartel

In the wake of De Beers' launch of its new diamond-marketing platform, Supplier of Choice (SoC) (see Bergenstock 2004) in 2002, the European Commission (EC) commenced an investigation into De Beers' market conduct that would eventually force Nicky Oppenheimer to completely dismantle the cartel. In January 2003, the EC issued statements of objection to both De Beers and Russia (Alrosa) on account of their violations of Article 82 of the EC Treaty, which prevents firms with a dominant market share from abusing that position to extract rents (European Commission 2007).[163] Three years of negotiations between the parties ensued. Being large members of an oligopolised group, the collusion between De Beers and Russia had a significant impact on the amount of competition that existed in the diamond industry, which aided Nicky Oppenheimer's desired extraction of suboptimal rents. De Beers

[163] From December 2009, Article 82 was renamed Article 102 of the Treaty on the Functioning of the European Union (TFEU).

initial offer to reduce its purchases of Russia's rough by 50 per cent reflect Oppenheimer's unwillingness to give up this ultimate goal.

When the EC market-tested De Beers' offer, the advice it received from the majority of the 21 third-party respondents was that the only way true competition could be restored to the diamond industry was if the cartel agreement between De Beers and Alrosa was entirely eradicated. Unlike in 1997, Nicky Oppenheimer could not simply adapt his intermediate and ultimate goals in response to hostility towards them in his environment. In November 2005, De Beers made another offer to the EC in which it committed to reduce its purchases from Russia until 2008, and to cease buying diamonds from the state entirely from 2009 (see Mische and Višnar 2010). In February 2006, the EC decreed that De Beers' commitment to cease its cooperation with Russia from 2009 was binding (European Commission 2006b).[164]

The EC's Competition Commissioner (European Commission 2006a), Neelie Kroes, declared at the time of the EC's decision:

> For the first time in the history of the diamond market there is an opportunity for genuine competition. De Beers' long-running primacy can now effectively be challenged by its biggest competitor, Alrosa. The Commission's decision frees up a viable alternative source for supply of rough diamonds, which will ultimately benefit consumers.

Kroes' statement is only partially accurate. As this chapter has shown, genuine competition had been witnessed in the diamond industry from 1996, and had been a key source of De Beers' declining market power from that time. Nonetheless, Kroes was correct in recognising the significance of the EC's decision to consumers. De Beers and Russia's inability to cooperate would inject a level of competition into the diamond industry that had not existed since prior to Rhodes' amalgamation of the De Beers and Kimberley mines in 1888. The EC's decision was responsible for restoring to diamond consumers, both within the EU and without, an enormous degree of the consumer sovereignty they had been deprived of under the De Beers cartel.

[164] Alrosa, for its part, remained intent on cooperating with De Beers. In June 2006, Alrosa appealed the EC's judgment, and in 2007, the Grand Chamber (GC) of the European Court of Justice (ECJ) found in Alrosa's favour and annulled the EC's decision. However, the grounds on which the GC had annulled the EC's decision were later found on appeal to have been incorrect, and the EC's initial judgment regarding the cessation of cooperation between De Beers and Alrosa was reinstated.

The Ethical Evolution of the Modern Diamond Industry

The following Gertian moral analysis will consider the impact of both intra- and extra-industry developments on the ethical evolution of the diamond industry after 1985. This moral analysis differs from those that have come before. Chapters Four, Five and Six of this study made informed moral judgements about the ethical evolution of the diamond industry based on the business practices employed by De Beers' leaders throughout the industry's history. As argued in Chapter One, for the majority of its existence, De Beers effectively *was* the diamond industry (Voss 1998:36), due to the near-absolute control it enjoyed over the world's diamond supplies, and thus over other members of the industry. This near-absolute control made the scope of the moral judgements of previous chapters appropriate.

However, as this chapter has demonstrated, by the late 1990s significant competition had emerged in the diamond industry. De Beers lost its former hegemonic position. Empowered actors with competing interests introduced new intermediate and ultimate goals into the industry. This chapter has also shown that as such changes were taking place, De Beers' leaders fought against them in an effort to maintain the structures that enabled De Beers' extraction of rents (both optimal and suboptimal). However, these changes contributed to the industry's positive moral evolution, as the following analysis will illustrate. Therefore, a pronounced moral disjuncture existed between De Beers and the forces promoting change within the diamond industry: while a portion of the diamond industry was becoming more moral, De Beers remained rooted in immorality. Therefore, it would be wrong to examine the morality of De Beers' leaders' conduct during this time and use it to judge the entire diamond industry.

For that reason, the morality of Ogilvie-Thompson and Nicky Oppenheimer's time in power will first be examined to determine how their commitment to the intermediate and ultimate goals of their predecessors ensured the perpetuation of the associated moral rule violations. That is, their violations of the moral rules will be shown to be *the same kind* of violations that their predecessors committed. De Beers' loss of market power will then be considered to determine what De Beers' declining hegemony meant for the ethical evolution of the diamond industry. The other key intra- and extra-industry developments that occurred in the diamond industry during this time will then be examined to determine their impact on the ethical evolution of the diamond industry.

Ogilvie-Thompson and Nicky Oppenheimer and Moral Rule Violations

This chapter has shown that Ogilvie-Thompson and Nicky Oppenheimer enthusiastically adopted the intermediate and ultimate goals of their predecessors. They both sought to stifle the emergence of competition in the diamond industry to sustain and defend optimised rents in perpetuity—a goal that Nicky Oppenheimer was eventually forced to downgrade to suboptimal rents. The methods via which these men sought to achieve these goals were very similar to the *modus operandis* of their predecessors. They sought to deter and prevent diamond producers (both current and future) from successfully operating independently, and employed both positive and negative incentives to do so, as witnessed in relation to Russia, Rio Tinto and Ashton Mining, and BHP. As Chairman of the CSO, Nicky Oppenheimer used negative incentives to deter clients from providing competitors with non-cartel avenues for trade. In limiting competition in the diamond industry, Ogilvie-Thompson and Nicky Oppenheimer sought to prevent consumers from exercising their consumer sovereignty. The resultant constraint experienced by consumers, and current and future producers and marketers violated the moral rules 'Do not deprive of freedom' and 'Do not deprive of pleasure'. Ogilvie-Thompson and Nicky Oppenheimer's anticompetitive conduct ensured De Beers' continuous extraction of rents from overpaying diamond consumers, which meant that they, like their predecessors, violated the moral rule 'Do not cheat' during their respective times in power.

