POLICIES AREN'T FOREVER:

Public Policymaking and the Argyle Diamond Project

by

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A dissertation submitted in partial fulfilment

of the requirements for the degree of Master of Letters.

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December, 1984

ABSTRACT

The Ashton Joint Venture is developing the Argyle diamond project in Australia's north-west. A number of public policies related to the Argyle project are examined. Case studies of the public policymaking process in relation to the naturalising provisions of the foreign investment guidelines, the Commonwealth powers in relation to the marketing of Argyle diamonds, and the genesis of a social impact policy at Argyle are each evaluated against normative criteria. An attempt is made to test Charles Lindblom's hypothesis that business is in a privileged position vis a vis other interests within the political/policymaking process. It is concluded that the case study material provides significant evidence which supports the hypothesis. The significance of the Lindblom hypothesis for recent theorising on the role of the state is discussed.

ACKNOWLEDGEMENTS

I wish to gratefully acknowledge the assistance of the following individuals and institutions: the ANU and the North Australia Research Unit for funding field work for this thesis, Rod Dixon and Dr. Ciaran O'Faircheallaigh for their comments on earlier drafts of the thesis, and the Commonwealth and Western Australian public servants and a number of other individuals who agreed to be interviewed and who must remain anonymous. Clare Sanby typed the manuscript with skill and initiative, for which I am very thankful.

The Commonwealth's Freedom of Information legislation was of crucial assistance in the preparation of this thesis; accordingly, I wish to thank the Departments involved and their staff for the work they carried out as a result of my requests for information.

I wish to especially thank my former employers, the Warmun Community since it was in the course of my employment at Turkey Creek that my interest in public and private policymaking developed; my supervisor Dr. Arthur Davies for his comments, advice and guidance throughout; and not least my family for their support and understanding.

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INTRODUCTION

The Lindblom Hypothesis

Public policies are usually analysed in terms of particular 'policy areas' and institutions. Such an approach has the advantage of providing a perspective on policy development, the role of key actors, and the incremental nature of much policymaking. The approach adopted here is somewhat different.

In his book Politics and Markets (1977) Charles Lindblom argues that the private sector fulfils 'public' functions by virtue of the fact that it determines the magnitude of capital investment within society, with concomitant implications for the nature, location, distribution and rate of employment, economic growth and creation of social infrastructure. Notwhthstanding the public importance of private sector activities, they are by their very nature not able to be commanded by governments, but must be induced. Lindblom argues that this creates a symbiotic relationship between governments and business where governments offer business a privileged position within the polity in return for the continued performance of business' public functions. Lindblom further argues that this privileged position is in direct conflict with the existence of democratic institutions as they are generally understood, and that as a consequence, the privileged position of business is legitimised in various ways, largely by removing 'grand issues' central to this position from the operation of polyarchal politics.*

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* Lindblom uses the term "polyarchy" to refer to political and social systems where authority rests with "many" rather than "some" or "one" (Lindblom 1977, 132).

Aaron Wildavsky (1978), in a sophisticated and penetrating critique of Lindblom's argument, addresses the existence of business privilege only tangentially. He argues that "democracy is less concerned with correct than with correctable decisions" (Wildavsky 1978, 232). Thus the power of business (and other interests) to veto government policies, to influence governments is for Wildavsky a positive element. In relation to Lindblom's arguments that grand issues are removed from polyarchal control, Wildavsky responds by arguing that to move in the direction espoused by Lindblom (that is, to clearly distinguish between private enterprise and market systems) would be retrograde in that it would reduce accountability, diversity and negate the possibility of reversing moves away from a private enterprise system.

There may be some force in Wildavsky's normative arguments; even so, they have the effect of downplaying the reality of the influence and role of business in public policymaking. Moreover, as one commentator has pointed out, Lindblom

> does not say that business performs its delegated responsibilities badly, or argue that business is underserving of some of the privileged access to power that it has. What he says is that the government system in the United States does not fit conventional understandings of democracy and that a large extra-electoral arena of decisionmaking in which business plays a disproportionate role, goes largely unregulated and unpublicised. (Schudson 1984, 51)

Lindblom's hypothesis goes to the root of the relationship between private sector activities and public policymaking, and is therefore worthy of detailed examination. The approach adopted in this study is to analyse a number of public policy decision processes relating to the discovery and development of a major resource project, the Argyle diamond mine in the East Kimberley region of Western Australia.

The project is being developed by the Ashton Joint Venture and has involved a complex series of important private policymaking decisions involving significant risks, uncertain markets, large capital costs and borrowings, long time frames and complex corporate structures. The project has also required a range of public policy decisions on matters such as taxation, foreign investment, royalties, environment, mining and corporate law, export controls, infrastructure development, northern development and Aboriginal affairs. From a private policymaking perspective, it was imperative for the successful development of the project that satisfactory arrangements be negotiated in relation to each and every policy decision. The joint venturers allocated significant financial and human resources to influencing these decisions, and to the bargaining that is a core component of the public policymaking process.

Lindblom (1977, 179) argues that business executives participate in policymaking processes not merely as representatives of a specific interest, but in their capacity as 'public' officials. This study therefore attempts to ascertain the extent, if any to which the Argyle developers were granted a priveleged position in that process vis a vis other interests affected (whether organised or not), and thus reach some conclusions regarding the relevance of the Lindblom hypothesis to Australian public policymaking.

The body of the thesis comprises an examination of specific case studies in relation to foreign investment controls and the project, the Commonwealth Government's role in relation to export controls on diamonds, and the development of a range of policies in an attempt to come to terms with the social impact of the project.

A final chapter attempts to unify the case study material, evaluate it in terms of Lindblom's hypothesis, and place it in theoretical perspective through a discussion of recent theorising on the nature of the state.

The Ashton Joint Venture: A Short History

The history of modern capitalism is in many respects the history of the corporation. It is the corporation that enables entrepreneurs to accumulate capital and apply it in ways which simultaneously limit the scope of any losses and expand the potential of profits.

The corporation is the creation of the state, and it is therefore inevitable that a substantial element of public policy processes relate to the activities of corporations (Steiner 1975, 48-50). The advent of Keynesian regulation of the national economy, and the concomitant perception that governments are responsible for the state of the economy and the economic well-being of the nation has only served to reinforce the interaction of state and corporation, public policy and corporate policy. This is clearly demonstrated in the formation and development of the Ashton Joint Venture (AJV).

In 1972, the Kulumburu Joint Venture was formed to explore for diamonds in the Kimberley region of Western Australia. It comprised five partners, each with a 20 per cent interest: Tanganyika Holdings Ltd., Anglo-Oriental (Australia) Pty. Ltd. (a wholly owned subsidiary of the Malaysian Mining Corporation (MMC)), Jennings Mining Ltd., Northern Mining Corporation NL and Sibeka Societe D'Enterprise et D'Investissements S.A.* In August

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* The Malaysian Mining Corporation was owned by the Malaysian Government (71%) and Charter Consolidated (29%). Charter is controlled by the De Beers group. See Bulletin, (19 September, 1978) and Madigan (1983) for background details on the formation of the KJV.

1973, the KJV discovered its first diamond near Lennard River in the West Kimberley.

In November 1975, due to a shortage of capital to fund ongoing exploration, CRA Ltd. was brought into the joint venture ahead of Peko-Wallsend (an Australian owned company) when it offered to spend $1.5 million in return for a 35 per cent interest in the project, the best offer made (AFR, 14 September, 1978). The Ashton Joint Venture was formally established on 6 February, 1976 (ADMJV Project Briefing, October 1982, 1). In October 1976, CRA became manager of the joint venture. In February 1977, the two listed companies, Northern Mining Corporation (NMC) and CRA announced the discovery of five kimberlite pipes in the West Kimberley. (Kimberlite is the major host rock for diamonds.)

In November 1977, Jennings sold its 15 per cent interest, and the joint venture's ownership was:

Tanganyika Holdings	8.4%
AO (Aust)	27.0%
NMC	5.0%
Sibeka	7.0%
CRA	52.6%

(Bulletin, 19 September 1978, 45)

By September 1978, the financial press was talking about 'The great Kimberley diamond rush' (The Economist, 16 September 1978, 117) referring to the discovery of a number of diamondiferous kimberlitic pipes at Ellendale in the West Kimberley - none of which has yet proved economic to mine (ADMJV Project Briefing, 1982, 33).

In late 1978, Ashton Mining NL was floated by AO (Aust) Pty. Ltd. to hold a 22.4 per cent interest in the AJV. Australian institutions and public were offered 40 per cent of Ashton, and 60 per cent of its shares were retained by the Malaysian Mining Corporation. AO (Australia) retained a direct equity interest of 4.59 per cent. The specific objective of the local float was to take advantage of the new naturalisation provisions of the foreign investment guidelines (AFR, 10 August, 1978; AFR, 10 November, 1978).

CRA reached agreement on the terms under which it would obtain naturalising status under the foreign investment guidelines in January 1979. Late in August that same year the first Argyle diamonds were discovered, followed shortly thereafter by the discovery of the AK-1 (Argyle Kimberlite No. 1) pipe.

A share swap arrangement in November 1980 led to the acquisition by Ashton Mining of Tanaust Pty. Ltd. (a wholly owned subsidiary of Tanganyika Holdings) and AO (Aust) Pty. Ltd. This brought Ashton Mining's share of the AJV to 38.2 per cent, whilst it simultaneously reduced the MMC interest in Ashton Mining. The transaction valued the Argyle deposit at approximately $770 million (AFR, 3 November 1980) compared to the $260 million valuation put on the joint venture when Ashton Mining was floated (AFR 10 November 1978).

In February 1981, Ashton Mining was itself granted naturalising status by the then Federal Government.

The joint venturers thereafter comprised, and still comprise:

CRA group	56.8%
Ashton Mining group	38.2%
Northern Mining Corporation	5.0%

As of 1 November 1982, the AJV was replaced by two joint ventures: the Argyle Diamond Mines Joint Venture to undertake mining and the Ashton Exploration Joint Venture to continue the exploration program (ADMJV Project Briefing, 1982, 2). As a matter of convenience, this study will refer to the AJV throughout except in cases where it is essential to distinguish the former and latter corporate entities.

During 1981-1983 a number of developments occurred in relation to NMC, which led first to it being taken-over by Endeavour Resources, which was itself subsequently acquired wholly by the Bond Corporation, and finally to the purchase of NMC by the Western Australian Government.

CHAPTER TWO

NATURALISATION: WHOSE POLICY?

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NATURALISATION: WHOSE POLICY?

The Policymaking Process

The McMahon Government introduced guidelines on foreign investment and takeovers based on protection of the national interest in 1972, and this criterion had been emphasised and reinforced during the early years of the Whitlam Government, but in a manner which resulted in considerable uncertainty (Anderson 1983, 84-88).

In September 1975, the then Prime Minister Gough Whitlam announced a number of changes to the existing policy on regulation of foreign investment. See Anderson (1983, Ch. 4) and Sexton & Adamovich (1981, Ch. 2) for outlines of the history of the development of foreign investment controls. In relation to mining, which was identified as an area of special attention, it was announced that all new mineral projects (apart from uranium where 100 per cent Australian equity was to be required) would be expected to have no more than 50 per cent foreign ownership and no more than 50 per cent foreign control within the development company, unless it could be shown that significant Australian participation was unobtainable (Sexton & Adamovich 1981, 20).

These provisions were maintained in the April 1976 policy reformulation by the new Fraser Government, (Treasury, 1 April 1976) which also established the Foreign Investment Review Board (FIRB) to examine proposals by foreign interests to invest in Australia, and to make recommendations to the Government. The Government also indicated that, in Loveday's words:

> if local equity capital was not available and a proposal was

> not against the national interest, it might be allowed to go ahead nonetheless in order not to delay development of natural resources, provided "satisfactory arrangement" were made to increase local equity to 50 per cent within an agreed period. (Loveday, 1981, 107; Treasury 1 April 1976, 9).

The criteria for examining the impact of proposals on the national interest were revised and expanded, the major element being whether

> the proposal would produce, either directly or indirectly, net economic benefits to Australia..... (Treasury 1 April 1976, attachment, 7).

Loveday (1982, 109) notes that the revisions removed the previous reference to conformity with national policies in relation to Aboriginal land rights, and replaced it with a reference to "Aboriginal interests". The Government also added the following precautionary rider:

> These criteria will be applied pragmatically according to the circumstances of individual cases. It is not intended that all investment proposals shall necessarily satisfy all the above criteria before being allowed to proceed. (Treasury 1 April 1976, attachment, 9).

The criteria fall short of what Stevenson (1976, 26) has termed the "new objectives of mineral resources policy" namely, "the general objective of increasing the Australian share of benefits from mineral resources" through the maximum appropriation by the community of the economic rent derived from resource development.

In this context, "economic rent" refers to returns to capital in excess of those that are required to attract the capital investment involved.

This then was the foreign investment policy facing the AJV in 1976/77 as it progressively expanded its increasingly successful diamond exploration effort in the Kimberley.* There was no requirement for the exploration stage to be Australian owned (the 1975 revisions had specifically excluded exploration, whilst requiring bi-annual reports on progress toward Australian equity participation), but the joint venturers were acutely aware that in relation to any discoveries, the AJV would be treated as 95 per cent foreign owned, and would be required to either sell of 45 per cent to Australian interests, or reduce the foreign equity within each of the major venturers namely, CRA Limited and Anglo-Oriental (Australia) Pty. Ltd.

It is clear that CRA in particular decided to attempt to neutralise the foreign investment controls in place, which led, in mid 1977, to considerable political conflict between CRA and the Federal and NSW Governments.**

There followed a period around March 1978 of intense negotiations between CRA/RTZ and the Government at Ministerial and Departmental levels. The FIRB had previously suggested that RTZ commit itself

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* By the end of 1976, 304 diamonds had been recovered from the Kimberley region (Bulletin, 19 September 1978) and CRA had received a number of "favourable" reports from its South African consultant (AFR, 14 September 1978)

** See Sexton and Adamovich (1978, 131f) for a full discussion of this point.

to reducing its holding in CRA Ltd. from 72 per cent to 30 per cent over eight years, and later from 72 per cent to 49 per cent over six to eight years. Neither suggestion was acceptable (Sexton & Adamovich 1981, 132). Instead, RTZ's Chairman, Sir Mark Turner stipulated two conditions: (i) that any reduction of RTZ ownership in CRA be on "fair and reasonable" terms and (ii) "that once RTZ's stake in CRA was down to 49 per cent, CRA would be recognised as an Australian company and free to compete on equal terms with other Australian companies...." (AFR, 26 May 1978).

A paper outlining the CRA/RTZ proposals was submitted to the Government, and examined by an inter-departmental committee (AFR, 26 May 1978) comprising representatives of Treasury, Prime Ministers, Trade and Resources (Loveday 1980, 110).

The financial press reported that the key supporter of the CRA proposals was Sir Alan Carmody, then Secretary of the Prime Ministers Department, and that Treasury took a strong stand against many of the CRA proposals (AFR, 29 May 1978). The Financial Editor of The Australian (30 May 1978) commented that the proposals had not received much sympathy at a bureaucratic level, but had "struck a responsive chord at the political level".

In late May the interdepartmental committee's recommendations received Cabinet endorsement (SMH, 2 June 1984), a number of meetings were held between senior Government representatives, including Treasurer Howard and Deputy Prime Minister Anthony and the Chief Executives of a number of the major companies involved in the resources sector in Australia (including BHP, CRA, AMP, Esso, CGFA, CSR, Amatil, Peko-Wallsend, WMC and ACI). Press reports indicate that the Government outlined its proposals to introduce the naturalisation provisions to the foreign investment guidelines. The proposals were supported by the foreign resource companies and the Australian financial institutions, but were strongly attacked by the Australian-owned companies (Australian, 3 June 1978; Age, 1 June 1978).

Perceptions of the purpose of the meetings apparently differed. The Australian (3 June 1978) reported that

> "CRA is adamant Anthony made it clear that a decision had been made to implement charges to the foreign investment guidelines and the meeting was being held for "consultation and reaction".
>
> CSR's recollection is that Anthony said the Government had arrived at ideas on the easing of the rules, but that he indicated they were not irrevocable...."

The negotiations did lead to a number of compromises: the provisions did not affect the extant provisions of the Foreign Takeovers Act*, which effectively prevents the "Australianisation" of foreign owned companies through the takeover of locally owned companies (Age, 31 May 1978). CRA's Chairman, Sir Roderick Carnegie had previously stated that CRA was committed to obtaining 50% Australian ownership through mergers, takeovers and capital

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* Under the Act, a company is regarded as "foreign" if a single overseas shareholding is 15 per cent or more, or if total overseas shareholdings exceed 40 per cent.

issues to the Australian public (National Times, 26 September 1977).

A second concession to the CSR forces was the inclusion by Treasurer Howard of a clause in the guidelines preventing naturalising companies entering into joint ventures with foreign companies (AFR, 12 June 1978). This was a key policymaking development for the Argyle project: it meant that CRA's "Australianising" 56.8 per cent equity in the AJV would not, by itself, satisfy the foreign investment guidelines, notwithstanding the naturalisation provisions. It appeared therefore that equity in the project would still have to be sold off to meet the FIRB requirements.

The Age (31 May 1978) reported that the discussions resulted in "near unanimity from the corporate world on the broad thrust of proposal". It noted, however, that

> while the Government has given the corporate world a guide to its thinking, it has not seen fit to extend that to the general public. Mr. Howard called a press conference last night to announce the discussions. But he refused to say what changes were being considered or what companies had taken part in the discussions.

The Australian Financial Review (2 June 1978) editorial was critical of the Government's "secretive and rushed" approach, its decision not to brief the Labor opposition in an area of existing bipartism agreement, and its failure to take the public into its confidence.

On 8 June, the Treasurer John Howard announced details of the changes to the foreign investment guidelines which would allow a foreign owned company to be regarded as "naturalising" or "Australianising" if it:

(i) had at least 25 per cent Australian equity;

(ii) provided in its articles of association for a majority of Australian citizen board members; and

(iii) made a public commitment to increase its Australian equity to 51 per cent. The time scale involved would be the subject of negotiation and agreement with the FIRB, but this would not be made public (Howard, 8 June 1978; Loveday, 1982, 110).