The pursuit and realisation of these goals, as illustrated in Chapters Four, Five and Six, violates the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat' in ways that impartial, rational moral agents would not publicly allow. The moral analyses within Chapters Five and Six demonstrated how the two-step procedure within Gert's (2005:225–6) moral system is used to classify violations that are fundamentally of *the same kind* as those that have been previously analysed. Ogilvie-Thompson and Nicky Oppenheimer's violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat' can be classified as the same kinds of violations as those of their predecessors because the moral dimensions of this market conduct were the same as for their predecessors.

Ogilvie-Thompson and Nicky Oppenheimer's adoption of the intermediate and ultimate goals of their predecessors meant that the objectives that drove their violations of the associated moral rules were identical to those of their predecessors. Further, this chapter has shown that the methods via which these rules were violated were essentially the same. Ergo, the morally relevant features of Ogilvie-Thompson and Nicky Oppenheimer's violations are fundamentally no different to those of their predecessors. For that reason, each answer to the morally decisive question would also be the same. Consequently, rational, impartial moral agents would not publicly allow Ogilvie-Thompson and Nicky Oppenheimer's violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat', nor would they make an exception for the two men. Thus, Ogilvie-Thompson and Nicky Oppenheimer's violations of the moral rules would be classified as unjustified, and thus immoral.

Chapter Five demonstrated how Ernest Oppenheimer introduced violations of the moral rules 'Do not Deceive' and 'Obey the Law' into De Beers' operations. These violations were products of Ernest Oppenheimer's deceptive advertising campaigns and his discretionary violations of the US Sherman Antitrust Act. Chapter Six argued that Harry Oppenheimer adopted these violations by extending De Beers' diamond-marketing campaign to new markets, and attempting to gain monopoly control over the US's industrial diamond sector. In relation to Ernest Oppenheimer's *initiated* violations of the moral rules 'Do not deceive' and 'Obey the law', during the reigns of Ogilvie-Thompson and Nicky Oppenheimer, De Beers continued to promote the diamond myth of value, scarcity and tradition. Therefore, as Chairmen of De Beers, it can be said that Ogilvie-Thompson and Nicky Oppenheimer also violated the associated moral rule 'Do not deceive'. In addition, this chapter has shown how De Beers was charged in 1994 with a conspiracy to fix prices in the industrial diamond sector in the US from 1991 to 1992. This charge demonstrates that, like Ernest and Harry Oppenheimer, Ogilvie-Thompson, as Chairman of De Beers, wilfully violated the law of a sovereign nation, thus violating the moral rule 'Obey the law'.

The discretionary nature of Nicky Oppenheimer's violation of this moral rule is perhaps best evidenced by a speech he gave in 1999 at the Harvard Business School, in which he mocked the US's Sherman Antitrust Act and openly boasted about De Beers' violations of this law. Oppenheimer (1999) stated in this speech:

> I assume that you, as graduates of the Harvard Business School, have worshipped at the Temple of this religion [the Sherman Antitrust Act] and are no doubt fervent converts. Therefore in your eyes I must be the devil incarnate, the anti-Christ. For I am Chairman of De Beers, a Company that likes to think of itself as the world's best known and longest running monopoly. We set out, as a matter of policy to break the commandments of Mr. Sherman. We make no pretence that we are not seeking to manage the diamond market, to control supply, to manage prices and to act collusively with our partners in the business.

This speech clearly demonstrates that Nicky Oppenheimer deliberately, and flagrantly, violated the law of a sovereign nation as Chairman of De Beers, thus violating the moral rule 'Obey the law'.

Ogilvie-Thompson and Nicky Oppenheimer's violations of the moral rules 'Do not deceive' and 'Obey the law' were *the same kind* of violations as committed by their predecessors, which Chapters Five and Six have shown would not be publicly allowed by rational, impartial moral agents. These men's violations shared the same moral dimensions, and thus the same morally relevant features, as those of their predecessors; the objectives that drove the violations of the associated moral rules were the same, and the methods via which they were violated were indistinguishable from the methods of part Chairmen of De Beers. In advertising diamonds as rare, valuable and traditional, the aim was to misinform consumers about diamonds in an effort to boost De Beers' market power and enable the extraction of rents. Ogilvie-Thompson and Nicky Oppenheimer's violations of the moral rule 'Obey the law' were, as for their predecessors, a product of the intentional infringement of a just law, the Sherman Antitrust Act, because of De Beers' anticompetitive conduct in the diamond industry. Consequently, rational, impartial moral agents would not publicly allow Ogilvie-Thompson and Nicky Oppenheimer's violations of the moral rules 'Do not deceive' and 'Obey the law', nor would they make an exception for the two men. Thus, their violations of these moral rules would be classified as unjustified, and thus immoral.

De Beers' Declining Market Power: Intra- and Extra-Industry Opposition to De Beers' Leaders' Goals

This study has shown that in the first 100 years or so of the diamond industry's modern history, each successive major Chairman of De Beers obtained a comparatively greater level of control over the diamond industry than had his predecessor. As argued in Chapter Six, this ever-increasing control, coupled with the moral rule violations that were vital to the realisation of De Beers' leaders' goals, caused the modern diamond industry to develop consistently in the direction of causing greater harm to society. However, this chapter has shown that, despite Ogilvie-Thompson and Nicky Oppenheimer's best efforts, De Beers' market power declined markedly after 1985, reaching 70 per cent *prima facie* market control by the late 1990s, down from 85 per cent to 90 per cent for most of the twentieth century. A degree of competition had emerged in the diamond industry that had not existed since the post-Rhodes, pre-Oppenheimer era.