The role of CRA in instigating this substantial policy change is quite evident from the reports in the financial press*, and is clearly recognised by academic commentators. Sexton and Adamovich comment:

> It is clear... that the naturalisation guidelines emerged out of CRA's determination to end - so far as new minerals projects were concerned - the lack of flexibility that went with categorisation as a foreign corporation. (Sexton & Adamovich, 1981, 132).

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* The AFR editorial of 5 September 1980 states "In June 1978, apparently in response to some very persistent lobbying from CRA, the Fraser Government amended its foreign investment guidelines..." Simson (BRW 12 September 1981) notes that "Fraser supporters were dismayed at the heavy-handed approach of Carnegie during the 1978 naturalisation discussions. Carnegie can in no way be considered part of Fraser's Melbourne business cabinet".

Anderson (1983, 134) states that "the scheme owes its existence to the pressure exerted by CRA Limited", and points to the significance of the naturalisation provisions for the development of the Argyle deposit by the Ashton Joint Venture (1983, 136).

Another commentator noted that:

> The Fraser Government's proposed alterations to the foreign investment guidelines are an integral part of the CRA coup and the group's hopes of becoming a force in the world diamond industry. (AFR 14 September 1978).

In January 1979, the FIRB reached an agreement with CRA and RTZ, in which RTZ agreed to decrease its 72 per cent equity in CRA to 49 per cent over an indefinite period, and agreed to amend its articles of association to ensure that a majority of its Directors were Australians at its next AGM (Sexton & Adamovich, 1981, 134). Formal naturalising status was granted on 15 May 1979 (Treasury, 2 March 1984).

It may be worth making a number of observations at this stage. Firstly, the naturalisation agreement appears not to meet the strict guidelines announced the previous year since 49 per cent RTZ ownership does not necessarily imply 51 per cent Australian ownership of CRA. It is perhaps salient to note that CRA consistently refers to a commitment to 51 per cent public (not

Australian) ownership.* (e.g. Facts About CRA 1983, 3; ADMJV Project Briefing, 1982, 4). Secondly, the amendments to the articles of association are in accordance with long-standing RTZ policy. McKern notes that in 1972, 9 out of the 10 CRA Board members were Australians, and that

> Given the strongly Australian flavour of the CRA Board, and the relative lack of vertical product integration between its subsidiaries and the parent corporation, coupled with the expressed RTZ philosophy of decentralised decision making, it is difficult to see areas in which the effective control of the company could be detrimental to Australian interests. (McKern 1976, 186).

The editorial writer of the Australian Financial Review has argued the reverse:

> The fact that a foreign owned company, accepted as having naturalising status, has a majority of Australian nationals on its board need not ensure that that company acts with Australian interests at the forefront of its considerations. Nor, necessarily, does a company which is 100 per cent Australian owned. The first consideration of an Australian company is and should be its shareholders interests; it is the duty of the government to reconcile this with the national interest. In the case of a foreign owned company

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* A Treasury publication states: "the Government recognises that public companies have only limited ability to influence the proportion of their shares held by overseas portfolio investors. Arrangements may therefore be worked out between the Government and the company concerned to provide for flexibility in meeting required levels of Australian shareholdings in order to cope with variations in foreign portfolio shareholdings, on a case by case basis, in the light of the circumstances prevailing at the time." (Treasury 1982, 10).

> the first duty of Australian directors will be to their foreign masters. They will not last long if that duty is not rendered. (AFR, 24 February 1981).

In early September 1980, CRA announced a share issue valued at $89 million. RTZ decided to take up its full entitlement to 61.1 per cent of the issue, stating that it would decide in each case of a rights issue "whether it was commercially sound to take up its rights or renounce them" (AFR, 3 September 1980). The Australian Financial Review, in an editorial pointedly titled 'Still an honorary Australian' stated

> There seems to be an implication that further Australianisation will occur only when shares can be issued at a price which might attract Australian investors but will not be commercially sound' for the much more knowledgeable RTZ interests. (AFR, 5 September 1980).

The decision to float Ashton Mining in late 1978 can now be seen to be a direct result of the late adjustment to the naturalising guidelines by Mr. Howard which prevented joint ventures comprising a naturalising corporation and a foreign-owned corporation.

During November 1980, Ashton Mining undertook a number of related moves aimed at satisfying the FIRB that it should be granted naturalising status. Ashton bought (in a share swap plus cash transaction) two of the other joint venturers, AO Australia and Tanaust, comprising 14 per cent of the AJV. It also made a share issue in which its parent company, the Malaysian Mining Corporation renounced its rights. A statement issued by Ashton Mining said in part that "Negotiations are nearing completion towards Ashton Mining achieving naturalising status" (SMH, 1 November 1980).

In February 1981, Ashton Mining announced that it had been granted naturalising status (AFR, 9 February 1981). The decision prompted yet another critical editorial from the Australian Financial Review, entitled 'The kangaroo from the veldt'. The editorial writer commented

> In Ashton we have a company controlled by a foreign government and heavily influenced by an international cartel about to don a kangaroo badge and obtain business over less well connected companies. The logic of recognising as Australian, or even close to Australian, a company controlled by a foreign government agency is itself hard enough to comprehend, let alone the policy considerations involved in such a decision.
>
> And of (sic) top of this, is the approval the government has given to the influence of a substantial shareholder, which, by the admission of the government's own adviser, is likely to be able to determine not only the production rate and degree of processing within Australia but also the price of an Australian resource*....
>
> ....Given the policy decision involved in approving Australianising status for a foreign government controlled company it is unlikely that the Foreign Investment Review Board could have a recommendation on this issue...

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* Emphasis added. Presumably the 'adviser' is the FIRB. It appears likely that the editorial writer was briefed by a 'knowledgeable source'.

> ...it is perhaps timely that FIRB's recommendations should be made public and the reason for the Government's decision more fully explained. (<u>AFR</u>, 19 February 1981).

The Treasurer, John Howard, replied to the editorial in a letter to the editor; he refuted

> entirely the assertions and inferences that the granting of naturalising status was in any way inconsistent with the Government's foreign investment policy...
>
> ...The writer has, intentionally or otherwise, confused considerations of policy relating to the naturalisation of companies with those relating to the development of new natural resource projects. Issues affecting the Ashton diamond joint venture are not directly relevant to the question of naturalising status for Ashton Mining.
>
> The arrangements for the marketing or (sic) products from the Ashton joint venture and the question of any effect that may have on equity and control of the project will be examined by the Government in terms of its foreign investment policy prior to the project proceeding to development. In that examination full regard will be had to any position of influence considered to be held by international diamond operators. (<u>AFR</u>, 24 February 1981).

Interestingly, the Treasurer - while refuting specifically a number of points made in the editorial - made no reference to the inference in the editorial that the FIRB pointed out to the Government the potential influence of De Beers on production rates, local processing, and the price of the resource. Nor did he refute the specific assertion that the FIRB had made no recommendation that Ashton Mining be granted naturalising status.

Another correspondent to the editor, clearly endowed with a sense of humour, deplored

> the way the Australian Government has allowed a consortium with 63 per cent foreign equity to ride rough shod over the legitimate concerns of the traditional Aboriginal inhabitants

of the Argyle area, and went on to suggest that

> Perhaps the Federal Government should consider amending the foreign investment guidelines to enable companies which promise to grant (someday....) equity in their projects to Aboriginal interests to count an equal amount of foreign equity as 'indigenising' and thus Australian. Such a change would provide an incentive for companies controlled by foreign interests to (someday....) deal fairly with the first Australians; and have no less logic than the present guidelines! (AFR 12 March 1981).

ANALYSIS

A number of conclusions can be drawn from the foregoing outline of the policymaking process relating to the naturalisation policy.

Firstly, the pivotal role of CRA in establishing the naturalisation policy is incontrovertible. The policy was much more favourable than the April 1976 formulation in that the focus shifted from specific proposals or projects to whole companies, with a concomitant increase in the flexibility involved. The naturalising criteria appear hand-tailored to meet CRA's requirements: the minimum Australian equity of 25 per cent was just exceeded by the Australian equity stake in CRA of 27 per cent; the amendment of articles of association requirement, so as to ensure a majority of Australian board members, was already RTZ policy; the provision for a confidential timescale for achieving majority Australian ownership was clearly designed to camouflage the lengthy period on which it appeared CRA would insist. In the event, this aspect of the naturalisation policy was weakened further as no time limit was set in relation to either CRA or Ashton Mining. Treasurer Howard subsequently stated

> The Government does not specify a firm time limit for a naturalising company to meet its obligation to increase Australian equity to the required level of 51 per cent and it does not believe that it would be commercially feasible for any company to give a watertight undertaking as to the time by which it will achieve 51 per cent Australian equity. (Howard, AFR 24 February 1981).*

Once the naturalisation guidelines were announced, they were publicly criticised by Gordon Jackson of CSR Ltd., who pointed out that the commitment to Australianise

> does not seem to be enforceable. The time frame to be allowed is apparently open-ended; articles (of association) may be changed at any time; boards may change; one foreign

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* The new Labor Treasurer, Mr. Keating has endorsed the naturalisation policy, but has indicated that "In future, the Government will seek, in consultation with companies proposing to naturalise, an agreed timetable for achieving majority Australian equity, subject to provision for adjustment to the timetable should abnormal circumstances arise" (Keating, 20 December 1983).

> company may be acquired by another foreign company with different views. (AFR 5 September 1980).

Loveday (1982, 133ff) has pointed to a number of other shortcomings of the naturalising/foreign investment guidelines: their "administrative arbitrariness" (whilst noting that this is seen as an advantage and termed "necessary flexibility" by official sources), the obscurity about rules and secrecy about reasons for decisions, and the vagueness and arbitrariness inherent in the operational definition of the "national interest". He also notes the continuity in policymaking from one government to another:

> Each has built on the policy and machinery it inherited when it came into office with very little change of direction, even though they have been loud in criticism of each other when in opposition. (Loveday 1982, 113).

One explanation is that the bureaucracy - in this case the Treasury and the FIRB - dominate the policymaking process, and that because this dominance (or even influence) is continuous, policy outcomes are characterised by continuity and incrementalism. Though there are indications of bureaucratic policymaking in relation to the ongoing 'administration' of the foreign investment guidelines*, it appears that decisions regarding the formulation of the naturalisation policy were political decisions

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* For example, there have been suggestions that bureaucrats have, since the election of the Hawke ALP Government, been taking a harder line with proposals under the Foreign Takeovers Act, to the extent of refusing to accept applications considered deficient, effectively absolving the FIRB from having to make a decision. (The Miner 21 November - 4 December 1983). This appears to be bureaucratic second-guessing rather than bureaucratic dominance.

taken at a Ministerial level. The direct involvement of the Deputy Prime Minister and the Treasurer in the discussions with the business community is clear evidence for this proposition.

An alternative explanation is that proposed by Lindblom, namely, partisan mutual adjustment, and in particular, the refinement of that concept in Politics and Markets which suggests that governments treat business deferentially because they depend on business for various 'public' functions. That is not to deny the existence of conflict within business interests; but as will be shown below, the opposition of domestic mining firms to the naturalisation policy is based on the fact that it admits a (very) select group of foreign-owned corporations to the privileged emplacement of domestic mining corporations. It certainly seems on the available evidence that successive governments have treated CRA and Ashton Mining (the only two companies to be granted naturalising status) with extreme deference in terms of the policy outcome. Of even greater significance, though, was the access granted to CRA (and to a lesser extent other business interests) to participate in the policymaking process itself. If might fairly be said that the naturalisation policy was conceived and formulated by CRA and RTZ (it was certainly the logical extension of more long-standing RTZ policies) to undermine the impact and constraints imposed by the foreign investment controls on their activities. This argument is discussed in detail in Chapter Five below.

So far, no attempt has been made to set out any normative criteria by which the effectiveness and rationality of the regulation of foreign investment should be judged. This is in partial recognition that the policy initiatives have largely been motivated by an increasingly nationalistic (and in some respects, xenophobic) electorate rather than a sustained attempt at rational calculation of the costs and benefits of regulation. The recognition that the foreign investment guidelines exist primarily for fundamental political reasons provides a clear explanation of the vagueness, secrecy and administrative arbitrariness pointed to by Loveday.

Anderson has pointed out that the regulation of foreign investment is "essentially a tax levied on foreign investors" (Anderson 1983, 148) because foreign investors are forced to divest interests in excess of 50 per cent equity in resource projects prior to development approval. Since only Australian investors may purchase these interests, the price will be less than in an unconstrained market.

The major beneficiary of this policy is the domestic mining industry since Australian investors and mining companies can buy into foreign owned projects at a discount. Further, the regulation of foreign investment reduces the political pressure for the taxation of resource rents generally (Anderson, 1983, 148f).

The naturalisation policy thus confers a double advantage on naturalising companies. It has the effect of exempting them from the implicit tax on foreign investment and also confers domestic status which allows them to obtain the benefits of the regulatory system pointed to above. Bryan (1983, 72) argues that the policy also benefits Australian financial institutions as they are the major purchasers of shares in naturalising companies. Certainly, the support of the financial institutions must have been a major factor in CRA's success in overcoming the opposition of domestic mining firms to the naturalisation provisions (Age, 1 June 1978; Australian, 3 June 1978).

Notwithstanding the political and economic nature of the foreign investment controls, it is worth canvassing the normative basis for regulation. McKern (1976, 14f) argues that there are two possible motives for a host country to accept foreign investment: (i) the capturing (via taxes and royalties) of economic rent arising from resource extraction; and (ii) "the obtaining of benefits arising from other flows between the mining operation and the host economy" such as employment and concomitant incomes and taxation revenue, infrastructure development, and economic growth arising from the multiplier effects of new investment.

Johns (1972) has argued that the requirement of a substantial local equity in mineral ventures imposes costs; other things being equal, there will be less domestic investment in other sectors of the economy; and there may well be a reduction in the flow of direct foreign investment and thus in the rate of economic growth. He rejects arguments against foreign investment alleging repatriation of excessive profits on the basis that "a sensible policy on taxes and royalties would assure Australians of a large share of available profits" (Johns 1972, 303ff). However, serious doubts exist in relation to the adequacy and efficiency of Australia's mineral taxation system: the exigencies of inter-state competition for resource development projects, the ideological commitment to development, at any cost, which exists in a number of states* and the different and largely uncoordinated revenue collection arrangements at State and Federal levels have all contributed to a less than effective mineral taxation system. It is only in recent years that governments have attempted to implement revenue systems which attempt to appropriate a proportion of the resource rents available. The Northern Territory Mining Royalty Act, and the Roxby Downs and Argyle Project Agreements are all examples of this trend (Garnaut, 1982, 292).

The Australian Financial Review has justified the regulation of foreign investment in the following terms:

> The reason why it is desirable that major companies should be 50 per cent or more Australian owned is that this is the most effective way of ensuring that the profits derived, particularly in the resource area, accrue to Australia, with their subsequent benefits to the community as a whole as they are reinvested, and that pricing policies, to some extent at least, reflect the interests of the Australian economy (AFR, 24 February 1981).

This reasoning is not wholly convincing. In terms of capital accumulation, the repatriation of 49 per cent of profits is barely more desirable than 51 per cent. The figure of 51 per cent is clearly arbitrary in terms of profit repatriation, and might just as easily be set at 40 or 60 per cent. In relation to pricing policies, the figure of 51 per cent is again arbitrary (although

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* See Harman, E.J. (1981) for a discussion of the role of ideology in Western Australia's approach to resource development.

arguably less so); the crucial factor is the degree of control which the foreign interests have over the rate of production and hence price. This is not merely a matter of control of particular companies or projects, but is also affected by the supply and demand forces facing the particular project, and the extent to which the project's production will affect the world market. It is clear however that a significant minority shareholder might often have the influence to control a projects production rate, and perhaps, the price by virtue of the project's impact on world supply. It must be remembered that this need not necessarily be against the host country's economic interests. Where the foreign interests are able to influence production rates in a particular mineral project, and as well control the world market in that mineral, the control of the price of the resource will be almost absolute.

In the case of the Ashton Joint Venture's Argyle deposit, it is difficult to see how the foreign investment regulatory process could achieve either of the regulatory objectives advocated by the Australian Financial Review. The naturalising status, sans time-table, of both CRA and Ashton Mining means that in excess of 50 per cent of the net profits of each company would be repatriated until each naturalised. (The FIRB had no way of estimating the resource rent from Argyle which would be obtained in Australia as royalty arrangements were the prerogative of the W.A. Government and were not finalised until December 1981). In relation to pricing policies, and in particular the potential influence of De Beers within the AJV, there appears to have been concern within the FIRB. Again however, the FIRB was in no position to make any estimates of the economic impact on Australia of future pricing policies: the marketing arrangements were yet to be determined, and were again subject to the approval of the W.A. Government.*

Treasurer Howard, in his letter to the AFR (quoted above, page 22), attempted to distinguish policy considerations relating to naturalisation and policy considerations relating to the development of particular natural resource projects. This has a logical ring, but little basis in pragmatic politics given the absence of Commonwealth export controls on diamonds. Further, it appears to be directly contradicted by the 1979 Foreign Investment Guidelines:

> A company accepted by the Government as a naturalised or naturalising company <u>is not required to notify proposals</u> to develop a new resources project that is subject to the 50 per cent rule where it intends to proceed on its own or in partnership with Australian owned companies or other naturalised or naturalising companies. (my emphasis). (Treasury 1979).

The question of De Beers potential influence within the AJV will be discussed below in relation to marketing.

It is clear, however, that the naturalisation policy itself provides scope for significant leakages of resource rents to foreign investors, which would otherwise accrue to Australian interests. (Anderson 1983, 136). It is ironic that a policy of

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* See the discussion below on export controls on diamonds.

Australianisation results in the advancement of the interests of corporate interests such as CRA and RTZ and the Malaysian controlled Ashton Mining group at the expense of the more general public interest.

CHAPTER THREE

EXPORT CONTROLS ON DIAMONDS

The Diamond Market

The Policymaking Process

Conclusions

EXPORT CONTROLS ON DIAMONDS

The Diamond Market

In May 1976, the Fraser Government deleted diamonds from the list of regulated commodities set out in the Customs (Prohibited Exports) Regulations.* Notwithstanding this decision, the Commonwealth Parliament remained an important policy forum on the issue of diamond marketing by virtue of its constitutional responsibility for the regulation of external trade. The ownership of minerals is vested in the Crown in right of the State, and consequently the Western Australian Government retains significant powers over resource development policy relating to diamond mining.