De Beers' near-absolute market control was both a *product* of multiple moral rule violations and a *source* of multiple moral rule violations. This study has shown that the attainment, protection and existence of the De Beers monopoly and cartel—De Beers' leaders' intermediate goals—caused violations of the moral rules 'Do not deprive of freedom' and 'Do not deprive of pleasure'. De Beers' leaders' resultant ability to restrict diamond supplies artificially and concurrently inflate diamond prices provided them with a source of rents that were essentially perpetual while soever such structures could be maintained. This resulted in violations of the moral rule 'Do not cheat'.

However, the competition that emerged in the diamond industry during the reigns of Ogilvie-Thompson and Nicky Oppenheimer fractured De Beers' market control and introduced a notable degree of competition into the industry. This had two effects on the ethical evolution of the diamond industry. Firstly, it reduced the number of actors who were dependent on De Beers for their diamonds, in turn reducing the amount of aggregate harm experienced because of De Beers' leaders' violations of the relevant moral rules. Secondly, De Beers' declining market power limited its leaders' capacity to control the actions of other members of the diamond industry via the explicit or implicit application of selective incentives. This also reduced the number of actors who were negatively impacted by Ogilvie-Thompson and Nicky Oppenheimer's violations of the associated moral rules. Therefore, it can be argued that the two men indirectly contributed to the diamond industry's positive moral evolution by failing to maintain the market control they had inherited from their predecessors.

However, this loss of market control was not solely organic. De Beers' decision to offer no price support to the lower tiers of the diamond industry from 1997 onwards, and its renunciation of its self-appointed role as custodian of the diamond industry in 2000, further contributed to the ethical evolution of the industry. The result was a lessening, if not an eradication, of the amount of artificial constraint experienced by members of the supply chain in the diamond market, including consumers. This would have again reduced the number of moral agents who were affected by Nicky Oppenheimer's violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat'.

This chapter has shown that in 1996 Rio Tinto and Ashton Mining became the first diamond producers in the modern diamond industry's history to successfully eschew the cartel to operate independently. In 2002, BHP followed suit. Rio Tinto, Ashton Mining and BHP, by embracing competition above collusion and profits above rents, rejected both the intermediate and ultimate goals of De Beers, and thus the associated moral rule violations that De Beers' successive leaders had uniformly endorsed, both explicitly and implicitly. The resultant competition in the diamond industry not only returned to consumers a degree of sovereignty they had been deprived of by De Beers' leadership, but also introduced competitive pricing into the diamond market as a product of the firms' rejection of the unjust marketing model that had given De Beers so much of its market power. These actions in effect liberated consumers from the full force of De Beers' leaders' violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat'. However, it must be noted that it would be wrong to attribute a moral imperative to Rio Tinto, Ashton Mining and BHP's defection from the cartel, or to their new marketing models. As this chapter has shown, these firms' defections were primarily economically motivated. The pursuit of competition and competitive profits introduced into the diamond industry new intermediate and ultimate goals, which would likely have been dropped if they had been unsuccessful. Thus, positive moral change in the industry was in part brought about unintentionally by producers acting in line with their own self-interests.

The EC's efforts from 2003 to halt De Beers' cooperation with Russia (Alrosa) marked the first time that the *existence* of the De Beers cartel had been challenged by a legal entity. The EC's refusal to allow the De Beers cartel, in any configuration or to any degree, to continue to operate in the European Union effectively forced Nicky Oppenheimer to renounce completely his intermediate and ultimate goals, which until then he had remained intent on pursuing. This eventually caused the demise of the cartel in 2009. By preventing the perpetuation of the De Beers cartel, in which three of the world's largest diamond producers cooperated to control supply and fix prices, the EC ensured that the molestation of consumer sovereignty that had occurred because of the cartel's existence was no longer possible. The EC's actions also ensured that other competitors within the diamond industry were no longer constrained because of the cartel's anticompetitive conduct. This significantly reduced the number of moral agents who were affected by the associated violations of the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat'. It also brought an end to the associated violations of the moral rule 'Obey the law', by aligning the firm with competition laws related to collusion.

The EC had a profound impact on the ethical evolution of the diamond industry for two key reasons. Firstly, it significantly reduced the amount of harm experienced in society because of Nicky Oppenheimer's intermediate and ultimate goals, and the methods via which he pursued them. Secondly, the EC passed what was effectively the first legal mandate that collusion in the diamond industry would no longer be tolerated. A competitive industry, as this study has shown, does not rely upon the moral rule violation that were so central to De Beers' anticompetitive aims and market conduct. The EC's actions thus prevented any future return to the immoral status quo that had been established, cultivated and protected by De Beers' leaders for much of the modern diamond industry's history.

Conclusion

This chapter has used the first two arrows of this study's tri-tiered theoretical framework, the theory of rent seeking and the logic of collective action, to examine the reasons behind the diamond industry's structural changes in the post-1985 era. It has used the third arrow, the moral systems theory, to examine the concurrent moral evolution that occurred in the industry during this time. This analysis has shown that both Julian Ogilvie-Thompson and Nicky Oppenheimer, during their respective Chairmanships of De Beers, adopted the intermediate and ultimate goals of their predecessors and worked diligently to achieve them. Ogilvie-Thompson sought to protect De Beers' market control during one of the most tumultuous times in the diamond industry's history to preserve his adopted ultimate goal of perpetual rent extraction. He employed bureaucratic rent seeking and other positive incentives to ensure Botswana's ongoing commitment to the cartel; established *ex-post facto* mechanisms to mop up the fringe diamonds emanating from war-torn Africa; used delicacy and positive incentives to manage Russia's incessant cartel cheating; and employed ruthless negative incentives to attempt to force Argyle's cartel defectors back into the De Beers fold. However, despite his commitment to the De Beers mandate, Ogilvie-Thompson was unable to prevent the loss of De Beers' market power that occurred during this time.

De Beers' declining market share gradually lessened its leaders' ability to apply selective incentives to encourage and compel cooperation in the increasingly competitive production sphere. When Nicky Oppenheimer became Chairman in 1997, he too remained intent on pursuing the ultimate goal of perpetual rents. However, Russia's partial independence from the cartel finally rendered this goal unachievable and forced Oppenheimer to accept a new intermediate goal—an abbreviated cartel, and thus suboptimal rents, moving forward. The permanency of Rio Tinto and Ashton Mining's defection from the cartel demonstrated the declining rationality of producers' commitment to collective action in the diamond industry. Moreover, the firms' competing intermediate and ultimate goals challenged the ubiquity of the cartel at all points of the supply chain, as well as the manner in which diamonds were sold at the wholesale and retail levels. The use of demand-driven diamond sales techniques enhanced both consumer sovereignty and transparency in the diamond market, and limited the capacity for rent extraction. In the face of this competition, Botswana became integral to the cartel's survival; De Beers thus oversaw a succession plan to keep the pro-De Beers BDP in power, in turn protecting De Beers' dominant firm status. However, the cartel continued to decline, until the EC's intervention forced a reluctant Oppenheimer to cease cooperating with Russia by 2009.

By adopting the intermediate and ultimate goals of their predecessors, Ogilvie-Thompson and Nicky Oppenheimer also adopted the moral rule violations that were vital to their realisation. In the past, the perpetuation of these goals (and associated violations) had been sufficient to ensure the diamond industry's downward sloping moral trajectory. However, with the emergence of notable competition in the diamond industry, and the outright rejection of De Beers' leaders' intermediate and ultimate goals by new firms, the associated violations affected fewer people. The diamond industry's ethical evolution was thus enabled by De Beers' declining market power. This evolution was further enhanced by each defection from the cartel, and renunciation of anticompetitive conduct. The most profound impact on the ethical evolution of the modern diamond industry came with the EC's intervention: by effectively prohibiting a cartel of De Beers' magnitude from ever again existing in the diamond industry, the EC ensured that Rhodes' moral template, which had been perpetuated and degenerated by his key successors, would never again be revived therein.

Chapter 8: Conclusion

Introduction

This study has applied a tripartite ‘three-arrow’ theoretical framework to the structural development and concurrent ethical evolution of the diamond industry from 1869 to the time of writing. In doing so, two principal questions have been answered: what were the origins of the modern diamond industry’s poor moral status, and how and why has that status evolved throughout the industry’s history? These questions were constructed to address the scarcity of research into how the diamond industry came to possess the corrupt moral character for which it is infamous. This gap in the literature is significant. The limited public knowledge of this aspect of the diamond industry’s history reduces the extent to which its members, and society more generally, can use lessons from the past to determine and inform the most desirable future trajectory for the industry. Such knowledge is also vital to illuminating why a future reinstatement of the business practices of the past is undesirable both for members of the diamond industry and for greater society.

This chapter commences with an overview of the goals of this thesis and the bespoke tri-tiered theoretical framework constructed to realise these goals. This is followed by a review of the major findings derived from the application of this framework to the industry’s history, including the motives that determined the ultimate goal that would be pursued by De Beers’ leaders, and the challenge-response mechanisms that comprised their corresponding intermediate goals. Next, the findings of this study regarding the moral dimensions of the particular goals and business practices pursued and employed by successive leaders of De Beers, and their significance to the diamond industry’s moral status and ethical evolution, will be explored. The implications of this history for the industry’s future moral trajectory will then be drawn out, prior to an overview of the policy recommendations that arise from the findings of this study. Finally, the limitations of this study and the potential for further research into the ethics of the diamond industry, and De Beers’ impact on its economic development, will be considered.

The Goals, the Method and the Synthesized Findings

It was argued in Chapter One that, to understand the origins of the modern diamond industry's moral status and subsequent ethical evolution, a critical examination was required of how and why the Chairmen of De Beers—men who dominated the modern diamond industry virtually from inception—sought, achieved and maintained the firm's extensive market control for almost a century. This, in turn, demanded an analysis of over 130 years of the industry's history, which was undertaken in Chapters Four through Seven. Each of these chapters was devoted to a single major epoch in the history of the diamond industry, which, given the authority enjoyed by De Beers' Chairmen over the industry, was defined by the reign of each key Chairman of De Beers. Chapters Four through Six, respectively, examined the reigns of Cecil Rhodes, Ernest Oppenheimer and his son Harry Oppenheimer. Chapter Seven encompassed the Chairmanships of Julian Ogilvie-Thompson and Nicky Oppenheimer.

Each epoch was considered through the three-arrow theoretical framework outlined in Chapters Two and Three. The first and second arrows were Gordon Tullock's theory of rent seeking (1967) and Mancur Olson's logic of collective action (1971). The third arrow was Bernard Gert's moral systems theory (2005). The theory of rent seeking illuminated the motives driving the pursuit of rents, and explained how far actors might rationally go to attain them. The logic of collective action identified the industry characteristics that increase the likelihood for collusion to succeed in industry groups, or alternatively those attributes that can render collusion near impossible or more prone to failure. The theory of rent seeking and the logic of collective action were used to investigate the nature of the ultimate goal pursued by De Beers' successive leaders—characterised as optimised rents extracted in perpetuity—and the intermediate objectives that this ultimate goal demanded. This ultimate goal was only achievable through the attainment and maintenance of pervasive controls over the industry's supply side, later extending into the demand side.

Following each detailed overview of a given epoch, the moral system was employed to determine the key moral dimensions of the intermediate and ultimate goals sought by De Beers' leaders, the methods they adopted to achieve them and the fundamental (un)justifiability of their associated violations of the moral rules. The aim was to determine how and why respective Chairmen of De Beers either initiated or adopted and maintained the goals and related business practices that defined the industry's operation for more than a century, and how the moral dimensions of their discretionary actions determined the industry's moral status and ultimate moral trajectory.