Once the significance of the Argyle deposit as potentially the world's major diamond mine was confirmed, the marketing of future production became a crucial issue for the AJV. They faced a world market dominated by the Central Selling Organisation (CSO); in terms of corporate policy, the marketing decision involved a complex set of factors many indeterminate and some mutually inconsistent. A major question was whether to market through the CSO, or alternatively, whether to seek to market the Argyle production independently. Prima facie, the advantages of marketing through the CSO included access to stable markets and long-term contracts with concomitant advantages in raising the finance to develop the project. (Projected capital cost of the project was in the region of $400-$450 million.) The disad-

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* This can be seen as part of a more general trend. See Davison 1980, 105f.

vantages included the imposition of a commission* and the possibility of enforced cuts in production.

In contrast to the foreign investment policy arena, public policy in relation to diamond marketing had (except in a negative sense) yet to be formulated at the time these corporate decisions were being taken. The Western Australian Government had made it clear that it would require that it approve the joint venturers marketing proposals prior to allowing the project to proceed; Department of Trade documents confirm, however, that its major concern was to ensure adequate provision was made for local (i.e. Western Australian) processing rather than maximisation of rents accruing to Australians generally**. The W.A. Government had a long-standing policy of encouraging local processing of the State's resources, though this was characterised by strong elements of pragmatism and flexibility.***

The Central Selling Organisation (CSO), established and owned by De Beers, operates as a monopsonistic cartel and markets 80 per cent of world diamond production. Standard economic theory suggests that cartels involve a misallocation of resources in that

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* Rees Towie, the then Chairman of NMC pointed out that the standard CSO commission of 10 per cent of the value of production would be equivalent to a 25 per cent equity interest in the project. (AFR, 14 July, 1981).

** "The W.A. Agreement is directed towards achieving the maximum benefit <u>for W.A.</u> from the Argyle project...." (Dept. of Trade 8 December 1981). Emphasis in original.

*** See Layman 1981 for a discussion of local processing issues. As early as 1962, Charles Court, while Minister for Industrial Development, had explained that "the maximum degree of local processing must always be our aim. This is not easy to achieve. Sometimes it will be necessary to make considerable concessions to allow the export of natural material as a first phase towards the development of mineral areas" (Court, 1962, 11) quoted in Layman (1981, 162).

in the long run, excess capacity and overinvestment in the industry is encouraged with consequent cartel-enforced constraints on production. Cartels are inherently unstable since it is to the advantage of each member firm to leave the cartel (or not join) and operate at full capacity and sell its output at just below the cartel price.

Successful cartels have, in general, resorted to one or more of the following practices: (i) invocation of government aid to compel membership and enforce cartel decisions; (ii) controlled entry into the industry through control of patents; (iii) controlled entry into, and operation within, the industry by ownership of the scarce raw materials cartelised; and (iv) compelled membership or prevented insubordination by dumping at (temporarily) greatly reduced prices. (Patinkin 1971, 278).

There is no doubt that the CSO operates as a very strong cartel. Nevertheless, it is somewhat surprising, given the apparent size of the Argyle deposit, that CRA and Ashton Mining both decided to join the cartel when, <u>prima facie</u>, their maximum advantage (and concomitantly, Australia's) lay in staying outside the cartel. Of the four strategies available to the cartel, only (iv) above might feasibly apply. However, this seems somewhat unlikely given that its value would have been reduced both by the size of the Argyle deposit, and the costs which its implementation would have imposed on the CSO. Nevertheless, the fact that NMC decided that its interests lay in not joining the cartel lends some credence to the press speculation that there was significant De Beers influence (though not necessarily reflected in equity holdings) within both CRA and Ashton Mining.

The only other alternative, and the marketing arrangements eventually agreed to by the CSO are in some respects consistent with this, is that the cartel is much more stable than most cartels. This may well be due to the nature of the demand for diamonds, and/or the consequent perception of most major concerns in the diamond industry that a price stabilising cartel is not merely a profitable arrangement, but is essential to the long term stability and survival of the industry. It might well be then, that the CSO and the CRA/Ashton companies reached a collusive agreement whereby CRA/Ashton were effectively made partners in the CSO, rather than coerced members.

If either situation obtains, Australia's national economic interests may have been downgraded. In the case of Australia's diamond resources, there are potential losses of resource rents arising from constraints on production, opportunity costs of marketing through the cartel, and the possibility that new deposits may not be brought into production.

The difficulty with utilising an approach based on 'standard' economic theory is that the nature of the (gem) diamond market is far from 'standard'. The demand for gem diamonds probably exhibits what Liebenstein (1971, 116) has called "snob" and "Veblen" effects; that is, demand for gem diamonds may not increase as the price declines, but may actually fall if prices drop below a certain level for an extended period. In these circumstances, and assuming that the 'demonstration effect' of an AJV decision to market outside the CSO would (eventually) destabilise the cartel, there may be an irreversible fall in diamond prices and consequently in the present value of resource rents available for appropriation. If these assumptions hold, a decision to market outside the cartel may also have downgraded Australia's national economic interest.*

In these circumstances, the quality and competence of the public policymaking process relating to marketing becomes crucial. An examination of Commonwealth public policymaking is undertaken below.

The Policymaking Process

Although it seems desirable that (public) policy formulation should precede (private) decisions, public policy*making* is almost always in response to decisions/events. The formulation of public policy on marketing Australia's diamonds was no exception; it proceeded simultaneously with the negotiation and development by the AJV and its potential trading partners of their marketing proposals. Before analysing the outcomes of the policymaking process, it will be necessary to outline briefly the key events in that process.

Within six months of the discovery of Argyle, the AJV had arranged "for an early exchange of visits with the De Beers group to discuss technical aspects of diamond production" (*AFR*, 11 April, 1980). Speculation continued in the press over the following year

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* I am indebted to Dr. C. O'Faircheallaigh for bringing this point to my attention.

that Argyle's production would be marketed through the CSO with consequent "complications with government authorities" relating to the effective foreign influence on the project. (AFR, 18 September, 1980).

In February 1981, the Australian Financial Review's Peter Maher reported that the Australian Mining and Energy Council (comprising all state and the Federal Ministers responsible for mineral and energy resources) had been advised by their public service advisers to use their influence with the AJV and the CSO to ensure the establishment of a diamond-cutting industry in Australia. (AFR, 19 February, 1981). The AJV responded by mounting a lobbying campaign

> with state and federal government ministers, members of parliament and appropriate members of the public service to counter efforts to induce the company to support downstream processing on terms unfavourable to the company. (AJV Public Relations Policy document quoted in Business Review 16-22 May, 1981).

In early June 1981, the Chairman of Ashton Mining stated at that company's AGM that the AJV

> should market its diamonds through an organisation of substantial financial standing which can undertake to purchase our diamonds on a long-term basis at fair and reasonable basis (sic - 'basis' should read 'prices')

and that

> preliminary investigations suggested it was not timely to establish a local cutting and polishing business in Australia. (AFR, 4 June, 1981).

By early July 1981, it had become apparent that there was a significant split within the AJV. Rees Towie, Chairman of NMC publicly disputed the valuations being announced by CRA and Ashton Mining, and was strongly critical of CRA's approach to the marketing question, stating that they had failed to evaluate any alternatives to the CSO* (AFR, 14 July 1981).

The marketing issue was raised publicly in the political arena in late August 1981. The then Minister for Trade and Resources, Mr. Anthony, answering a question from Mr. Jacobi (Labor, S.A.) regarding the possibility that an arrangement with the CSO would mean that Australia would lose control over the pricing, production and marketing of its diamond resources, stated:

> The marketing of Australian products is largely in the hands of the company or firm or the person involved. It is basically the organisation's responsibility to shareholders to sell its products in a manner which is in the interests of those shareholders. I hope that in doing this, it is in the best interests of Australia....(SMH 27 August 1981)

These comments are clearly consistent with the laissez-faire ideology espoused by the Fraser Government, but fail to come to grips with the specific situation in which the two major interests in the joint venture had, by virtue of the 'naturalising' criterion effectively side-stepped the standard controls on foreign direct investment. The Minister appeared to have been caught off

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* See Roberts, Jan 'How De Beers Plans to Control our Diamonds' (SMH 22 August 1981) for a detailed discussion, based on a leaked document prepared for NMC Directors, of the differences between NMC and CRA/Ashton Mining.

guard by the question, for he also stated that he would call for the facts relating to diamond marketing from his Department.*

The Opposition spokesman on Minerals and Energy, Mr. Keating, responded by calling for the reinstatement of Commonwealth export controls on diamonds as a

> first step by the Government in seeking to rectify what has been a negligent disregard for the national interest in its failure to formulate and monitor a diamond development policy (AFR, 28 August, 1981).

The then Opposition Leader, Mr. Hayden, indicated that a future Labor Government would reimpose export controls on diamonds, and warned that

> the joint venturers must understand that any contract negotiated which ignores the Australian national interest will not be endorsed by a future Labor Government. (SMH, 29 August 1981).

The response of the joint venturers to these political developments was to issue a press release insisting that no decision had been made to market through the CSO ("all options are still open and speculation as to the outcome is premature"); though this was

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* In a draft minute dated 8 December 1981, the Department of Trade indicated that it was clearly desirous of an involvement of some kind in relation to the marketing arrangements; however, it accepted as a fait accompli Mr. Anthony's decision not to reimpose export controls on diamonds. The minute discusses the marketing question in terms which emphasise the AJV perspective and requirement rather than any Commonwealth objectives. (Department of Trade, 8 December 1981).

correct in a formal sense, the leaked NMC documents (SMH 22 August 1981) and the public statements of Rees Towie make it clear that the AJV's market study group had recommended in February 1981 "that the AJV commit its production to the CSO".* The Directors of Ashton Mining took the additional step of issuing a public statement denying that either the policy or operations of Ashton Mining or the AJV are controlled by companies within the De Beers or Anglo-American groups. (AFR 4 September 1981).

Notwithstanding the Ashton Mining statement, the question of De Beers influence within the AJV remained on the political and policymaking agenda. The De Beers group was not a passive observer of Australian developments; it sponsored visits by investment executives and journalists to South Africa (e.g. AFR, 21 September 1981) and seconded its senior public relations officer to Australian Anglo-American in Melbourne for four or five months. (AFR 4 December 1981). In mid-October, the Prime Minister, Mr. Fraser, answering a Parliamentary question stated:

> I can see no advantage to Australia or to Australian industry in having arrangements in which Australian diamond discoveries only serve to strengthen a South African monopoly in these areas. I believe that that would be contrary not only to the interests of Australia, but to the interests of Australian corporations. (AFR 16 October 1981).

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* An Indian trade delegation which visited Australia in March 1982 were critical of the AJV's marketing procedures claiming that the Indian trade was not canvassed as a potential purchaser of Australian diamonds. (AFR 18 March, 1982; AFR 25 March, 1982). This matter became the subject of diplomatic exchanges between India and Australia. (Department of Trade 3 August 1984).

The statement elicited an immediate response from the W.A. Premier, Sir Charles Court. He claimed there was no possibility of the project being controlled by De Beers, and that he had informed the Prime Minister that as it was a Western Australian project, the State would negotiate its development. (West 16 October 1981). The media portrayed the Fraser statements as direct confrontation with the W.A. Government and the De Beers group; headlines included "Fraser, Court clash in gem marketing", "PM Defies Diamond Cartel" (AFR 16 October 1981), "PM: No Role for De Beers" (West 16 October 1981), "Fraser Volunteers CRA for Service" (AFR 16 October 1981). The editorial press was largely critical, arguing that the Prime Minister appeared to be subverting a rational approach to resource development policy based on a "calculated assessment of what best benefits Australia" to one which "seemed to suggest that nationalism and racialism are the main factors affecting diamond selling policies" (AFR 20 October 1981).

In retrospect, this incident appears to have been misinterpreted by the press and the specialist financial commentators. The Prime Minister clarified his remarks on 20 October, arguing that he had been misinterpreted, and that he had not categorically ruled out a De Beers connection except where it only served De Beers interests. Ironically, the media portrayed this as a backdown by Fraser in the face of strong pressure from Sir Charles Court. However, even on 16 October, the Opposition's Spokesman on Resources and Energy, Mr. Keating responded to the Prime Minister's statement not in terms of ruling out marketing via the CSO, but in terms of marketing diamonds on a basis consistent with

Australia's national interest. (AFR 16 October 1981). It seems plausible that both Fraser and Keating were in fact involved in an exercise (though not necessarily in concert) which took for granted that the bulk of Argyle's diamonds would be marketed through the CSO, and which was aimed at strengthening the AJV's bargaining position vis-a-vis De Beers by imposing an 'external' constraint which would be effectively non-negotiable by the AJV, and thus immune to De Beers pressure.*

Certainly, Mr. Keating had been in contact with the AJV prior to the Fraser statements. A number of press reports had indicated that CRA had given Keating and the ALP an assurance that the national interest would be protected. (BRW 12-18 September 1981; AFR 24 September 1981; National Times 18-24 October 1981 and BRW 24-30 October 1981). It seems highly probable that this assurance was the quid pro quo for a decision to market through the CSO; having made such a decision, it would have made sense for the AJV to seek out all the support it could as it proceeded to negotiate the details of the marketing arrangement.**

In late February 1982, the broad terms of the agreement negotiated between CRA (in its capacity as manager of the joint venture) and De Beers became public (AFR 22 February 1982). The agreed terms

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* Geoff Kitney in his article 'Glittering Prizes' in the National Times 14-20 February, 1982 makes a similar point in the final paragraphs of the article.

** This interpretation explains not only Mr. Fraser's reference to "the interests of Australian corporations" (albeit naturalising ones) but the reports that "CRA sources were surprised at Mr. Keating's opposition" when the proposed marketing arrangements were later made public (AFR, 22 February 1982).

provided for the sale of all high quality gemstones to the CSO*, and 75 per cent of the remaining stones (near gems and industrials) produced after 1985. By value, it was expected that the CSO would purchase $150 million worth of diamonds annually, while the AJV would market $30 million worth independently. A further concession announced was that a "most favourable" commission rate would apply, that is, De Beers would charge no more than the most favourable rate it charges any other producer. There is some suggestion in Department of Trade files that there is an element of window-dressing in this concession.**

Although the proposals were yet to be endorsed by the joint venturers, and had not been submitted to the Western Australian Government for approval in accordance with the Diamond (Ashton Joint Venture) Agreement Act, they received general endorsement by the Prime Minister and the Minister for Trade and Resources, both of whom ruled out the possibility of reimposition of Federal export controls (West 23 February 1982). The Labor opposition attacked the proposals on the basis that export controls should be reintroduced "as a matter of urgency" (AFR 22 February 1982). Significantly, there was no criticism of De Beers and the CSO per se. Mr. Keating followed up with a Parliamentary Question and the

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* The joint venture retained the right to retain a small proportion of the top gems to support a local cutting and polishing industry.

** A Department of Trade briefing to the Minister dated 31 May 1982 relating to a visit to the CSO states that the Minister should discuss "Most favoured nation" issues with the CSO; "i.e. in the event that AJV formally recommends to the WA and Commonwealth Governments that a contract be concluded with CSO, the Government will need to be able to assert that no other diamond producer has a contract any more favourable... [the following 20 lines related to this issue are deleted]". Thompson (1983, 39) states that the CSO commission is unknown, "but is thought to be 7.5 per cent by knowledgeable sources".

initiation of a Discussion of a Matter of Public Importance (Keating 1982a, 1982b) which focussed on the question of valuation of diamonds, and which had as their theme the importance of a Federal Government role in the prevention of transfer pricing. Keating was particularly critical of the failure of the AJV to obtain the right to market 25 per cent of the high quality gems produced; as over 80 per cent of the joint venturers revenue will derive from the sale of gems, the scope for effective comparison of prices between the CSO and the independent marketing arrangements was severely limited. The Minister for Trade and Resources, answering the Parliamentary Question, agreed that valuation of the diamonds was crucial to the national interest, and indicated that both the W.A. and Commonwealth Governments would undertake valuations of diamond production on top of those undertaken by the joint venturers themselves (Anthony, 1982).

The concern and debate about valuation and transfer pricing of diamonds is important; however in some respects it is also misplaced as it ignores a more fundamental problem: the absence of a competitively determined market for diamonds.* The CSO operates as a monopsonistic cartel; it <u>determines</u> the value of diamonds by manipulating its stockpile.** There is thus no

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* This point was recognised by the new Labor Minister for Trade when he annotated a briefing note which advised that the valuers reports "will demonstrate whether or not the sales being made by the Argyle partners under their marketing arrangements are in accordance with the national interest" with the following comment: "This is a judgement beyond any valuers expertise. All he will be able to tell us is whether they are being sold at current market value" (Department of Trade 23 March 1983).

** Monopsony refers to a market dominated by a single buyer (as opposed to monopoly where there is a single seller). See Epstein (1982, 57f) for a discussion of the strategy adopted by the CSO to ensure it retains a monopoly on the stockpiling of diamonds.

'objective' value for any diamond. A further problem arises because the CSO sets the classifications by which diamonds are sorted and valued; there is thus a potential for 'under-classification' as distinct from under-valuation, the usual form of transfer-pricing.

In October 1982, NMC announced that it would not accept the marketing proposals negotiated with De Beers, and would submit proposals to the Western Australian Government that would allow it to take its 5 per cent of production and market it independently (AFR 8 October 1982). There appeared to be no immediate response to this announcement from either the W.A. or Federal governments. NMC subsequently announced that it would be selling its share of production to a Belgian firm, Arslenian Freres PVBA of Antwerp.

The Western Australian Government approved the separate marketing proposals of CRA/Ashton Mining and NMC in December 1982, the final government approval required before the start of full-scale mining.

As of 1 January 1983, the Western Australian and Federal Governments jointly appointed the London diamond dealers Triefus Ltd. to monitor and check the value of Argyle's production. The valuers task was (i) assess the buying assortment sample established jointly by the CSO and the AJV in Perth; (ii) check the allocation and valuation of AJV production against the sample assortment at each of 10 sales deliveries each year; and (iii) provide a quarterly report on the international diamond market. (Department of Trade 3 June 1982; Department of Trade, February 1983). It was also reported that the AJV was negotiating with another London dealer to provide the Joint Venture with independent advice on the prices received from the CSO (AFR 5 January 1983).