Chapter Four addressed the current gap in the literature regarding the origins of the diamond industry's poor moral status by demonstrating that they lie in the intermediate and ultimate goals introduced into De Beers' operations by Cecil Rhodes in the 1880s. Rhodes desired absolute control over the world's diamond output to restrict supplies artificially and thereby raise and sustain diamond prices above their competitive level. It was documented how Rhodes ruthlessly sought monopoly control over existing and potential mine output alongside anticompetitive downstream distribution relationships. These intermediate goals were chosen by Rhodes to enable the realisation of his ultimate goal, the extraction of perpetual rents, in an industry that was steadily accruing privileged characteristics. Owing to Rhodes' use of both positive and negative incentives, diamond producers that had previously been in competition with De Beers progressively sold their operations to Rhodes.

Although Rhodes secured effective monopoly control by the mid-1890s, the self-interest that remained in the competitive, intermediate diamond-marketing sphere was a threat to his industry control. He took his anticompetitive ethos downstream, establishing the industry's first cartel agreement in 1889 with the diamond-marketing Syndicate. Concurrently, Rhodes pursued egregious bureaucratic rent seeking, rent protection and rent hedging through his position in the Cape Colony Parliament, including a stint as Prime Minister. The success of the corporation that Rhodes built on these structures and techniques demonstrated not only the rewards that can accrue to unfettered monopolists, it also established a moral template for future generations of diamond industry leaders, whereby all means were considered legitimate in the pursuit of their common ultimate goal of perpetual rents. The actions of future generations of diamond industry leaders show how influential the basic Rhodes template was. While future generations had to tailor their methods to the conditions prevailing in their respective epochs, their reigns can be usefully considered as graduated deviations from the themes embodied in the moral template installed by Rhodes.

The influential role played by Rhodes' moral template conveys a great deal of power on the Gertian analysis of Rhodes' goals, and the methods by which he achieved them, in establishing the overall findings of this study. This study has thus also made a significant contribution to the field of moral philosophy by demonstrating the efficacy and practicality of the Gertian framework in the isolation and assessment of moral concerns in the business sphere. It was ascertained in Chapter Four that Rhodes violated the moral rules 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat', with the first two violations arising from his pursuit and establishment of De Beers' monopoly control, and the third from his successful extraction of perpetual rents. An application of the two-step procedure to these violations determined that rational, impartial moral agents would not publicly allow them, and thus they were classified as 'unjustified' and immoral. The near-absolute control Rhodes' enjoyed over the diamond industry during his time in power meant that virtually all actors in the diamond supply chain were vulnerable to his unjustified violations. Rhodes was thus responsible for setting De Beers, and the greater diamond industry, on an immoral course in the absolute sense—its first modern moral nadir.

Chapter Five demonstrated that Ernest Oppenheimer, in his leadership of De Beers from 1929 to 1957, was successful at overcoming the competition that had emerged in the then-intermediate production and marketing spheres after Rhodes' death in 1902. He re-introduced into De Beers' operations the spirit of Rhodes' moral template, adopting intermediate goals that sought to minimise competition in the diamond industry. The conditions he faced made Rhodes' intermediate goal of monopoly control of output unfeasible, so he adapted this goal to pursue a global supply cartel. He also went beyond Rhodes in terms of downstream engagement, adopting a strategy of vertical integration that gave De Beers a dominant presence in distribution to complement its supply-side power.

Like Rhodes, Ernest Oppenheimer's intermediate goals were designed to afford De Beers complete control over the world's diamond supplies, as was required for the realisation of their common ultimate goal of the extraction of optimised rents in perpetuity. In aggressively pursuing and realising these goals, Ernest Oppenheimer embraced the rejection of moral constraint that Rhodes had shown was vital to the achievement of his goals. He thus violated the same moral rules as Rhodes (that is, 'Do not deprive of freedom', 'Do not deprive of pleasure' and 'Do not cheat'), in the same fundamental way. Ergo, rational, impartial moral agents would not publicly allow Ernest Oppenheimer's violations of these moral rules, and would classify them as 'unjustified' and thus immoral. Ernest Oppenheimer's emulation of his pioneering predecessor thus gave Rhodes' goals, and the moral rule violations that were vital to their realisation, perpetuity in the modern diamond industry. As argued in Chapter One, the **perpetuity** of the ultimate goal being pursued by De Beers' leaders demanded **perpetual** market distortions, **perpetual** engagement in the supplementary methods that the ultimate goal demanded, and thus **perpetual** violations of moral rules (Kyngdon-McKay in press). For as long as De Beers' leaders pursued and achieved the ultimate goal introduced by Rhodes, the diamond industry would be set on a perpetually immoral trajectory.

Ernest Oppenheimer did not, however, merely refasten De Beers at Rhodes' moral nadir; he deepened and broadened the immorality of De Beers' operations. In relative terms, the industry thus exhibited a higher degree of immorality at the conclusion of the administration of Ernest Oppenheimer than it did upon Rhodes' death in 1902. Simply put, Ernest Oppenheimer's adaptations of the Rhodes template contributed greater aggregate harm than did Rhodes' original violations. Not only did he augment and amplify Rhodes' violations by increasing the level of market control enjoyed by De Beers in an expanding market, he also raised De Beers' rent-extracting capability by steepening the demand curve for gem-grade diamonds through the dissemination of the diamond myth. The combined import of these actions increased the number of entities that were negatively affected by the firm's anticompetitive conduct. Further, a Gertian analysis of the deceptive diamond advertising campaign Ernest Oppenheimer instigated and his flagrant violations of the United States' competition law showed that he *initiated* violations of the moral rules 'Do not deceive' and 'Obey the law' in De Beers' operations. In applying the moral system's two-step procedure, it was shown that rational, impartial moral agents would not publicly allow these violations, and thus they were classified as immoral. The combined augmentation and initiation of moral rule violations meant that during Ernest Oppenheimer's leadership of De Beers, the firm, and thus the greater diamond industry, experienced a moral decline. These important findings filled further gaps in the literature by demonstrating how the modern diamond industry's immoral status was both perpetuated and enhanced by leaders of De Beers throughout much of the industry's history.

Chapter Six examined the leadership of Ernest Oppenheimer's successor and son, Harry Oppenheimer, which extended from 1957 to 1984. The challenges faced by Harry Oppenheimer as Chairman of De Beers were different to those of Rhodes and his father. Most obviously, Harry Oppenheimer had inherited a successfully functioning cartel. In adopting the intermediate and ultimate goals of his predecessors, Harry Oppenheimer needed to ensure that the omnipresent centrifugal forces of self-interest did not destroy De Beers' coordinated collective action, and thus its perpetual rents. The emergence of rich large-scale diamond producers forced Harry Oppenheimer to rely on positive incentives to engender their engagement with the cartel. De Beers' dominant firm status remained, but its market share, and thus its capacity to dictate to the industry with impunity, had declined. In seeking to ameliorate the loss of market control caused by the emergence of large-scale producers, Oppenheimer increased De Beers' downstream market control. This augmentation of his father's vertical integration strategy both reduced the number of potential weak hands in the supply chain, and increased the diamond industry's dependence on De Beers to previously unseen levels.

Harry Oppenheimer had inherited the adapted Rhodes-based moral template of his father. In adopting the intermediate and ultimate goals of his predecessors, he also embraced the moral rule violations that were central to their pursuit, thereby ensuring the violations' perpetuation. His moves to increase the degree of vertical integration made more members of the diamond supply chain vulnerable to these violations. Moreover, by expanding De Beers' deceptive diamond advertising campaigns to new markets and seeking to monopolise the industrial diamond sector in the US, he increased the number of people exposed to the moral rule violations inherent in these practices. Harry Oppenheimer thus caused a further ethical decline of the diamond industry, thereby creating a new moral nadir.

In Chapter Seven this study successfully illustrated how and why the moral decline the diamond industry had experienced since the commencement of Ernest Oppenheimer's reign was halted in the last quarter of the twentieth century by forces external to both De Beers and the greater diamond industry. Ogilvie-Thompson became Chairman of De Beers in 1984, to be followed by Nicky Oppenheimer in 1997. These two leaders adopted the intermediate and ultimate goals of their predecessors, and thus the moral template that Rhodes had initiated in the diamond industry. However, their ability to contain the centrifugal forces that threatened collective action in the production sphere were increasingly compromised from the early 1990s onwards. The competing interests that existed in the production sphere from this time, namely Russia's cartel cheating, Australia's cartel defection and the short run income maximisation of the latent, atomised diggers in war-torn Angola and Sierra Leone, meant that De Beers' market control steadily decreased for the first time since the 1920s.

First Ogilvie-Thompson and then Nicky Oppenheimer fought against the increase in competition in an effort to fulfil their adopted intermediate and ultimate goals. Like their predecessors, they sought to ensure the perpetuation of the unjustified moral rule violations associated therewith. However, as De Beers' leaders' capacity to apply incentives to encourage or compel competition decreased, alongside their ability to provide an optimised collective good, fewer producers saw cooperation with the cartel as their most advantageous option. The permanent defection of Rio Tinto and Ashton Mining from the cartel introduced into the diamond industry the ultimate goal of competitive profits, which directly challenged the rent-seeking orthodoxy promoted by De Beers. With a further challenge arising in 1998 with Russia's debt crisis, by which time Argyle's impressive profitability had validated its owners' cartel defection, De Beers' edifice was crumbling. Simultaneously, De Beers' self-appointed role as protector of the collective good was proving a significant financial burden for the firm. The result was that the competitive approach became recognised as more lucrative, and thus more rational, in turn releasing powerful centrifugal forces in the diamond industry.

The emergence of significant competition in the diamond industry, coupled with the introduction of new goals by major players that did not require the violation of moral rules, meant that fewer members of the diamond supply chain were vulnerable to the moral rule violations perpetrated by De Beers' leaders. The decline in affected moral agents in turn reduced the amount of harm visited upon society. This period witnessed the first positive (albeit partial) reversal of the diamond industry's moral degeneration, setting the industry on a path of positive ethical evolution.

To account for this shift towards competition, Nicky Oppenheimer was forced to recalibrate his adopted intermediate and ultimate goals, to seek unoptimised collective action and suboptimal rents moving forward. Nicky Oppenheimer thus became the first Chairman of De Beers since before his grandfather's reign to institutionalise a decline in the firm's market power. In 1998, it was recognised by the consultancy firm Bain & Co. that De Beers' self-appointed role as protector of the industry's collective good had become untenable. The marginal costs of De Beers maintaining this role had become too great to bear profitably, and the firm formally ceased its custodial role in 2000. De Beers' formal loss of market control again reduced the constraint on competition in the diamond industry, further enabling its positive ethical evolution.

Despite Bain & Co.'s decisive acknowledgement of the impracticality of pursuing perpetual rents in an increasingly competitive oligopolised production sphere, Nicky Oppenheimer remained intent on pursuing suboptimal rents as he worked to maintain an abbreviated De Beers cartel into the twenty-first century. Thus, while the emergence of competing interests in the diamond industry's production sphere had reduced De Beers' market power (and the associated harms inflicted on society), Nicky Oppenheimer's ongoing resolve to extract rents meant that the termination of the cartel required external intervention. This intervention came from the EC in the shape of formal objections to the cartel's anticompetitive conduct and the harms consequently experienced by consumers. The EC's refusal to allow a truncated cartel to continue to operate in the diamond industry, despite De Beers' pleas, eventually forced Nicky Oppenheimer to disband the cartel in 2009 and cease his pursuit of collective action. The production sphere of the diamond industry thus became more competitive than it had been for over a century, further enabling the industry's positive ethical evolution.

The Moral Future of the Diamond Industry and Associated Policy Recommendations

The findings of this study are useful for predicting what could be termed the 'moral minimum' of the diamond industry's future moral status. Central to this moral minimum is the fact that the fall of the De Beers cartel represents more than the demise of a single market structure. The structural changes that occurred endogenously in the 1990s because of firms rationally electing to operate independently in an oligopolised production sphere, and exogenously because of the legal constraints placed on De Beers in the 2000s, mean that competition is now the norm in today's diamond industry. Competing interests in the production sphere are ever increasing as more independent small-to-medium scale mining companies, or 'juniors', obtain viable mines. This reality, combined with the EC's strong and legally robust objections to Nicky Oppenheimer's intermediate and ultimate goals, means that a cartel of De Beers' magnitude should never again exist in the diamond industry. Consequently, the diamond industry should never return to the immoral state associated with the era of De Beers' near-absolute dominance. Rather, the industry's moral evolution is now set on a positive trajectory.