The election of Labor Governments in both Western Australia (February 1983) and federally (March 1983) has had no immediate effect on the marketing arrangements in place. Both governments have stated that they will examine the marketing arrangements, but that existing contractual arrangements would be honoured. The new Treasurer, Mr. Keating went further and stated that the Government recognised that there was no real commercial alternative, at least in the short term, other than to sell the major portion of the diamond output to the CSO; in other words, he endorsed the previous Government's policy. He did announce, though, that the FIRB should, as appropriate, review the operation of the marketing arrangements, and would examine any agreements proposed after the current agreement expires in 1989 (AFR 11 April 1983). The 1982-83 Department of Trade Annual Report indicates that the "coverage, procedures and administration" of export controls are being reviewed following the change of Government (Department of Trade 1983, 32).

ANALYSIS

It is superficially attractive to rationalise intervention by a Federal Government in the marketing of Australia's diamonds in terms of the 'national interest'. However, as Knorr has pointed out:

> It is misleading to insist that, in addition to serving

> particular interests, governments also uphold basic national interests or 'national welfare' in any way that transcends particularistic demands. (Knorr 1973, 37).

In Harris' words,

> Exporting countries do not have just one 'national interest', but their behaviour will often reflect the influence of a changing set of interest groups, government administrations, competing bureaucracies and the like. (Harris 1983, 7).

Nevertheless, it may be useful, in the interest of establishing a normative basis for the evaluation of public policymaking, to set distributional questions to one side and posit that the nation should maximise its appropriation of the economic rent deriving from the Argyle project. This criterion is broader than (though not inconsistent with) the objectives of federal export controls outlined by Stevenson (1976, 48f), and implicit in the rationale for export controls offered by a senior official in the Department of Trade:

> The government has found that there is a need for export control when situations exist which distort normal market forces and depress the prices received for Australia's resources as, for example, when Australian producers are dealing with single or coordinated monopoly buyers; when transfer pricing or inter-company marketing is a significant factor; or where significant over-capacity exists. (Barratt 1982, p22).*

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* A Departmental publication entitled 'Australia's Mineral Resources - Development and Policies' makes similar points (Department of Trade 1981, 12f).

'Transfer pricing' refers to the practice of transnational corporations selling a natural resource at an artificially low price (generally to an associated corporation) to escape the payment of taxes or royalties on production, profits or exports. The potential for transfer pricing in relation to Argyle diamonds is greatest in relation to the 25 per cent of non-gem production being marketed by Argyle Diamond Sales Pty. Ltd. (ADS)*. The possibility of transfer pricing on the major portion of the production would require significant collusion between ADS and the CSO. The appointment of 'independent' valuers by the W.A./ Commonwealth governments will provide significant protection against straightforward transfer pricing by ADS.

The possibility of under-valuation and/or under-classification by the CSO is more difficult to protect against; although the buying assortment is chosen jointly by the CSO and the AJV, there is always the possibility that diamonds will be resorted and upgraded by the CSO in London. Nevertheless, the appointment of an independent valuer by the ADMJV will go some way toward protecting ADMJV and indirectly State and Federal revenues. Of course, the existence of collusion between ADM, ADS and the CSO would render these protective arrangements useless.**

The possibility of transfer pricing, under-valuation or under-

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* Argyle Diamond Sales Pty. Ltd. is owned 60 per cent by CRA and 40 per cent by Ashton Mining Limited.

** It should be realised that the existence of collusive activities is in no way dependent on De Beers influence or control within the ADMJV. It is, however, dependent on the parties having a motive to do so. The argument has not been that such a motive exists, only that the potential for such a motive exists, and that it is the role of public policymakers to monitor these possibilities.

classification are not the only threats to optimal appropriation of resource rents by the nation. A further major threat (included in Barratt's criteria) is the possibility of market distortion. This could occur either as a result of the effective control of the world market by De Beers or arising from the effective monopsonistic power exercised by De Beers.

The question of De Beers control of the world diamond market is a matter which, prima facie, is beyond the influence of Australian public policymakers. However, in normative policymaking terms, all potential policies should be considered no matter how unlikely in the Australian political context. Export controls are clearly a clumsy and indirect means of affecting the market power of De Beers. Nevertheless, it may be that the size and importance of the Argyle deposit combined with the prospectivity of the Kimberley region is such that public policymakers should address the market control problem. The relative size of the Argyle deposit can be gauged from the following data. Annual world diamond production is approximately 50 million carats worth $4 billion (AJV, 1981, 27). Of this, De Beers produces about 20 million carats and markets through the CSO approximately 40 million carats. (De Beers 1983, 48; De Beers 1984, 14).*

Argyle will produce about 25 million carats per annum, although it has, according to the AJV, a higher than average percentage of

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* The Chairman's statement in the 1983 Annual Report advises that "There has never been a time during the period of more than 50 years that I have been in the diamond industry when the proportion of the total world rough diamond production marketed through the CSO was as high as it is today." (De Beers, 1984, 5).

non-gem diamonds, and a lower than average quality in each of the gem, near-gem and industrial categories. The joint venturers have indicated that while Argyle will increase the world supply of diamonds by 40 per cent in terms of carats produced, it will only lead to an increase in the value of world production of 4 per cent (ADMJV 1982, 72-87 especially 85, 86). See Appendix C for a more detailed discussion of these matters.

It is clear that an important task of public policy analysts would be to assess in an independent way the accuracy of the claims of the joint venturers in relation to the importance of the Argyle deposit as this would have an important bearing on the potential impact of export control policies on the De Beers' control of the world diamond market. For example, it may be that an export control policy which stipulated a low maximum level of sales to De Beers, and a minimum production level would have the effect of challenging the De Beers control of the world market, and the concomitant market distortions. Such a policy would probably not be effective; however rational policymaking requires that it be examined. There is no evidence in the available Department of Trade files that such an examination took place.

An alternative public policy approach to the market distortion problem (indeed the marketing issue generally) is the possibility of direct public-sector participation in the project. Public sector participation in diamond extraction is almost the norm in the rest of the world apart from South Africa.* Lanning and Meuller (1979, 401, 442-445) whilst acknowledging the advantages of public sector participation, point to the danger that nation-states' private interests may override their national responsibilities.**

Notwithstanding these dangers, public sector participation in the Australian diamond extraction industry would ensure that relevant production and marketing cost data were available during the formulation of public policy, with corresponding improvements in the degree to which the normative objectives of those policies might be attained.

An alternative to public sector participation in a particular project is the establishment of a crown corporation to compete with private sector firms (Cohen and Krashinsky 1976). Thus there may well be a case for a National Diamond Marketing Corporation, with a right to market either part or all of Australia's diamond production. The establishment of such a corporation would ensure an arms length relationship between the production and marketing of diamonds, and would provide a market-determined yardstick by which to evaluate private marketing arrangements. In the absence of such a corporation, there is a real risk that optimal pro-

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* But see Department of Trade minute (12 March 1983) which indicates that De Beers leases the South African Government's 70 per cent interest in the Finsch mine and the 60 per cent interest in the Premier Mine and comments: "the degree of government ownership is much greater than we were led to be believed....(sic)".

** "The host government will now have a vested interest in defending the companies against political attacks, in preserving a 'stable environment', and in making the local subsidiary as profitable as possible to maintain a high level of government earnings from its 51 per cent share." (Lanning & Meuller, 1979, 444).

duction rates (in terms of maximising the resource rents accruing to Australia) will not obtain; and further, that new discoveries may not be developed, especially if controlled by the AJV, and/or located in Western Australia.

The public policy implications in terms of foregone economic rent and regional development in the event that potentially viable deposits are not developed are substantial, especially when it is realised that the whole of the Kimberley region is highly prospective for diamonds, and might easily contain a number of significant deposits comparable to Argyle.* Of course, it is also possible that a large increase in production of Australian diamonds would lead to substantial falls in price, and consequently in the resource rents available for appropriation. Thus, it is not necessarily in Australia's interests to bring newly discovered deposits into production. If this was the case, it would still be in the interest of a state other than W.A., and a firm other than the AJV, to develop the deposit. Clearly, there is a role for Commonwealth involvement in the future development of Australia's diamond resources.

There is little evidence publicly available which suggests that the possibility of public sector participation in the Argyle project or in diamond marketing generally was considered at the Federal level. The political reasons why this should be so will

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* Mr. A.K. Jones, Chief Executive of Ashton Mining has stated "experience in Russia and Africa has shown that economic kimberlites occur in clusters, albeit over a wide radius, and there are good geological reasons for believing this pattern will be repeated in Australia..." (Jones 1984, 20).

be analysed in a later chapter. Nor was there any consideration of public ownership in Western Australia during the policymaking process leading to the State Government approval of the proposed mining and marketing arrangements. The subsequent purchase by the new Labor Government in W.A. of NMC was a major initiative towards state participation in the resources field and the diamond extraction industry in particular.*

Nevertheless, the significance of this purchase was somewhat diminished by the fact that it came after the crucial marketing decisions had been made. Nor did it affect the degree of local ownership in the joint venture, merely replacing one set of Australian shareholders for another. The decision to take up an equity stake in the project appears to have been based more on ensuring the maximum degree of local processing is taken up in W.A. (notwithstanding the provisions of the <u>Diamond (Ashton Joint Venture) Agreement Act</u> 1981) than on maximising the appropriation of rents by the W.A. Government. The prior decision of NMC to market independently has been maintained. The W.A. Government would certainly be in a better position to evaluate future marketing proposals if and when they arise as a result of its participation in the project; however the agreement between the joint venturers and the State Government appears to make no provision for reconsideration of the approved marketing arrangements so long as the joint venturers do not intend to "significantly modify, expand or otherwise vary" the approved marketing arrangements (Diamond (AJV) Agreement, clause 6(6)).

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* See Stevenson 1976 for an extensive discussion of the role of State and Federal governments in direct participation in the resources field.

It thus appears that the participation of the W.A. Government in the project is largely symbolic in terms of its effect on the criterion of maximum appropriation of economic rents, except insofar as it is in a much improved position to assess the adequacy of the royalty provisions of the Agreement. It may be difficult for future State Governments to take advantage of this knowledge as variations to the agreement, including the royalty arrangements, require the agreement of both parties under clause 38. Nor is the State's involvement significant enough to affect the marketing of the Project's production in such a way as to pose any threat to the control of the world market by De Beers.*

The other potential market distortion, the existence of effective monopsony power by De Beers, is also a potential threat to the normative objective of maximum appropriation of economic rents by the nation. Given that other buyers do exist for Argyle diamonds, the existence of monopsony power will largely be a function of the degree of influence and/or control which the De Beers group is able to bring to bear on the AJV (and indirectly, the Australian Government).

There has been a great deal of speculation over this issue, much of it simplistic and misleading. It is crucial to realise that De Beers, the ADMJV and the Australian populace, represented by the

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* Dr. C. O'Faircheallaigh (1984) in a personal communication has pointed out that there is the possibility that Government involvement would give it access to information which would permit generally applicable legislation to be enforced more effectively. He states that Government officials he has interviewed overseas support the validity of this point. The division of responsibilities between state and Commonwealth Governments in Australia diminishes, in my view, the force of this argument in relation to Argyle.

Australian and W.A. governments are involved in a complex set of bargaining processes. It is inevitable that each will influence (and given appropriate circumstances, control) the others. Bargaining processes are inherently difficult to analyse as they involve not only the interaction of the political and economic resources of the parties, but also depend upon the parties' perceptions of their relative strengths, and the negotiating skills they can bring to bear. An important determinant of bargaining outcomes are the initial positions of the parties. A second factor is that bargaining processes are not static as the relative strengths of the parties may change while the bargaining is taking place. This may arise because of a change in some circumstance external to the process, and which may be totally unpredictable; or it may be related to internal factors. For example, Harris (1983, 9) has pointed out that the bargaining power of the investor vis a vis the host country is substantially reduced once the investment has been made.

It is worth outlining the evidence for significant De Beers influence over the AJV in relation to the marketing issue. Much has been made of the complex chains of equity holdings leading back from CRA and Ashton Mining to the Anglo-American Corporation and the De Beers group, both effectively controlled by the Oppenheimer family. However, the effective equity holdings of the

Oppenheimer interests in the AJV is quite small, probably less than 2 per cent.*

However, mere calculation of effective equity holdings ignores the overall structure of those intérests. Clearly a company owned by a large number of small shareholders might be controlled by a single shareholder with a substantial shareholding, notwithstanding that it might be substantially below 50 per cent. The existence of reciprocal shareholdings can have a similar result. Epstein (1983, 105f) points out that Oppenheimer interests are able to control both the Anglo-American Corporation and De Beers, and appoint the Boards of both companies, on the basis of a 10 per cent holding of Anglo-American stock.**

It is beyond the scope of this present study to make any attempt to calculate the effective control/influence of the De Beers group within the AJV. Apart from the fact that control or influence will vary from decision to decision, control is, as Anderson (1983, 142) points out inherently difficult to quantify with the result that ownership levels are almost invariably used as a proxy. Nevertheless, there is a real possibility that the equity-

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* A press release by Ashton Mining Limited (3 September 1981) claimed that the effective Anglo-American/De Beers equity in the AJV would shortly fall to 1.1 per cent. See also AFR 13 November 1980; Aust. Bus. 2 July 1981; Thompson 1981, 287 for analyses of De Beers interests in the AJV. A Department of Trade briefing note to the Minister dated 21 September refers to "innacurate" public comments regarding the extent of De Beers influence in CRA, Ashton Mining and the AJV.

** According to the 1982 De Beers Annual Report, shareholdings in excess of 5 per cent in De Beers Consolidated Mines Limited are held by Anglo-American (31.1%), SICOVAM (6%) and South African Mutual Life Assurance Society (6%); in turn, De Beers holds a 38 per cent interest in the Anglo-American Corporation. (De Beers, 1983, 17, 51). See Lanning and Meuller (1979, 446-455) for a detailed discussion of these matters.

derived influence of the De Beers group exceeds the level of its effective equity holding, though it seems unlikely that this type of influence was of itself of the significance to predetermine the marketing issue. This leaves what Anderson (1983, 141) has referred to as "non-equity methods of control". For example, it has been suggested that the Malaysian Government (which controls MMC, the largest shareholder in Ashton Mining) was vulnerable to De Beers pressure because of the existence of a CSO processing plant in Malaysia (Aust. 28 August 1981). Perhaps the most important non-equity method of control available to De Beers is its undisputed dominance of the world market, and its ability to destabilise and/or substantially reduce diamond prices during the project's crucial initial stages, and conversely, to reduce the supply cost of investment capital for the project by offering firm, long-term marketing contracts.

This non-equity leverage would be greatly magnified if De Beers 'customer equity' (however tenuous) enabled it to obtain access to detailed data on the cost of production and the special characteristics of Argyle diamonds as this would enable it to fine-tune diamond prices in any price war to minimise the disadvantage to itself and maximise disadvantage to the joint venturers. It seems probable that De Beers would have had access to the cost and characteristics of production data as the Chairman of Charter Consolidated,* Sidney Spiro is both a member of the De Beers Board of Directors and RTZ's Board (AFR 11 April 1980). Charter Con-

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* De Beers has a controlling 36 per cent holding in Charter Consolidated (De Beers 1983, 54). Lanning and Meuller (1979, p452) include Charter as part of the 'control core' of the Oppenheimer group.

solidated also had a 28 per cent holding in the Malaysian Mining Corporation, prior to October 1981 when it was reduced to 14 per cent (Ashton Mining, 3 September 1981).

The significance of this bargaining strength was magnified by the financing arrangements for the project: both CRA and Ashton Mining utilised what is known as 'limited recourse project finance' where the syndicates of banks which loaned the funds ($175 million to Ashton Mining; $235 million to CRA) retain a recourse <u>limited to the proceeds of diamond sales</u>.*

A prerequisite for limited recourse project financing is the existence of long-term marketing arrangements. From the perspective of the joint venturers, the decision to market through the CSO would have had the advantage of allowing the project to be debt-financed, thus freeing internal funds for other uses, and providing access to significant tax deductions on the interest repayments which would largely offset the cost of the CSO commission.

The evidence for De Beers control within the AJV is indirect, circumstantial, and not persuasive. The results of any Government examination of this question (and there is no certainty that such an examination took place) have not been made available to this writer. While the lack of an "arm's length" relationship would certainly have public policy implications, it is possible to reach

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* See the <u>Miner</u> 9-22 April, 1984 and the <u>Australian</u> 14-15 April, 1984 for details of the financing of the project.

conclusions on the proper role of public policymaking on the basis of the structural relationship between the parties, and the known outcomes of the bargaining process that took place. Thus, the decision of NMC, the only participant in the joint venture with no foreign shareholders, to market independently of the CSO is evidence of the appropriation of substantial resource rents from the project by the De Beers group; the public disagreement between the joint venturers which led to NMC's Towie stating that CRA and Ashton were understating the value of the diamonds being recovered at Argyle, and that CRA had failed to actively examine alternative marketing options (AFR 14 July 1981) reinforces this conclusion. The corollary of appropriation of rents by De Beers is the loss of those rents to the AJV and/or to the Australian nation.

There are two possible interpretations of this situation. One is that De Beers used its monopsonistic market power to appropriate rents that should properly (given appropriate public policies) accrue to the nation. It should be noted that this conclusion does not depend on there being any control or influence over the AJV by De Beers; the AJV will act in its own self-interest within the constraints of prevailing public policies. The second interpretation is that NMC's decision to market independently is a function of the small volume of diamonds involved (5 per cent of Argyle production) and that this merely reflects 'free rider' behaviour rather than evidence that the AJV marketing arrangements with De Beers were sub-optimal in terms of the normative criteria adopted in this study. Transfers to De Beers of resource rents under the second interpretation are seen as the justifiable costs of operating an essential price-stabilisation cartel.

Senior advisers to the W.A. Government interviewed preferred the second interpretation. They argued that the CRA/Ashton decision to market through the CSO was the only option available to the two major joint venturers, and that the NMC decision to market outside the CSO was a reflection of the small amount of diamond production involved relative to total Argyle production and the world market. Once CRA/Ashton decided to market through the CSO, NMC had the option to market outside the CSO without fear of De Beers retaliation. There are a number of problems with the second interpretation; it is based on two premises: (i) that the cartelisation of the diamond market is essential because of the unique nature of the gem market and (ii) that the value of CRA's and Ashton's share of production is so significant that the CSO would not allow them to market independently. Figures issued by the AJV indicate that Argyle's gem output is only 2 per cent by value of the world's total gem output (see Appendix C); this data places the second premise in at least some doubt.

It is not possible to resolve the issue of which interpretation is correct with the data available on the public record; the point which must be emphasised, however, is that whichever interpretation is correct, there are public policymaking implications. If the first interpretation is correct, there is a strong case not only for Commonwealth export controls, but for a Commonwealth role in marketing. If the second interpretation is correct, there were still questions to be answered by public policymakers: might there be a possibility over the longer term of reducing the monopsonistic control of (segments of) the world diamond market by De Beers? The relevant question in normative public policymaking terms was not what was feasible for the joint venturers, but what was feasible for the Australian Government in relation to the marketing question.

Conclusions

The policymaking process relating to export controls and marketing at Argyle appears to have been severely deficient in comparison with the normative criteria adopted, viz., the maximisation of the nation's appropriation of resource rents and external benefits arising from the project.

The non-existence of a national export control policy directed to counteracting the market distortions inherent in De Beers monopsonistic control of the world diamond market is a second potential mechanism for rent transfers away from Australia. As Lanning and Meuller (1979, 420) note, the issue of market stabilisation is logically separate from De Beers control of the stabilising organisation.

A second potential resource rent loss is the opportunity cost of diamond resources not brought into production because of cartel imposed production constraints. Alternatively, there may be resource rent losses if new diamond deposits are developed (especially if this occurs outside the CSO). Whilst it is impossible to make *a priori* decisions about these matters, they demonstrate the necessity for a rational national approach to diamond marketing. To date, the federal policymaking processes involved in the corporate regulation of the Argyle development have not only been not ideal, they have largely been uncoordinated and irrational. Thus, the foreign investment issue was effectively finalised prior to the discovery of Argyle; yet the rational formulation of public policy on the marketing issue would have required the assessment of the extent of foreign influence vis a vis the AJV, and of the likely outcome of the bargaining process. In the event, ideology won out over rationality. The effect of public policy appears to have been to shape the form of the bargaining relationships rather than to intervene effectively and decisively in the bargaining process. The result has been that foreign interests have benefited, possibly at the expense of Australian interests. Synonymously, it might be observed that corporate interests have benefited at the expense of other more general interests. The reasons for this will be addressed in the final chapter.

CHAPTER FOUR

SOCIAL IMPACT AT ARGYLE: GENESIS OF A PUBLIC POLICY.

Aboriginal Sites and the Good Neighbour Policy

Pressure for Social Impact Assessment

Environmental Review Procedures

The Impact Assessment Group

Analysis

Conclusions

SOCIAL IMPACT AT ARGYLE: GENESIS OF A PUBLIC POLICY

The Social Geography of the East Kimberley.

The East Kimberley region was settled by pastoralists in the 1880s, and there followed thirty years of sporadic conflict between Aboriginal groups and European settlers (Palmer & Williams 1980, 12-15). A period of relative stability followed which saw the consolidation and growth of the pastoral industry in the region. In the 1960s, under the political impetus of the ideology of northern development, a major project to dam the Ord River, establish an irrigation area, and construct a town and infrastructure was initiated. The project has failed to live up to expectations and has had a significant negative impact on Aboriginal societies in the region (Young 1978, 5; Cousins & Nieuwenhuysen 1984, 144).

The inclusion, in 1968, of Aboriginal stockmen in the Pastoral Award reduced employment opportunities in the region and led to a major movement of Aboriginal people to the towns of Halls Creek, Wyndham and Kununurra, and to the establishment of, among others, a permanent Aboriginal community at Turkey Creek (Palmer & Williams 1980, 14).

The Argyle Project Environmental Review and Management Programme (ERMP) outlines the social demography of the Aboriginal communities in the region in some detail (Dames and Moore, 1982, 206-218). The major communities are the Warmun Community at Turkey Creek, the Woolah Community at Doon Doon Station (formerly

Dunham River Station), and the Mandangala community at Glenhill outstation. They comprise populations of approximately 200, 50 and 20 respectively.

A recent development among Aboriginal communities in the region has been the tendency for small groups to resettle in areas of traditional significance, often referred to as the outstation movement; for example, the Mandangala community was initially established and supported as an outstation of the Warmun Community. The outstation movement has led to the establishment of resource organisations to service outstation communities. The Balinggarri Association, representing about twenty outstations and communities in the East Kimberley including the Warmun and Woolah Communities and their outstations, was established in 1982, and is based in Kununurra.

The Argyle project is the first major development project in the region which has resulted in a focus on the question of social impact by public policymakers. This focus has been largely, though not entirely, directed to social impacts on Aboriginal societies in the region. That this is so reflects the fact that the project is taking place on land of traditional significance to those Aboriginal societies, and that the perceptions of Aborigines are that they stand to gain only limited benefits, and certain costs from the project.*

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* See Rumley 1983 for an analysis of the social inequalities which exist in the Kimberley between Aborigines and Europeans.

The efforts by Aboriginal communities and organisations to have this perception validated and recognised by public (and private) policymakers have, if the policymaking reaction is any guide, been to a large extent successful.

It is not the intention of this study to attempt to evaluate or quantify the social impact of the project; that would require a major research effort involving a multi-disciplinary approach, and would necessarily involve significant methodological difficulties (AIAS 1984; Dillon, 1983b). Nevertheless, a number of writers have identified the scope and form of many of the major impacts of the project on Aboriginal communities in the region (Dames & Moore 1982, Christiansen 1983). The approach adopted here is to outline the political circumstances which moulded the development of a public policy (or policies) in relation to social impact assessment of the project. Three major loci of policymaking are identified: Aboriginal sites and the Good Neighbour Policy, pressure for social impact assessment, and the environmental review procedures. It is argued that together they encompass the political conflict engendered by the establishment of the project in areas of significance and in close proximity to Aboriginal communities.

Aboriginal Sites and the Good Neighbour Policy

The origins of political concern relating to social impact of the project can be traced to conflict between the AJV and Aboriginal groups over sites. This conflict has been discussed in detail elsewhere (Langton 1983, 390-399; Dillon 1983a;

Christiansen 1983). The dispute eventuated in the making of an agreement (the 'Glenhill Agreement') between the AJV and a sub-group of traditional owners in July 1980.*

Though the full agreement has never been made public, its major provisions included financial payments (see discussion below) conditional on the consent of the Aboriginals involved not to oppose the mining of sites in the area.

The political context in which the Agreement was made is important as it indicates the underlying nature of the Agreement which is (still) the focal point for public policymaking in relation to social impact in the region, and was a crucial factor in the public policymaking outcomes on sites.

The following brief chronology is derived from a confidential source. The responsibility for administration of the W.A. Aboriginal Heritage Act is lodged with the Trustees of the W.A. Museum. They are required to make recommendation to the Minister, who has powers of direction over the Trustees (Dillon 1983a). In February 1980, CRA applied to utilise the Aboriginal site daiwul located on the Argyle Kimberlite pipe. On 12 June, 1980, the Aboriginal Cultural Material Committee (ACMC)** of the W.A. Museum recommend-

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* The AJV has never conceded that the Aboriginal parties to the Agreement represented a minority of traditional owners and maintains that the agreement was made with "all four principal custodians of the sites at a meeting with company representatives which was attended by 34 adult Aborigines nominated by the custodians as entitled to a say on the future of the site" (O'Leary, Age, 30 March 1984). The representativeness of this group was questioned by other Aboriginal groups; see West 23 September 1980, AFR 11 June 1981, Langton 1983, 394ff.

** The ACMC is a committee of public servants and anthropological experts established by the Act to provide technical advice to the Trustees of the Museum.

ed "protected status" for the site. On 14 July, the then Minister for Cultural Affairs wrote to the Trustees asking them to defer any decision on the site at their meeting that day pending further information. The Trustees acceded to the request. During the period 21-26 July, the Glenhill Agreement was negotiated and finalised. On 7 August, a number of Trustees and Museum staff met with the then Minister Mr. Grayden. The Minister informed the Museum of the basis of the Agreement, and had arranged for CRA to provide the Museum with a list of names of the Aborigines involved to assist in their evaluations. The Trustees met again on 11 August, and authorised further work by Museum staff. The staff visited the Argyle region on 2/3 September, 1980. In their ensuing report, they stated:

> Sites 25 and 27 are still regarded [by the Aborigines] as significant ('sacred') but in view of the disturbance that has already taken place, and the apparent inevitability of mining development, they have entered into the compensation agreement.....

They recommended that permission to CRA to utilise site 25 be granted. On 12 September, the ACMC met, reviewed the staff report, and resolved (again) to recommend that permission not be granted and that site 25 be declared a protected area on the basis that "notwithstanding the agreement between the Community and the Company.....the Community recognises the continued outstanding significance of site 25". This was in accordance with section 39(3) of the Aboriginal Heritage Act which states:

> Associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained, shall be regarded as the primary considerations to be taken into account in the

> evaluation of any place or object for the purposes of this Act.

On 18 September, the Minister's Private Secretary contacted the Museum and "explained that the Minister was being put under some pressure by CRA for a decision on the sites", and requested that a copy of the staff report be provided to the Minister. This was duly done. On 24 September, at a special meeting, the Trustees over-ruled the recommendation of the ACMC:

> The Trustees believed that the agreement was an important factor which had to be taken into account in reaching a conclusion.

They resolved to recommend to the Minister that in view of this "important factor", consent to CRA's request to utilise site 25 be given. The Minister announced his decision to consent the following day (Dillon, 1983a, 496).

The implications of the chronology outlined above for present purposes are (i) to establish the existence of the political intervention of the then Government in the evaluative processes of the statutory authority charged with formulating policy options; (ii) to establish that in Aboriginal perceptions, the agreement was seen as compensation for the fait accompli of destroyed sites and the inevitability of mining development, and not as a voluntary consent agreement; (iii) to establish the strategic significance of the Agreement in providing a rationale to both CRA and the Government for the Minister's decision to allow utilisation of the sites* and (iv) to establish the primary responsibili-

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* This was necessary in view of the fact that the W.A. Government's stated policy was to protect "genuine, identified sacred sites" (Dillon, 1983a, 491).

ty of the government (rather than the joint venturers) for the negative social impact of mining on Aboriginal sites on Aboriginal communities in the region.*

The signing of the Glenhill Agreement in Perth on 26 July 1980 laid the foundation for what was to become known as the Good Neighbour Policy (GNP). The Agreement provided for a capital works program on Glen Hill Station to the value of $200,000 and the funding of capital items to the value of $100,000, indexed to inflation, each year thereafter that mining continued (CRA 27 July 1980). The first public mention of the "good neighbour" aspects of the agreement is in a press release issued on 30 July 1980.** This followed the receipt by Sir Roderick Carnegie of Sir Charles Court's reaction to the news of the agreement, which made it quite clear that he was far from pleased:

> I found over the weekend as I was about to leave London that a deal had been done by CRA with John Toby and those associated with him in respect of Argyle which did not appear to be consistent with the general understanding I had reached with you in London and Peter Jones [Minister for Resource Development] had discussed with your representative in Perth. You will recall that I had welcomed any discussions by the

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* As Sir Roderick Carnegie, Chairman of CRA, noted in May 1980, "it must finally be a government responsibility to weigh the social factors and to decide whether or not development proceeds, and if so, under what conditions." (Carnegie, 1980).

** The press release, titled "Aboriginal Representation in Agreement with the Ashton Joint Venture" stated in part: "The Ashton Joint Venture believes it has acted in good faith by entering into an agreement with those Aboriginals with independently identified direct affinity to the Argyle sites. In doing so, it has made no admission of desecrating an Aboriginal site but rather aims to establish good neighbourly relations with the Glen Hill community...." (CRA Limited 30 July 1980).

> Joint Venturers with the local community and said that the Government would also welcome any arrangement where things were done by the developers to assist the local community on a 'good neighbour' basis.*
>
> I think the term 'good neighbour' was emphasised by me at the time and generally accepted as the correct approach. From what I understand, CRA have gone far beyond this and have entered into a firm contractual commitment in respect of both initial capital expenditure and recurring amounts - the former being $200,000 and the latter $100,000 a year. This is so specific that it must be interpreted as compensation and payments in lieu of royalty. (Court 30 July 1980).

Clearly, the AJV were in a difficult position. To provide the rationale for the Minister for Cultural Affairs' decision to allow the site to be mined, they needed to maintain the legitimacy of the Agreement with "the recognised Aboriginal custodians" without legitimating the demands of Aborigines for statutory recognition of their traditional interests in land generally (as opposed to particular sites) and without acknowledging the arguments of other Aboriginal groups such as the Warmun Community at Turkey Creek that the agreement was not completely representative of the 'traditional owners' of the Argyle area (Langton 1983, 394ff; West 23 September 1980). The approach adopted was to commit public relations resources to the support of the agreement and to package it as part of a good neighbour program as a defence

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* Sir Charles Court had not coined the term out of the air. In a speech in 1970 he had said: "Our development policy is based on an expectation that developers will be good neighbours. We expect them to have a satisfactory desire to conserve the environment and minimise pollution" (Quoted in McKern 1976, 16).

against criticism of the AJV's treatment of Aboriginals and pressure for substantial compensation and royalties (Age, 20 June 1981; Nat. Times, 21-27 June 1981). Thus, the June 1981 Aboriginal Relations Briefing Paper produced by the AJV characterised the Agreement as part of a "Good Neighbour Programme" (AJV 1981, 6) in an attempt to remove the issue from the general land rights debate.

The tactic appeared to be largely successful; the Commonwealth Government appeared to accept that the issue was not one of protecting the fundamental interests of traditional owners, but rather one of ensuring that all the communities affected by the project were included in any compensation measures adopted by the AJV. The Department of Aboriginal Affairs and its Minister, Senator Chaney, were certainly instrumental in having the scope of the GNP widened. In September 1980, the Department briefed the Minister on Argyle developments:

> The main area of contention is that certain people will not benefit from the agreement reached between John Toby's group and CRA. The emphasis is now being placed on extending the benefits of that agreement to other people interested in the area, particularly the Turkey Creek community. Whilst we may wish to support any move to extend the benefits to other groups and encourage CRA to enter into further discussion and possible agreement with other Aboriginals affected by the proposed mining, we would have to be mindful of the criticism already lodged against CRA by the WA Government who have indicated that the current agreement goes beyond what the WA Government considers to be proper limits.

> The situation requires some further consultation with CRA but before approaching the company, discussion of this issue with you would be appreciated. (DAA, 11 September 1980).

A note dated 15 September on the bottom of the brief indicates:

> Minister advised that he thinks CRA should be encouraged to talk further with the Toby group with a view to widening discussion with others who consider themselves affected by proposed developments. (DAA, 11 September 1980).

In December 1980, the Minister met with senior officers of the AJV. The record of meeting indicates that the Minister encouraged the AJV to enter into discussions with the Warmun Community. The AJV indicated that they had been talking to "representatives" of the community and that the AJV "would be quite happy if it were asked by the community to provide such things as houses or water supply to the community but that the Joint Venturers would not be prepared to enter into any agreement with the community nor to negotiate with the Kimberley Land Council". (DAA, 16 December 1980). This is consistent with the AJV's aim to keep clear of the land rights debate.

In April 1981, the DAA Area Officer in Kununurra indicated to a Warmun Community employee that DAA could not provide funding for a mechanics shed, but that the AJV's GNP may be an alternative source of funds (Warmun, 3 April 1981).

By July 1981, the AJV had changed their mind concerning an agreement with Warmun; they offered the Warmun Community $100,000 per annum, indexed, and the Woolah Community on Doon Doon Station (formerly Dunham River Station) $40,000 per annum, indexed, for the life of the mine, on the condition that the AJV "remains free to conduct its mining operations throughout its Argyle tenements". The offers were accepted by the two communities.

The implementation of the GNP has had a significant impact on the three Aboriginal communities involved; it has provided housing, a school, roads and pastoral development infrastructure at GlenHill; a community store, school kitchen and workshop at Warmun; and pastoral development items at Doon Doon. A significant number of highly prized vehicles have been purchased for the beneficiary communities.*

However, the operation of the GNP has not been without problems. Aboriginal communities have complained publicly over the lack of control they exercise over the arrangements: the funding is limited to capital items and is paid directly to contractors/suppliers by the AJV (AFR, 4 February 1982). The Warmun Community had requested the AJV to purchase the nearby Bow River Station, but the AJV refused, arguing that such a purchase was outside the ambit of the GNP (Age, 7 August 1982; O'Leary 1984).** The potential overlap between the GNP and government programs has also been of concern. There has been some readjustment of funding priorities by both the ADC and DAA, though there appears to have

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* Rein (1982, 133) has pointed to the growing extent to which private enterprise is used by the public sector as its agent in the provision of welfare services.

** Bow River Station was recently purchased with funds from the W.A. Government and the ADC. Space does not permit an analysis of the decision to purchase.

been no formal co-ordination between the funding Departments and the AJV.* See Altman (1983, 20) for a discussion of the problems which arise when payments which are fundamentally compensatory are treated by governments as revenue, and thus a potential substitute for their own spending obligations.

Further problems that have emerged are the issues of dependence and community development. The very flexibility of the GNP in contrast to the slow and constrained financial processes of the public sector has meant that:

> the method of dispensing Good Neighbour allocations amounts to a form of patronage which creates dependence, and, given the trade-offs involved, weakens traditional values and systems of authority. The net result can only be the perpetuation of a situation containing little hope for the attainment of the Government's declared aim of Aboriginal self-determination. (Christiansen 1983, 44).

In policymaking terms, the GNP has displaced or downgraded the operation of government programs in the region. Christiansen (1983, 44f) comments:

> ...ADM has gained an influence over Aboriginal affairs in this region out of all proportion to its actual financial input. As its influence has grown, so has the independence and authority of government departments diminished...

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* The DAA Area Officer in Kununurra confirmed that capital project funding submissions from the beneficiary communities received a lower priority because of the existence of the GNP; he emphasised that recurrent funding had not suffered (and in fact had increased). Nor had the regional budget administered by the Area Office been reduced. (Interview, June 1984, Kununurra.)