It does not necessarily follow, however, that the lack of feasibility in establishing a cartel comparable to that of De Beers' eliminates the desire for a return to at least a degree of anticompetitive conduct in the diamond industry. As argued in Chapter One, leading members of the diamond industry today continue to covet the 'market stability' (that is, rents) that only competition-suppressing market distortions can provide (Russia Today 2012, Morsel 2011). The realisation of such market distortions in today's industry would slow its ethical evolution by reintroducing the unjustified moral rule violations that this study has unambiguously shown are associated therewith. It is also important to note that in today's industry the pricing of diamonds is still not entirely based on market forces, as some large producers continue to 'support' diamond prices (see The New York Times 2009). In doing so, these actors are emulating the De Beers model to extract rents from overpaying consumers, and their associated moral rule violations are slowing the industry's positive moral growth. Disincentivising such market conduct is vital to ensuring that the diamond industry's moral status continues to improve at a respectable pace.

It is here that the significance of this study's findings is particularly well demonstrated. Anticompetitive conduct and rent extraction clearly remain *desired* and *utilised* by at least of portion of the modern diamond industry. This is due to three different but related reasons. Firstly, as this study has repeatedly shown, attractive financial gains can be made for the organised minority via such practices (Tullock 1967:232). Secondly, due to De Beers' leaders' concealment of the harms caused by their anticompetitive conduct in the diamond industry, often by using 'socially acceptable' rationales (see Gregory 1962:229, De Beers 1988:19) or by openly boasting about their actions (Oppenheimer 1999), they have actively cultivated the misconception, particularly within the diamond industry, that such anticompetitive conduct is acceptable. Thirdly, as argued in Chapter Seven, the financial penalties borne by De Beers in the US cannot be considered to have collectively met the threshold for rational deterrence (see Winter 2008:8). Consequently, industry actors that wish to engage in anticompetitive conduct akin to that of De Beers may not be sufficiently disincentivised by these financial penalties.

The findings of this study can be used, however, to lessen the desirability of engaging in anticompetitive behaviours in today's diamond industry. In relation to the potential for financial gains, the assumption that anticompetitive market conduct is financially attractive in the diamond industry is a short-term view. If consumers wish to avoid overpaying for diamonds because of cartel formation in the industry, they now have easy access to multiple diamond substitutes, such as synthetic and recycled diamonds and coloured gemstones, which are priced according to the market. Further, this study provides consumers with clear justifications as to why and how De Beers' anticompetitive conduct was harmful and morally bankrupt. This is significant, as consumers nowadays regularly ascribe genuine value to the ethics surrounding the goods they buy (Nicholls and Opal 2004, Lamb 2009, Barnett et al. 2010). Establishing a new cartel agreement could thus discourage ethically motivated consumers from buying diamonds, which would ultimately harm the industry's bottom line. Given the plethora of morally loaded issues with which the diamond industry is currently contending, including blood diamonds (Partnership Africa Canada 2010), human and labour rights violations (Dave 2013, de Morais 2012), transparency (Wyndham 2013) and illicit activities (Tailby 2002, Siegel 2009), its members arguably cannot afford to allow an even partial reversion to the immoral days of the cartel era.

Regarding the ongoing nostalgia for a return to De Beers' past business practices owing to the concealment of the true immorality of these practices, this study is the first to isolate the moral dimensions of De Beers' leaders' anticompetitive conduct, and categorise their violations according to their ultimate moral justification. This has been achieved using a positivist illustration of the morality that exists within society, making the representativeness of these findings sound. In turn, these findings clearly and reliably illuminate the fallacy of attempts by De Beers' leaders, and their supporters, to justify their harmful market conduct, the wantonness of their historical actions and the degree of their hubris. This study should thus contribute to undermining any future efforts to use morality-based arguments to defend the supposed 'legitimacy' of anticompetitive conduct and the extraction of rents in the diamond industry.

De Beers' anticompetitive conduct remains appealing partially because of the failure of the formal financial punishments meted out to date to disincentivise cartel formation. However, fines are not the only disincentives available in deterring such conduct. As argued by Olson (1971:60–1), social incentives, including those that have a moral basis, can encourage peoples' engagement in positive, pro-group activities. In other words, social incentives can limit the desire to engage in activities that benefit the minority but are ultimately harmful to the majority. In the sphere of business, this contention is supported by research that argues that moral shaming is a significant disincentive for people in business to engage in white-collar crimes or regulatory offences (Benson 1990, Braithwaite and Drahos 2002, Ivancevich et al. 2003).

By clearly explicating the immorality of De Beers' historical goals and business practices using a model of the morality that actually exists within society, the findings of this study have the capacity to communicate to members of the diamond industry the undesirability of engaging in these activities in terms of their own community-based self-interests. The findings of this study are therefore potentially extremely significant to ensuring that the diamond industry's moral development does not regress but instead continues to improve. Moreover, the value of this study's findings is not exclusive to the diamond industry. Indeed, the immoral goals and business practices analysed in this thesis are present in a multitude of industries across the globe (Barboza 1999, Evenett et al. 2001). The findings contained herein can thus be broadly applied to help to identify, isolate and subsequently disincentivise harmful, anticompetitive behaviours and realise positive moral change in the greater business sphere.

The successful application of morality-based selective incentives to actors in the business sphere requires, however, the clear communication of the moral dimensions of white-collar crimes and regulatory violations to all members of society, something that is recognised as currently lacking in many legal and regulatory spheres (Braithwaite 1989, Paternoster and Simpson 1996, Skeel 2001). This would enable the abovementioned moral shaming and social rejection of protagonists, which would potentially reduce the attractiveness of engagement in these behaviours on the aggregate. The policy recommendations of this study are therefore focused on the explicit advertisement of the moral dimensions of white-collar crimes and regulatory violations. It is recommended that companies and individuals found guilty of engaging in such conduct be forced to pay, in addition to any fines, for targeted advertisements, organised by the relevant legal or regulatory body, that clearly explain to consumers the moral dimensions of the protagonists' legal and/or regulatory offences, and how those actions may have affected consumers personally (for example, in the form of financial losses). This moral shaming, combined with consumer education, could effectively reduce rates of recidivism amongst convicted offenders while also disincentivising such conduct among others ex ante.