The reasons for this are largely linked to the specific nature of the AJV's policy objectives, to minimise local Aboriginal opposition to its activities and the ability of the company in contrast to government bodies to intervene extremely quickly especially in relation to financial commitments. Consequently, the AJV appears to largely set the parameters of much of the local policymaking in Aboriginal affairs.

Pressure for Social Impact Assessment

Relatively early in the policymaking process, the Aboriginal communities, particularly Warmun, recognised the importance of social impact assessment as a means of legitimising their concerns.

In May and June 1980, the Warmun Community wrote to the Australian Institute of Aboriginal Studies (AIAS) seeking an evaluation of social impact at Argyle. The AIAS Council supported the proposal at its meeting on 3/4 October 1980 on the basis that it be linked to the Alligator Rivers social impact study which the AIAS was then undertaking.* Nothing ever came of this decision; it appears to have been blocked by the then Minister.

In early July 1980, the Warmun Community wrote to Prime Minister Fraser and Minister for Aboriginal Affairs, Senator Chaney, asking the Commonwealth Government "to study the impact of mining on our

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* See the various reports of the Uranium Impact Project Steering Committee chaired by Professor Colin Tatz. The final report has recently been presented to the Minister for Aboriginal Affairs. (AIAS, 1984; see also Nat. Times, 6-12 July, 1984)

communities and our land. We want the work held up until this is done" (DAA 25 July 1980). The Department's W.A. office prepared a draft reply and a covering brief. The brief suggested a "possible social impact study in the general area - this may require more consideration in terms of Departmental policy implications" (DAA 25 July 1980). The draft reply included the following paragraph:

> I am aware of your concern at developments occurring at Argyle and appreciate that it is difficult to assess how far these developments will affect your community... Unfortunately, at this very early stage of exploration, it is difficult to carry out an impact study that is likely to be of any real benefit. It is not until mining activity actually commences that a meaningful impact study can be undertaken to give information as to the likely effect it will have on communities concerned. (DAA 25 July, 1980).

The Minister, Senator Chaney, rejected this approach with the following handwritten note dated 17 August 1980, to senior Canberra DAA officers:

> This letter from the Warmun Community is clearly not home grown.
>
> Colin Tatz raised the same subject with me a couple of weeks ago and I propose to ring him to suggest that at this stage a monitoring group would probably make this situation even more complex. What we need to do is get on top of this situation before it gets on top of us. I think that:
>
> (a) DAA should get from the community the best info. it can on what is going on.

(b) I should write CRA re request from community asking for briefing and meeting.

(c) write community saying following up. (DAA 17 August 1980).

Both the rejected draft and the Minister's notes reflect the ad hoc nature of policy planning.

Chaney's eventual reply of 17 September 1980 fails to mention social impact assessment specifically; instead it argued that "matters relating to land and mining are primarily the constitutional responsibility of State Governments" and goes on to suggest that the role of the Commonwealth Government is merely "to work with Aboriginals, mining companies and State Governments to formulate and implement workable ground rules for the reasonable accommodation of all the interests of the parties involved" (DAA, 17 September 1980).

On 9 December, 1980, the Warmun Community wrote to the new Minister, Senator Baume, pointing out the constitutional powers of the Commonwealth in relation to Aboriginal Affairs and argued that it would be the Commonwealth Government that would be called upon "to meet the costs of social dislocation resulting from mining development" and that an "ongoing social impact study will have a number of positive benefits" including the provision of a valuable information base for government operations and Aboriginal community decision making (Warmun, 9 December 1980). Senator Baume replied in a letter dated 13 January 1981, stating:

> In the Kimberley, these matters [assessment of the impact of mining on Aboriginals] are subject to existing state legislation, and the Commonwealth has no basis for direct intervention.*

Environmental Review Procedures

The third policymaking area which focussed the attention of public policymakers on social impact assessment was the area of environmental review. The locus of legislative powers in relation to environmental matters rests largely with the states as the Australian Constitution makes no reference to a Commonwealth power to make laws with respect to the environment. Nevertheless, in recent years, the Commonwealth Government has legislated in the environmental field, notably the Environmental Protection (Impact of Proposals) Act 1974 relying largely on indirect constitutional powers such as the trade and commerce, external affairs and corporations powers, and in particular, the power to control exports (Fowler 1984, 11 & 23). An environmental impact statement (EIS) is only required under the 1974 legislation where a Commonwealth decision is required, for example, in relation to export controls or foreign investment. In the case of the Argyle project, the prior (non) decisions of the Commonwealth Government in relation to export controls and the naturalisation of the two major joint venturers had the effect, in the end, of leaving policymaking relating to environmental protection with the Western

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* As will be seen below, this statement is inaccurate both in terms of the Commonwealth Government's powers in relation to Aboriginal Affairs, and in relation to the definition of 'environment' in respective State and Commonwealth environmental legislation.

Australian Government under the terms of the W.A. Environmental Protection Act 1971-75.*

As early as December 1979, the W.A. Premier, Sir Charles Court promised after an inspection of the Argyle deposit to "expedite a study of environmental and associated matters" to facilitate early development of the project (AFR 17 December 1979). This indeed occurred when mining of the Upper Smoke Creek alluvials was allowed to proceed in January 1981 after a "Brief Environmental Statement" (and not a full Environmental Review and Management Program (ERMP) which is normally required under the Western Australian legislation, and which has provision for public comment) was approved by the Government (ADMJV Project Briefing 1982, 67).

An ERMP was required however for the mining of the kimberlite pipe. The W.A. legislation defines "environment" narrowly as the physical environment;** in contrast, the Commonwealth legislation defines "environment" more broadly to encompass the social environment. There was thus no legislative requirement for the proponents to examine the social impact of their proposals. In the event, the AJV undertook a significant amount of research into

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* Because export controls might have been introduced quite easily by amendment of the Customs Regulations, there was a period of uncertainty as to whether a federal EIS would be required. Had it been necessary, it would have been incorporated into the W.A. ERMP procedures in accordance with an agreement between the W.A. and Commonwealth Governments made in 1977. See Bambrick (1979, 122f) for a discussion.

** Seaman (1984b, para. 10.38) recommends that this definition should be broadened to include social impact upon Aboriginal people.

the social impact of the project,* and included a chapter entitled "Social and Economic Impact and their Assessment" in the draft ERMP published in August 1982. Informants interviewed indicated that this decision was taken by the AJV in the face of internal opposition and strong pressure from the then W.A. Government to keep clear of the social impact issue. The reasons advanced by these sources as bearing on the decision to include assessment of social impacts included (i) concern to counter any threat to the Glenhill agreement; (ii) the possibility that a Commonwealth EIS might eventually have been required; (iii) concern at the potential for adverse reactions to CRA activities in the international sphere; and (iv) a concern to highlight the benefits (positive impacts) of the project.**

In relation to the State Government's views on social impact assessment, it is interesting to note that the Diamond (Ashton Joint Venture) Agreement requires the AJV to provide the Government with environmental management proposals (clause 7(1)(j)) and to undertake a "continuous programme of investigation and research" and three-yearly reports on their findings (clause 11).

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* A DAA briefing to the Minister dated 7 July 1981 refers to the Minister's discussions with AJV officers seeking an assurance that the social impact study team would "make a special effort to consider fully the views and fears of the Aboriginal communities concerned" and explains that the AJV has advised DAA informally that the Managing Director is "writing to you setting out the study team's brief and providing the assurance you sought" (DAA 7 July 1981).

** See Christiansen (1983, 38f) for some corroboration of these points.

Yet nowhere are they required to research, monitor or report on social impacts of the proposal.*

No attempt is made here to summarise the ERMP's conclusions in respect of the social impact of the project. The ERMP was widely recognised (particularly within government circles) as a sophisticated and useful document in relation to social impact assessment. It does not have the appearance of tendentiousness:

> For Aborigines, by and large, the benefits are less certain. To achieve its social policy aims, and to avoid the possibility of serious social disruptions, AJV will need sensitivity, persistence and some long term flexibility (Dames & Moore 1982, 18).

The W.A. Environmental Protection Authority (EPA) in its report on the ERMP commented:

> The project will cause quite large and wide ranging social changes to the East Kimberley. The ERMP included a section on the perceived social impacts both good and bad that can be expected to occur as a result of the project in both the construction and operation phases.
>
> This section received considerable favourable comment in many

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* Nowhere in the agreement are Aboriginals mentioned. On a briefing document to the Minister on the Diamond (AJV) Agreement Bill 1981, a senior DAA officer annotated the following comment: "There is a plus and a minus for us in this. The minus is that in 53 special conditions Aboriginals are not mentioned at all! The plus is the recital [in the second reading speech] of the agreement with the Aboriginal custodians almost as an integral part of the procedures". The Minister, in a revealing comment which contrasts with the thrust of much of the Ministerial correspondence to the Aboriginal communities on Commonwealth/State responsibilities, noted: "Mostly negative I fear - Aboriginals are dealt with by default" (DAA 26 November 1981).

> of the submissions received.* The EPA considers it was a very useful and well prepared section of the ERMP and that it made a serious attempt to explain the changes likely to occur to the social environment of the region (Department of Conservation and Environment 1983, 19).

The Department of Aboriginal Affairs submission to the EPA on the ERMP was favourable and uncritical:

> The report is a serious attempt to highlight particularly, the social and environmental problems associated with the construction and mining operation... Generally, the report can be endorsed for its adequate setting out of the problems associated with the effects that mining will have on the Aboriginal people of the region. However, it is more important that the observations and proposals are implemented with sensitivity (DAA 26 October 1982).

The major critic of the ERMP has been Christiansen (1983, appendix 4) who has argued that the document is "as much a public relations document as it is a serious appraisal of environmental problems and solutions"; that it is based on selective research which ignores the tensions and social disruption caused by the destruction of sites and the way in which the Glenhill Agreement was signed; that the research methods may have been inappropriate; and that government has a responsibility

> not only to separate obvious fact from obvious falsehood, but also to see through the subtly conveyed images of Company

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* No submissions on the ERMP were received by the EPA from the Aboriginal community organisations in the East Kimberley.

> performance and intentions to the underlying reality. This is why support for Community input into environmental review processes is so essential, and why, in the present case, ADM monopolisation of research input into Government is so disturbing. (Christiansen, 1983, xx f).

He concludes his critique by questioning the assumption, which he sees as implicit in the ERMP and in the Good Neighbour Policy, that the AJV has a legitimate right to act as change agents in the social policy field. This final criticism is perhaps misdirected given the abdication of responsibility by both the State and Commonwealth governments.

The ERMP, and the government reactions to it, appear to downplay the existence of a conflict of interest between the AJV and Aboriginal groups. Where such a conflict is recognised, the approach adopted is to use what might be termed "repressive tolerance"; that is, to use "sensitivity" and "flexibility" to "tolerantly" impose one group's interests over the other. What is required (and is conspicuously absent) is a specific program to compensate Aboriginal groups for the costs imposed on them.*

The EPA made the following recommendations to the W.A. Government in January 1983:

> 1.3 The Company have further discussions with the W.A. Museum on all aspects of Aboriginal Site Protection and Management in areas influenced by the development. Local Aboriginal groups should be involved in any such discussions.

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* I am indebted to Rod Dixon for drawing my attention to the notion of "repressive tolerance".

1.4 The Company closely monitor the social impacts of its development on the town of Kununurra and nearby communities, especially during the construction phase. It should co-operate with private and government agencies as well as other possible developers to control or overcome any adverse impacts which may occur. (Department of Conservation and Environment 1983, 1).

The thrust of these recommendations, placing as they do responsibility for undertaking impact monitoring with the AJV, contradicts much of the literature on social impact assessment (Dillon 1983b) and is not consistent with the AJV position expressed in the ERMP:

> There is a need for monitoring of social and economic changes in the region. It is in the AJV's interests to cooperate with and participate in this monitoring process in conjunction with government departments, agencies and authorities with responsibility in this area. (Dames & Moore 1982, 244).

The EPA recommendations were published in January 1983. Following the election of the Burke Labor Government in Western Australia, there appeared to be a period of delay in governmental consideration of the ERMP. One possible reason surfaced in early May 1983 when press reports indicated conflict within the Government. The Australian Financial Review indicated that the conflict related to the dissatisfaction felt by some members of the Government over the terms of the Diamond (Ashton Joint Venture) Agreement, particularly in relation to the amount of compensation to nearby Aboriginal communities (AFR 6 May 1983). The Western Mail, whilst recognising the issue of compensation to Aboriginal communities, painted the conflict in broader terms of competition for control of the project between the Deputy Premier and Minister for Economic Development and Technology, Mr. Bryce, and the Minister for Mines, Mr. Dowding (WM 7 May 1983).

On 16 May, 1983, the W.A. Cabinet approved a submission from Mr. Bryce (who retained, with the Premier, the dominant policymaking role in relation to the project) which accepted the EPA recommendations, but added *inter alia* the following conditions:

(vi) The Company consults with the Government and local Aboriginal groups with a view to changing the management of funds contributed under the Good Neighbour Policy;

(vii) An Impact Assessment Group be established comprising representatives of Government, Company, and local communities, including Aboriginal groups, to monitor and review and recommend to Government the social impact of the project with a view to further development of the Government and Company's social programme. (Bryce, 13 May 1983).*

In a telegram dated 17 May, Bryce added the following comments:

> The Government believes Aboriginals and companies should be encouraged to work openly toward public agreement on all issues.
>
> The key to the Government's approach is the creation of the impact assessment group which will pave the way to avoid conflict and confrontation. (Bryce, 17 May, 1983).

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* In comments after the decision was announced, Bryce stated "that there was no scope for the current Government to alter the Argyle agreement in any fundamental way and to do so might have threatened the project's future. However, the Government was concerned about the informal arrangements entered into by the company with local Aboriginal communities. The management of these arrangements had caused social disruption in the Kimberley region and the Government would not endorse any secret arrangements". (AFR 20 May 1983).

The decision to create the impact assessment group was indeed a key policy initiative. Rather than solving problems, it has led to the creation of a much more complex policymaking environment and generated policy problems for all parties involved. As of October 1984, the decision had still not been implemented. The decision was in a very real sense the culmination of the public policymaking processes on heritage protection and the environment, the AJV's Good Neighbour policymaking initiatives, the Aboriginal lobbying for a full-fledged social impact assessment, and political compromise within the Labor Cabinet. The attempts to implement the decision deserve analysis in some detail.

The Impact Assessment Group

The approval of the ERMP in May 1983 was a major milestone in the development of the project. It was the first major decision on the project to be made by the new Labor Government. The Government resisted pressure for the renegotiation of the Diamond Agreement to make specific provision for Aboriginal interests despite its publicly announced concern at the "social disruption" caused by the "informal arrangements entered into by the company with local Aboriginal communities". (AFR 20 May, 1983; Age 23 May 1983). The provisions of the ERMP approval for consultation over management of the GNP and the establishment of the Impact Assessment Group were clearly compromise measures (not so much between the AJV and Aboriginal interests as between forces within the Government aligned with these interests) rather than positive initiatives in their own right. This may have been the reason for the Government's later unwillingness to implement the announced policy decisions; a decline in the bargaining strength of the pro-Aboriginal forces within the Government once the ERMP had been approved may have been relevant also.

The reaction of Aboriginal groups such as the National Aboriginal Conference (NAC) and the Kimberley Land Council was far from positive; they described the decision as "political waffle" and announced that the Government had "dropped its facade of concern" (West 20 May 1983; Age 23 May 1983). Local communities responded in a letter to the Premier, Mr. Burke, criticising the proposed IAG on the basis that it would involve only a nominal Aboriginal input. Instead, a group controlled by and accountable to Aboriginal people was proposed (Balinggarri Association 1983a). In early September, the Balinggarri Association, a resource agency representing about twenty Aboriginal communities in the East Kimberley wrote again to the Premier seeking talks on the management of the GNP funds in accordance with the approval conditions on the ERMP (Balinggarri, 1983b). The Premier's reply, on 16 September, to Balinggarri's first letter (and implicitly to their second letter) made no commitments, but advised that a high-level interdepartmental committee had been established comprising the heads of the Premier's Department, Resources Development, Community Welfare, Conservation and Environment, and a senior consultant in the Premier's Department. The committee apparently met once or twice, but had no significant impact on the policymaking process.

During this period, the Government had been largely (pre)occupied in renegotiating the Diamond Agreement. The major issue was the requirement (clause 25) for the AJV to build (or use an existing) town in the region. The renegotiation resulted in this requirement being deleted in exchange for a pre-payment of $50 million in royalties due under the principal agreement between 1986 and 1993 (clause 29B of the amended agreement). Approximately $40 million was immediately used by the Government to purchase Northern Mining Corporation, one of the joint venturers, from the Bond Corporation. The decision on the township was primarily an economic one for the AJV; and a political one for the Premier. Nevertheless, it was a decision sought by Aboriginal groups, and undoubtedly has reduced the potential negative social impacts of the project.*

On 10 October 1983, the 'supplementary agreement' was executed.** In a press release issued that day, the Premier outlined the provisions of the supplementary agreement, plus a number of "other aspects of the agreement" - not all of which were included in the formal agreement - including a requirement for "the compliance of ADM with the Aboriginal Heritage Act".*** The final paragraph of the release presaged a new initiative: the allocation of $1 million "to assist with the work of a social impact assessment group which would study the impact of the project on the area surrounding the mine" (Department of Premier & Cabinet, 10 October 1983).

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* Both the AJV and the Government have emphasised this aspect of the decision, whilst down-playing the self-interest involved. See for example O'Leary (1984); Department of Premier and Cabinet, News Release, (10 October 1983); Rose <u>et al</u> (1984).

** The Diamond (Ashton Joint Venture) Agreement Amendment Act 1983, which incorporates the supplementary agreement, took effect on 31 October 1983.

*** Perhaps this press statement was unfortunately worded; the fact that the Government found it necessary to specifically require the AJV to comply with an existing piece of legislation appears to infer that such compliance had not taken place in the past.

The West Australian (12 October 1983) reported that the Government was negotiating with the AJV regarding a proposal that an additional contribution of $500,000 each by the Government and the AJV be made available for a period of five years. The report indicated that the structure and guidelines for the impact assessment group were being drawn up by the AJV and the Government. The Premier was quoted as saying:

> I see this as the fulfilment of the obligation the Government and the joint venturers have to ensure that Aborigines and other people affected by the mining proposal benefit fairly, and suffer as little distress and inconvenience as possible as the mining proceeds. (West, 12 October 1983).

In a letter to a colleague, the Premier confirmed these arrangements and indicated that the arrangements provided for a review after five years without any implication that the arrangement will cease. The company had agreed, subject to the agreement of "its co-signatories to relevant legal policies", to contribute $500,000 per annum for the five year period whilst suspending its payments under the GNP, amounting to approximately $300,000 p.a., for the period (Burke 1983).

The Aboriginal response was to assert that control of the IAG monies should be with Aboriginal groups and that the AJV should be required to maintain the GNP funding and contribute $0.5 million p.a. (Balinggarri 1983c; 1983d).

In late 1983, responsibility for the IAG was transferred to the West Australian Minister responsible for Aboriginal Affairs, Mr. Wilson. A senior consultant to the Minister was given carriage of the matter. It is apparent (in retrospect) that the nature of the Government's policy initiative had been fundamentally altered by this time; this was confirmed by a number of public servants who were interviewed. Internal working documents prepared in July 1983 referred to the "Argyle Community Impact Group" and focussed not on assessment, but on the arrangements for distribution of the funds involved. The public servants indicated that the implementation of the Government's original proposals had become caught up in the renegotiation of the Diamond Agreement; in particular, it emerged that the joint venturers were not prepared to become involved in the ongoing assessment of social impacts, despite the statements in the ERMP that ongoing monitoring of social and economic change in the region is required (Dames & Moore, 1982, 244). The joint venturers argued that because of the narrow definition of "environment" in the W.A. legislation (see discussion of this matter above), the provisions of the Diamond Agreement for environmental monitoring and reporting did not extend to social impact assessment and monitoring. The W.A. Government accepted this line of argument; one public servant interviewed explained the change of direction in terms of the recognition by both the AJV and the W.A. Government that social impact assessment was in fact a Commonwealth responsibility!

In January 1984, the Minister's office circulated a proposal to establish a committee of Government and company personnel "to advise on and monitor the distribution of funds". The respective roles of Government and company were justified in the following terms:

> Because the proposal involves funds being distributed by both the Government and the Company and because each has a public accountability, one to its joint venturers and shareholders and the other to the public, each requires to be involved in a supervisory way. (Department of Youth and Community Services, January 1984).

The Aboriginal response was predictable. It criticised the lack of focus on impact assessment, questioned the value of a proposal to employ a government liaison officer and sought guarantees that existing funding would not be affected (Balinggarri, 1984). However, there was no unified response from Aboriginal interests in relation to the allocation of the funds. The consultant had suggested that the "good neighbour" communities, Mandangala, Warmun and Doon Doon should not be prejudiced by the new initiatives, and that communities in Wyndham and Kununurra were "'affected' by the company's operations", and should be included in the distribution of the funds. Balinggarri suggested that the 'good neighbour' communities should receive a continuation of existing funding with the excess being split between a large number of other affected communities. The 'good neighbour' communities disagreed with this approach. A visit to the region in March 1984 by a number of the policy advisers involved failed to progress matters. It did induce an incisive and critical response to the Government's proposals from the National Aboriginal Conference research officer in the region, R.A. Dixon:

> Instead of Aboriginal groups being permitted to make the hard decisions concerning priority funding within the region, these decisions will continue to be made by Europeans leaving

> Europeans open to the sort of ongoing and justified criticism that they are stifling (albeit unintentionally) Aboriginal attempts to gain control of the management of their own affairs. This has made many Aboriginal people - in reality and in their own perceptions - passive victims and continues to make the task of community development so difficult. (Dixon, 1984a).

Attached to Dixon's letter was an alternative proposal for tri-partite (Government, company, Aboriginal communities) negotiation of (i) policy guidelines relating to community development and self-management objectives for the affected areas; (ii) funding criteria based on those objectives; and (iii) accounting procedures for funded projects. A committee (or committees) composed entirely of Aboriginal interests would then consider applications for funding in line with the previously agreed criteria. Dixon went on to suggest:

> If this approach has merit but remains unacceptable to the mining company, then it could be pursued in relation to funds provided by the Government. The contention that the company will not enter into the arrangement unless there is a joint approach and that, ipso facto, the company view must have a large influence on the Government's approach ignores that (i) it is the Government's prime responsibility to formulate policy in Aboriginal Affairs; (ii) that the funds provided by the Government are public monies over which the company has no control. (Dixon, 1984a).

In a reply, the consultant to the Minister stated that

> Unfortunately, negotiations between the Company and the

> Government have reached such an advanced stage that the views which you have expressed in relation to funding and self-management will not be able to be implemented on this occasion.... (Department of Youth and Community Services, 13 April 1984).

A file note on NAC files states:

> Government negotiations on the establishment of an Impact Assessment Group are close to completion...A meeting was to have taken place between the Premier and O'Leary of CRA* to finalise arrangements...There was some suggestion that O'Leary requested the meeting after failure to agree with the Government negotiating team...The impression gained in conversations with (a Government source) is that it is the Company who will not agree to Aboriginal management of the funding and that they will withdraw from negotiations if this line is pursued. (NAC, 16 April 1984).

A Warmun file note identified the dispute between the Government and the company as being over the number of affected communities, with ADM arguing that only the 'good neighbour' communities were 'affected'. It also indicated that a Government source had made contact to say that "the Premier would consider doing away with the [proposed] structures if the communities decided not to accept the extra $190,000 that CRA was putting in" (Warmun, 1984).

In late April, after further lobbying from Aboriginal interests, the Premier provided an assurance that he was taking a personal

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* Mr. M. O'Leary is the Managing Director of Argyle Diamond Mines Pty. Ltd.

interest in the issue, and that consultations would take place before any final decisions were taken (Burke, 1984).

By June 1984, the implementation of the Cabinet's decision of 16 May 1983 to establish an impact assessment group, and the Premier's announcement of 10 October 1983 to provide funding to "affected" communities had still not taken place. That same month, responsibility for the Argyle Community Impact Group was transferred to the Minister assisting the Minister Co-ordinating Economic and Social Development*, Mr. Parker. It is, as yet, too early to describe and analyse the approach being taken on the matter under Parker, who is also Minister for Minerals and Energy.

ANALYSIS

Any understanding of the policymaking process described above must be based on an analysis of the underlying structural relationships involved. The absence of any comprehensive legislative framework regulating the relationship between Aboriginals and miners is symptomatic of the Government's failure to come to terms with the conflict of interests which existed. At its most fundamental level, the policymaking, both private and public, at Argyle involved bargaining between the parties with respect to the recognition that a conflict of interests existed which required the government to mediate and arrange for the losers to be compensated. There are two separate strands to the compensation

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* The Premier, Mr. Burke, holds a number of portfolios, one of which is Minister Co-ordinating Economic and Social Development.

argument, which were not fully identified or distinguished during the policymaking process outlined above.

Firstly, there was a conflict based on claims to property rights - the Aborigines had a statutory right subject to Ministerial discretion, in the Aboriginal site, daiwul. The AJV had a right, by virtue of their mineral lease, to mine the kimberlite pipe. The Aboriginal site and the kimberlite pipe were coextensive, and consequently, the Government was required to resolve the conflict. Although the Government had a previously stated policy of "protecting genuine, identified sites", its actual priorities were to see resource development at all costs. A further complicating factor was that the Court Government in W.A. had a firm policy of preventing the recognition of any Aboriginal rights in land (as opposed to sites), and in fact, this was the reason there was no comprehensive structure which allocated statutorily recognised property rights.

Secondly, the allocation of property rights finally determined by the polity was imperfect in that it involved externalities; that is, not all the (social) costs and benefits arising out of the allocation of the property right were internalised by the property right owner, but were in fact experienced by others.

In theoretical terms, the two aspects of the compensation problem are clearly related - the existence of externalities, by definition, means that property rights have been allocated imperfectly, or not at all, by the polity (this may be a technical inevitability rather than a political problem).

In general, economists have suggested that the solution to compensation problems is to ensure that all parties involved are allocated property rights, and then allow them to trade (Coase, 1960). This has the effect of 'internalising' the 'externalities' in the cost/benefit calculus of each party. If an effective market can be created (i.e. without any 'market failure') involving all those bearing external costs and benefits, then trading will eliminate those externalities and thus compensate those bearing the costs.

Thus, in relation to the social costs of mining on Aboriginals, Lloyd (1983, 20-21) proposes that a damages tax be levied on mining companies (the tax to be equal to the negative impacts or social costs of particular projects).*

If the damage tax could be levied accurately and was paid to the Aboriginals harmed by the project, they would be completely compensated. The Aboriginals would, in effect, be given a right to trade in social impacts, though this right is a limited one in that Lloyd envisages the Government levying the tax (and presumably assessing the extent of the damage). The obvious problems with the damage tax proposal is the methodological one - how are the damages (or social impacts) to be evaluated (Altman and Peterson, 1984, 17). To the extent that the assessed value of the damages is inaccurate, so will the market created be imperfect.

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* If the Government was merely interested in an efficient allocation of resources independent of distributional questions, then the mere act of levying the tax would lead to an optimal level of mining since as the social costs of mining would be internalised by the mining company, it would only produce as long as private benefits (experienced in marginal revenue and marginal cost terms) exceeded social costs.

Other approaches are possible which also have the effect of allocating tradeable property rights; for example both the Aboriginal Land Rights (Northern Territory) Act 1976 and the Pitjantjajara Land Rights Act 1981 provide for a (limited) Aboriginal veto over mining on Aboriginal land which provides the basis for negotiated 'consent to mine' payments. This has the effect of creating a market; they are, nevertheless, imperfect markets in a number of respects (for example, the N.T. legislation provides for an Aboriginal refusal to consent to be set aside in the national interest and for the payment to Aboriginal interests of statutory royalty 'equivalents' as well as consent payments - forms of price fixing; both mining companies and Aborigines have limited information; etc.).

There are a number of reasons for utilising the theoretical approach adopted in the economic literature on property rights, externality and market failure.

Firstly, it provides at least in notional terms, one normative standard upon which to evaluate public policies relating to the social impact of resource development, namely, that if an exchange relationship is established between the 'impacted party' and the 'impactor' (assuming perfect information and no transaction costs) then compensation will take place.* There is thus a rationale for Government intervention (or if you like - public policymaking) to either create property rights where such exchange opportunities

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* Note that if the impacts are positive, the impacted party will be prepared to 'compensate' the impactor to ensure the positive impacts continue.

don't exist or to re-allocate property rights where externalities exist which mean that the trade or markets in the property rights operates inefficiently.

Secondly, the policymaking processes described in this chapter clearly revolve around the recognition and/or creation of property rights of various kinds for Aboriginal people affected by the project.

Thirdly, if it was known that the development of the project involved <u>significant</u> externalities, whether positive or negative or both, (and the ERMP suggests that this may well be the case) then the question would arise whether the private decision making of the joint venturers reflected the public interest, in terms of a socially optimal allocation of resources.*

It is clear that resource developers may have significant incentives to externalise (or not internalise) costs not only because internalised costs involve reduced profit, but also because the ascertainment and consequent internalisation of costs (where there is a legislative requirement for mitigation) will itself be costly (Campbell and Scott, 1980, 39). It follows that, in general, there are strong incentives to ignore, understate or evade collection of 'damage information' on the part of developers.

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* Or in economic terms, is the project consistent with the basic theorem of cost-benefit analysis: projects should not proceed unless the net present value of their private and external (or social) benefits exceeds the net present value of private costs, social and environmental damages. Private sector decision makers are not in a position to make these decisions.

In terms of the first aspect of the compensation argument, analysis of the Glenhill Agreement and the Government decision to allow the AJV to use the Aboriginal site <u>daiwul</u> in terms of property rights theory reveals a complex situation. There is no officially sanctioned market in Aboriginal traditional rights to land in Western Australia; there is (as yet) no land rights legislation and the Aboriginal heritage legislation allocates the property right to the Minister rather than Aborigines. Furthermore, in terms of Aboriginal perceptions and traditional law, rights in land are not goods to be bought and sold, but are transferred on the basis of ceremonial and ritual knowledge.

It is clear then that in relation to the issue of Aboriginal sites, the exchange relationship was not between the AJV and Aboriginal interests, but between the AJV and the W.A. Government. It was the Government (and not the Aboriginal traditional owners) who had the power to grant the right to mine the site, since the W.A. Aboriginal Heritage legislation gave that power to the Minister. However, the exercise of this power involved political problems; the Government's often stated commitment to "protect genuine, identified sites" would make any outright exercise of the Government's power appear morally and politically illegitimate. It therefore required a means by which to legitimate any decision to allow mining on the site.*

The means adopted was to disguise the real nature of the exchange relationship by establishing a second "exchange" relationship:

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* The AJV, though to a lesser extent, had a similar need to make its actions appear legitimate.

the Glenhill Agreement; it was construed by both the AJV and the Government (including the Museum Trustees) as a fundamental exchange of rights in the sites for economic benefit (though the right of Aborigines to do this was never given any statutory recognition). In fact, as the Museum staff noted, the Aborigines involved perceived the agreement as compensation for a fait accompli. That the AJV and the Government perceived it as an officially sanctioned and necessary "side payment" or "bribe" is apparent in the way in which the agreement was reached.* In structural terms, the exclusivity of the exchange relationship between the W.A. Government and the AJV was maintained through the exclusion of Aboriginal interests; the incorporation of those interests into the Good Neighbour Policy can thus be interpreted as an attempt to silence and negate the Aboriginal articulation of their fundamental interests.

The normative implications of this analysis are to point up the need for the allocation of tradeable 'amenity' or property rights in lands of traditional significance to Aboriginal groups, along with regulation of market dealings to ensure that land-owning groups <u>as a whole</u> make decisions. In terms of actual policies, this would mean the establishment of registration procedures for Aboriginal sites (involving an independent professional determination) which would then provide for a veto on alternative uses except where consent could be negotiated. In relation to areas

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* See Langton (1983) and Cousins and Nieuwenhuysen (1984, 150-154) for criticisms of the "inadequacies" in the way in which the Glenhill "agreement" was reached. Hunt (1982, 208) who represented the Mandangala Aborigines in the negotiation of the agreement describes it as a "sweetheart" agreement.

designated "Aboriginal land", veto and consent provisions similar to those applying in the Northern Territory would be appropriate. The actual policymaking process that took place in relation to the use of Aboriginal sites and the negotiation of the Glenhill agreement clearly does not meet the normative ideal postulated here.*

The normative implications for policy arising out of the second aspect of the compensation problem are much more vague. To some extent, the suggestion above for the allocation of property rights to the Aboriginal groups would 'internalise' the externalities (though to the extent that Aborigines have limited information on potential social impacts, or that impacts are delayed, they may not become part of the calculus at time of exchange).** However, if a project is developed off Aboriginal land (as at Argyle) and does not infringe on Aboriginal sites, then the allocation of fundamental property rights will not be possible. In such a situation economic theory suggests the application of damage taxes and/or subsidies or the allocation of 'amenity' rights. As Altman and Peterson (1984, 15) suggest, this may not be possible in relation to social impacts.

The reason for this is the intrinsic nature of social impacts, incorporating as they do intractable methodological problems

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* It is, however, consistent with results obtained by Rolph (1983) who found that regulatory programs which were introduced after changes in the political environment, and which conferred property rights nevertheless had the effect of maintaining the distributional status quo.

** Seaman (1984b) does not accept this point, see paragraph 10.18.

relating to subjectivity, definition and identification. See Dillon (1983b) for a discussion of these issues. In such a situation, policymakers must make the best estimate of social impacts that they can prior to implementing policies to either mitigate or compensate for the negative impacts.

The policymaking events surrounding the decisions not to undertake social impact assessment by either the Federal or Western Australian Governments, nor to seek the inclusion of social impact assessment conditions in the Diamond Agreement demonstrate a marked reluctance to address the problem of compensation for Aboriginal groups (and others) bearing the external costs of the project. This reluctance was magnified by the fragmented nature of the policymaking process involving both the Federal and State Governments and a number of Government agencies. The use of standard coordinating strategies by Governments - inter-departmental committees and non-public service Ministerial advisers appears to have been unsuccessful in providing any coordination. A further obstacle to coordination has been the fact that different agencies have been involved in the issue at different times, with different policy objectives and perspectives. The major reasons for the changes in agency involvement were, firstly, that the policy arena was a new and emerging one, and secondly that the Government's objectives in relation to a social impact policy were subsidiary to its major aim of ensuring that the project proceed. The Government clearly did not have the expertise to assess the social impact of a resource development project on Aboriginal people. Consequently, the policy objectives, vague and unformulated from the beginning, eventually became purely reactive. The political problems that Governments in fact addressed were the (annoying) demands of Aboriginal groups to be seen, that is, to have their (property) rights recognised and the compensation issue addressed by Government. The initial response adopted by governments and the AJV was to use the Glenhill Agreement and the Good Neighbour Policy in an attempt to buy back Aboriginal invisibility by silencing public criticism.

The response of the W.A. Labor Government was also to attempt to buy off the Aboriginal demands through the decision to inject what was specifically referred to as compensatory monies into affected communities. The failure of the Burke Government to implement its own decision to conduct an impact assessment and monitoring program, and the Premier's comment that the IAG funds were "the fulfilment of the obligations the Government and the joint venturers have...." are symptomatic of this approach.

The major implications of the analysis of the policymaking process relationship to social impact at Argyle are to establish: (i) the crucial role which the relationship between Government and the joint venturers plays in the policymaking process; and (ii) the concomitant lack of an accepted and institutionalised framework within which Aboriginals have influence and a right to consultation over decisions which affect their fundamental interests. Time and again during the policymaking process it was the relationship between Government and the AJV which became a determinant of policy outcomes. This was demonstrated in relation to the sites issue, the establishment of the GNP, and the environmental review procedures (all at an informal level).