Limitations of Research and Avenues for Further Research

Although this research is as thorough as possible given the length constraints imposed, and has fulfilled its stated goals, it suffers from some unavoidable limitations. Several notable developments have occurred in the diamond industry in recent years that could not be investigated given this study's terms of reference. These include the establishment of the Kimberley Process Certification Scheme (KPCS), which seeks to halt the trade in conflict diamonds (Bieri 2010); the creation of the Responsible Jewellers Council (RJC), whose mandate is to set standards for principled business practices and certify actors in the jewellery supply chain (Responsible Jewellery Council 2013); and the use of transparent, competitive diamond tenders, which have the capacity to challenge De Beers' still-pervasive sightholder model of diamond sales (Cramton et al. 2013). As the efficacy and potential longevity of these *prima facie* positive moral developments are either fiercely contested or uncertain (see Wyndham 2013, Le Billon 2006, Smillie 2010:201, Gooch 2011, Kimberley Process Civil Society Coalition 2011, Bates 2013, IndustriALL et al. 2013), considerable potential remains for further research into the ethical dimensions of the contemporary diamond industry.

This study also identified two issues within the industry's history that are particularly worthy of further examination using the theories utilised in this study; that is, the role played by De Beers in funding the civil wars in Angola and Sierra Leone in the 1990s, and the impact of De Beers' bureaucratic rent seeking on the economic development of Botswana. In relation to the former, an application of Gert's (2005) moral system to De Beers' role in these civil wars would be extremely valuable to illuminating the affair's moral dimensions and De Beers' leaders' ultimate moral culpability. Regarding De Beers' agency capture in Botswana, an analysis of the state's economic development through the lens of the logic of collective action would be effective in revealing the impacts that organised, rent-seeking elites can have on emerging economies (see Olson 1982).

Conclusion

This study's applied examination of the ethical evolution of the modern diamond industry has posed and successfully answered two key questions: what were the origins of the modern diamond industry's poor moral status, and how and why has that status evolved throughout the industry's history? These questions were designed to address significant gaps in the current literature by ascertaining the origins of the diamond industry's poor moral status, how it was perpetuated and why it evolved. A bespoke 'three arrow' theoretical framework, consisting of Tullock's (1967) theory of rent seeking, Olson's (1971) logic of collective action and Gert's (2005) moral systems theory, was developed to answer these questions. The two former theories were used to determine that the motivations and challenge-response mechanisms behind the intermediate and ultimate goals pursued by key leaders of De Beers demanded the firm's attainment of near-absolute market control, in either monopoly or cartel form. The latter theory was employed to determine the moral dimensions of this control and the methods via which it was achieved and protected, and the ultimate (un)justifiability of the associated moral rule violations.

This study's tracking of the development of the modern diamond industry from its inception in 1869 to 2009 enabled the discovery of the origins of the industry's poor moral status. Rhodes' desire for perpetual rents, his 'ultimate goal', and his corresponding need to establish monopoly control of the diamond production sphere, his 'intermediate goal', were shown to have introduced into De Beers' operational mandate the goals that would be adopted and adapted by his key successors at the helm of De Beers for decades to come. The moral analysis demonstrated that the means by which Rhodes' achieved this control, and the control itself were sources of moral rule violations that rational, impartial moral agents would classify as unjustified, and thus immoral. By the time of Rhodes' death in 1902, he had established the immoral standing of De Beers in absolute terms, creating the moral template to which future generations of the firm's leaders would subscribe.

The perpetuation of the moral rule violations introduced by Rhodes was carried out by his most powerful successors: Ernest Oppenheimer, Harry Oppenheimer, Julian Ogilvie-Thompson and Nicky Oppenheimer. As these men sought to obtain the perpetual rents enjoyed by the founder of De Beers, they sought to pursue and maintain the market control that Rhodes had demonstrated was vital to success. In doing so, it was shown that they violated the associated moral rules in ways that rational, impartial moral agents would deem unjustified, and thus immoral. Ernest Oppenheimer and Harry Oppenheimer both contributed to a further degeneration of the moral standing of the diamond industry during their respective times in power, due to the increased control they obtained for De Beers over the greater diamond industry, and the new violations they introduced into the firm's mandate. So, in brief, at Rhodes' death, the industry was immoral; it was more so by the time of Ernest Oppenheimer's passing in 1957; and yet more so when Harry Oppenheimer retired in 1984.

Their successors, Julian Ogilvie-Thompson and Nicky Oppenheimer, were, however, unable to contain the powerful centrifugal forces that emerged during the final quarter of the twentieth century. The industry's twenty-first century competitive rebirth was found to have materially reduced the harm visited upon society by the industry's discretionary actions. At the time of writing, the industry's moral trajectory is set on a positive course, and with both endogenous and exogenous forces likely to prevent regression, the industry's improved moral status could well be permanent.

This study has shown that the modern diamond industry was not immaculately conceived in an immoral state. The strength and flexibility of the three arrows framework employed herein have enabled the elucidation of the origins of immorality in the industry, its long era of moral decline and its shift towards improving morality in the final years of the twentieth century and the first decade of the twenty-first century.

In the era of De Beers' dominance, the diamond industry rose to the status of an ultimate rent seeker. That is no longer a suitable appellation. However, while considerable segments of the industry now conduct their affairs like responsible stakeholders, there remain substantial industry players who would no doubt embrace a return to the old, morally bankrupt ways. A return to the immoral conduct of the cartel era must be rendered highly undesirable by a combination of formal and social disincentives. Getting this framework right will enable the industry to continue on its currently positive moral trajectory, thereby eventually earning it an unqualified future status as a positive sum stakeholder in the global economy.

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