Similarly at the formal level of the Diamond Agreement, the irrelevance of the Aboriginal interests to the overall policymaking processes was clearly demonstrated. The only significant initiative by a Government which focussed on Aboriginal concerns was the inclusion of conditions requiring social impact monitoring in the ERMP by the new Labor Government. Within six months, this initiative had been discarded, in favour of the distribution of funds by an 'impact assessment group'. The lack of any statutory recognition of a body representative of Aboriginal interests such as the Kimberley Land Council, the refusal (on Government instructions?) of the AJV to deal with the KLC, and the absence of an institutionalised framework for negotiation served not only to disadvantage Aboriginal interests, to the extent that they have already suggested renegotiation of their present status vis a vis the project (McGill, 1984; Cousins and Nieuwenhuysen 1984, 152) but has also led to subsequent policymaking problems. For example, the fiasco involving the IAG, would, I suggest, have been resolved quite early had tripartite discussions taken place. Similarly, the absence of any framework for negotiation based on statutorily recognised property rights has magnified the influence and role of the AJV vis a vis public sector agencies in the region. The implications of these conclusions are to undermine the pluralist conception of the state as a neutral arbitrator between conflicting interests (Palmer 1983, 7). This question will be examined in the following chapter.

The policymaking approach adopted at Argyle will have important ramifications for social impact policymaking in relation to future resource development projects adjacent to Aboriginal communities in Western Australia, and will provide a benchmark from which eventual land rights legislation will be evaluated.

CONCLUSION

It has been argued that the various policy issues raised by the development of the Argyle Diamond project are all part of a larger political conflict, namely, the demand by Aboriginal groups and communities (and to a much lesser extent, others) for recognition that the project has had a continuing negative social impact, which is focussed on the communities adjacent to the project.

The underlying structure of the relationships between the project developers, the policymakers and the Aboriginal communities was examined. It was shown that in a very real sense, Aboriginal interests were invisible, but further, that the public policymaking process was directed to maintaining that invisibility. This ensured that governments would not be called upon to mediate between the conflicting interests (as prevailing ideology dictates) which would have made clear the fundamental congruence of interest between the government and the AJV, and undermined the notion that governments operate in the general public interest. This contrasted with the normative implications of the analysis which indicated that in the absence of the creation of statutory property rights in lands of traditional significance, policymakers should make the best evaluation possible of the social impacts of the project. This would allow policymakers to incorporate external costs and benefits into the public calculus regarding the allocation of resources to the

Argyle project,* and would provide the basis for the development of compensatory and mitigative policies by both Governments and the AJV.

It is contended that policies which ignore the need for an assessment of social impacts at Argyle will be unsuccessful (in terms of the policymakers own criteria) as they will be unable to persuade those bearing the negative social impacts of the project that their concerns have been dealt with justly.

The genesis of a public policy on the social impact of the Argyle project has evolved out of the fragmented policies, decisions, actions and rationales of the interests involved. The analysis argues that public policymaking in relation to mining and Aborigines must distinguish between ownership of a property right and the existence of externalities, that is, between a right of veto and social impact. Recent political developments in Western Australia make it clear that the proposed Western Australian Land Rights legislation will not incorporate veto provisions, but only deal with the issues of compensation for mining on Aboriginal land (AFR, 28 September 1984).

The Argyle situation becomes a highly relevant case study in these circumstances for a number of reasons. It involves a major mine on a non-Aboriginal owned pastoral lease, yet clearly on land of

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* This is very much a normative argument. Governments normally evade any direct involvement in private decisions (even where they have implications for the public interest) to allocate resources to production, arguing that they are the prerogative of the private sector. See Offe (1975, 126).

significance to Aboriginal traditional owners. Thus, in Aboriginal perceptions, it is exactly analogous to the situation that will pertain under the proposed land rights legislation. The failure to recognise what are, in Aboriginal perceptions, clearly defined property rights can only magnify the negative social impact on Aboriginal society of future mining on Aboriginal land.

Secondly, the study demonstrates that both Liberal and Labor governments in Western Australia have recognised explicitly the existence of significant social impacts on Aboriginal people of a project that is not on Aboriginal land, and devoted significant policymaking resources to dealing with the problem. There is thus a firm precedent available in relation to social impacts which will not be able to be ignored in the administration of any future Western Australian Land Rights legislation.

CHAPTER FIVE

EVALUATION: PUBLIC POLICYMAKING AT ARGYLE.

EVALUATION: PUBLIC POLICYMAKING AT ARGYLE

The three previous chapters described and analysed policymaking processes relating to specific policies: foreign investment, marketing and social impact. An attempt was made to utilise (though not exclusively) the theoretical methodology of economics to evaluate the policy outcomes involved.

The present chapter attempts to focus on the policymaking process, and in particular, analyse the relationships between public and private policymaking utilising the 'case-study' material in the first three chapters.

The Role of Business in Public Policymaking

The outstanding recent contribution to social science literature on the public/private relationship is Charles Lindblom's Politics and Markets. Aaron Wildavsky, in a critical review, criticised the book's major argument, yet was able to state that

> Lindblom's seminal contribution is to achieve a more radical separation of markets from private enterprise, of supply from demand, that has heretofore been thought possible. This separation, fraught with consequences, is a milestone in the history of social thought. (Wildavsky 1978, 219).

Lindblom identifies three basic methods of social choice or control: authority, exchange and persuasion. Exchange is the basis upon which market systems are built, authority the basis for government, persuasion is used by all social systems (Lindblom 1977, 11-13). He characterises the controls over authority in the so-called liberal-democracies as "polyarchic" meaning rule by many (Lindblom, 1977, 132f). He then asks why is it that all polyarchies utilise "without exception", private enterprise market systems. It appears strange, to him, that not one polyarchic system (outside of wartime) has experimented with central planning.

Lindblom explores the possibility that popular control is weaker than generally believed because of the role business plays in polyarchy. He argues that under private enterprise systems, business leaders are delegated decision making powers which inevitably have significant implications for public affairs. Business executives decide:

> a nation's industrial technology, the pattern of work organisation, location of industry, market structure, resource allocation... They are also the immediate or proximate and discretionary decision makers, though subject to significant consumer control, on what is to be produced and in what quantities... Businessmen thus become a kind of public official and exercise what, on a broad view of their role, are public functions. (Lindblom 1977, 171f).

The implications are far-reaching; the levels of investment, employment, prices and economic activity are all tied to the decisions of business; consequently government has a vital interest in ensuring that the public functions which business undertakes are carried out. This can not be commanded, but must be induced; the inducements offered

> are whatever businessmen need as a condition for performing the tasks that fall to them in a market system: income and

> wealth, deference, prestige, influence, power and authority, among others. Every government in these systems accepts a responsibility to do what is necessary to assure profits high enough to maintain as a minimum employment and growth. (Lindblom 1977, 174).

Lindblom is at pains to point out that there is nothing duplicitous or improper in the granting of a privileged position to business by governments; rather, this is an essential element in the structure of private enterprise market systems. The relationship is a symbiotic one where government exercises broad authority over business activities whilst the formulation of public policy is constrained both by the concern of policymakers about possible adverse effects on business and by the privileged role of business as a participant in the formulation of public policy (Lindblom 1977, 178). The role of business is 'privileged' in policy processes due both to the degree of access provided (in contrast to other interest groups) and the fact that government officials implicitly recognise that business wears the persona of the public official.

Lindblom proceeds to argue that polyarchal governments face two ostensibly rival constraints: polyarchal institutions involving popular control and the need to induce business to perform 'public' functions. However, business utilises its resources, organisation and privileged position to attempt to dominate polyarchal politics. In Lindblom's view, business is largely successful, and exercises a "greatly disproportionate influence" within polyarchal institutions ostensibly subject to popular control (Lindblom 1977, 200). This influence is, in Lindblom's view, realised in largely negative ways: removing grand issues (such as the desirability of the existence of private enterprise as opposed to other forms of market systems) from politics and through legitimation of the privileged position of business. There is however a positive influence in terms of the impact of business lobbying on the formulation of public policy on secondary issues where pluralist politics continues (Lindblom 1977, 203ff).

Lindblom's critics argue that corporate power is not distinctive nor unique, in particular, they point to the existence of the countervailing power of organised labour and to the robust nature of pluralist democracy (Anderson 1978, 1015). The argument is clearly stated by Epstein:

> Although the political power of business firms and their managers is very real and pervasive, it does not presently constitute a danger to the American pluralist democracy, which continues to produce legislation, rulings, decision, and programs that are contrary to the desires of significant corporate interests. (Epstein 1969, 303 quoted in Steiner 1975, 387).

Lindblom's response would be to agree that pluralism exists in respect of so-called secondary issues, especially where business interests are opposed to one another. The examination of the accuracy of Lindblom's hypothesis in relation to secondary issues requires analysis of policymaking processes and not merely policy outcomes.

The relationship between Lindblom's analysis and that of the neo-Marxist theorists on the state requires examination. Anderson

(1978, 1015) makes the curious point (for a pluralist) that perhaps Lindblom's argument would have been more persuasive

> had he taken the thesis of capitalist hegemony in full seriousness, had he evoked Gramsci, Habermas, Miliband and Offe rather than the more pedestrian arguments of revisionist American political science...

In fact, it is the neo-Marxists who are turning to Lindblom.

In a useful contribution, Crouch (1979a) has identified a significant problem in neo-Marxist analysis of the state, namely, that whilst it recognises the 'relative autonomy' of the state*, it begs the question of why the state in a capitalist society necessarily acts in the interests of capital (Crouch 1979a, 26). Crouch points out that this has very little explanatory power, especially in relation to specific political situations. As well, Marxist analyses have difficulty in explaining the distrust of the state by ruling classes (or in Lindblom's terms, business) and the "relative responsiveness" of capitalism to working class demands in liberal-democratic capitalist societies (Crouch 1979a, 27). Crouch then turns to Lindblom's analysis of the relationship between the state and business as a more sophisticated and convincing replacement for the functionalist explanations of most Marxist writing.**

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* So that it may "establish what are the general interests of capital and pursue them, if necessary, against the interests of individual fractions" (Crouch 1979a, 25). Lindblom, too, is aware of the distinction between the particular and the general interests of business (Lindblom 1977, 203).

** "Lindblom can hardly be counted as a Marxist; however his contribution to the theory of capitalist (or, in his terms, business) domination of the state is more cogent than virtually all the straightforward Marxist contributions, while it at the same time fulfils the important requirement of any theory of the state in liberal-democracy of providing a place for the power of non-capitalist interests" (Crouch 1979a, 37).

Crouch proceeds to outline a general theory of the role of the state which emphasises the pursuit of stability*, rationalises mature capitalism's link with polyarchy on the basis that polyarchy constrains the pursuit of "non-economic priorities" such as foreign military adventures, and places elite formation and activity in a secondary role.

Other neo-Marxists have advanced arguments similar to Lindblom's; Offe (1975, 126) has defined the state in terms of four elements; the maintenance of the conditions of capital accumulation, the divorce of state activity from the processes of production and capital accumulation, the requirement for the state to legitimate its role in capital accumulation, and the recognition that the state is dependant on the capital accumulation process. Offe characterises these elements as exclusion, maintenance, dependency and legitimation.

The neo-Marxist approach of Offe is clearly complementary to Lindblom's, but is much more abstract, determinist and not as explanatory of the process of policymaking within polyarchy because, as Crouch (1979a, 27) points out, the existence of elements of genuine pluralism and liberty within capitalism is not admitted.** The determinist nature of neo-Marxist theorising leads to problems for even the crudest empirical assessment; thus, in relation to statements such as:

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* Stability will usually be equated with policy objectives aimed at "securing the interests of the existing mode of production, because it is on that that prosperity seems to rest" (Crouch 1979a, 40).

** Though Crouch qualifies this point in relation to Offe's later writing (Crouch 1797a, 27).

> State activity takes on the form of policymaking when the process of competitive accumulation becomes too fragile to regenerate itself within the framework of allocative state activities and when the state is required to produce (rather than merely decide upon) the conditions of continued accumulation (Offe, 1975, 134)

it is difficult to envisage how one would go about attempting to observe situations where "accumulation becomes too fragile to regenerate" or accumulation is not occurring.*

In contrast to Offe (and other neo-Marxists), Lindblom is much less deterministic; he merely argues that governments in a polyarchy grant business preferential treatment. Policy formulation in this schema can still retain strong pluralistic elements and is determined largely by relative bargaining strengths which are issue and context specific. If, as Crouch (1979a, 41) argues, the pursuit of stability provides the ultimate motivation for state activity, the outcome of particular bargaining situations related to the formulation of public policy may not be proportional to the actual political strengths of the interests involved, but be a function of the government's perceptions of the various

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* According to Offe, "productive state activity is initiated by the actual or anticipated, sectoral or general absence of accumulation (or disturbances in the accumulation process). The rationale is to restore accumulation or to avoid or eliminate perceived threats to accumulation" (Offe, 1975, 132). It is interesting to note the parallels between this analysis and the standard rationale in economic theory for the existence of the state: market failure due to the existence of externalities ("disturbances in the accumulation process") and public goods where there are no incentives to produce goods privately because by their very nature, once produced for one, they are available for all ("absence of accumulation"). See Randall (1983) for a critical discussion of market failure.

outcomes for social stability. This line of argument explains Blowers (1983, 412) observation that when business is at its weakest in economic terms, it can defend against environmental pressures best; similarly, it explains the ability of politically weak interests (such as Aboriginal groups) to sometimes gain important policy concessions from governments. Such concessions are rare since social stability is generally "best served by securing the interests of the existing mode of production" (Crouch 1979a, 40).

The implications of this discussion for present purposes are to indicate the theoretical importance of Lindblom's hypothesis regarding "the privileged position of business", and in particular, place the analysis below, in perspective. The analysis will attempt to focus as much as possible on policymaking processes rather than outcomes; although it will address Lindblom's 'major argument', it is not directed to his general thesis that markets and private enterprise should be disengaged.

The present exercise is also limited to a small number of public policies, and relates to one specific set of business interests (though they are in conflict or opposition to different interests in each policy arena). It is therefore not an adequate empirical basis from which to generalise. In these senses, there is certainly force in Wildavsky's implied view that Lindblom's hypothesis is difficult to test (Wildavsky, 1978, 225). Nevertheless, it seems important that some effort be made to corroborate (or negate) Lindblom's largely theoretical argument. The very nature of public policy formulation, the fact that it deals with and occurs within an environment of extreme complexity, that it is a process as well as an outcome, that it can "consist of what is not being done", and that it is concerned with meta-choices (Heclo 1972, 85) means that any analysis will necessarily be inconclusive in some respects.

Policymaking at Argyle

The marketing and naturalisation issues were analysed in chapters two and three. The major conclusions of the analysis in respect of these policies were that the corporate interests of the joint venturers were advanced, possibly at the expense of the general public interest. However, despite attempts to do so, I have been unable to uncover the policymaking documents which would establish the nature of the relationship between the Federal Government policymakers and the AJV. Instead, I have relied on press reports, which are less reliable and must be treated with some degree of caution. Nevertheless, much of this material is able to be corroborated in one form or another, and this has been done where possible.

In relation to the naturalisation policy, there is overwhelming evidence to suggest that the policy was the result of "very persistent lobbying from CRA" (AFR Editorial, 5 September, 1980). It is effectively a policy of exemption from the broader policy relating to foreign investment. As of March 1984, only two companies have taken advantage of the policy: CRA Limited and Ashton Mining NL; naturalising status was granted on 15 May 1979 and 6 February 1981 respectively. The development and formulation of the naturalisation policy is consistent with Lindblom's hypothesis. It is quite clear that business interests were given special access to the policymaking process; moreover the policy was shown to be isomorphically related to RTZ/CRA's own policies in relation to Australian Directors, local ownership, and the timing of the naturalisation process. There is, in short, strong evidence for the proposition that the naturalisation provisions are a private policy in a public mask. Lindblom's arguments concerning the "greatly disproportionate influence" of business in polyarchal institutions are certainly consistent with the process of formulation of the naturalisation policy, even though it is apparent that there existed both structural and specific differences within the business sector. Anderson (1983, 148) has pointed to the distributional implications of controls on foreign investment, that is, to benefit the domestic mining industry at the expense of foreign interests. Examination of the naturalisation policy reveals that it confers a double benefit on naturalising companies; not only are they admitted to the domestic mining club, and thus to the benefits of the controls on foreign investment, but they are advantaged vis-a-vis other domestic interests in that the deferment of the sale of the foreign equity interest in particular projects leads to the deferment in the appropriation of resource rents by Australians. Furthermore, because finance and long term contracts will have been arranged, the selling price of the foreign equity will be higher than it otherwise would, thus reducing further the rents available for capture by domestic corporations (Anderson 1983, 158). It is not surprising, therefore, that the major critic of the naturalisation policy, Mr. Gordon Jackson, is the chief executive of a major domestic corporation with extensive mining interests.

The existence of internal conflict within the business sector does not negate or diminish Lindblöm's argument; the salient point is that the naturalisation policy was formulated in closed sessions where the constraints of polyarchal institutions subject to elements of popular control were absent.

In relation to diamond marketing, the policy formulation process at the Commonwealth level involves a further theoretical complication in attempting to ascertain the existence of a privileged position for business. The issue revolved around whether to reintroduce federal export controls on diamonds, and the eventual decision was to maintain the status quo. We are thus dealing with a 'non-decision' and the attendant problems of ascertaining causality. As Heclo has noted,

> where no conflict over policies exists, where the less advantaged acquiesce to the prevailing consensus, it cannot be empirically determined whether the consensus is 'genuine' or enforced through non-decision making. (Heclo 1972, 97).

In the situation being examined here, there was certainly not a prevailing consensus (at least while the ALP was in opposition). The issue did in fact reach the political agenda, with substantial discussion in both the Federal and Western Australian Parliaments. As with the naturalisation policymaking process, there was no organised countervailing interest group to oppose the business interests involved, and further, the W.A. Government itself had a strong interest in maintaining its <u>de facto</u> involvement in marketing issues, and would have resented very strongly the re-imposition of Commonwealth controls.

Notwithstanding these complications, the available evidence does not contradict the basic thrust of Lindblom's hypothesis. The basic conclusion of the analysis of the marketing issue was that public policy was deficient when measured against the normative ideal of maximising the appropriation of resource rents by Australian interests; specifically, the policy outcome clearly favoured the foreign corporate interests involved. Unfortunately, however, research undertaken to date has failed to gain access to any of the key policymaking documents relating to the decision not to reintroduce export controls. Consequently, it has not been possible to establish the actual role of business interests in the policymaking process (except insofar as it is accepted that a rational marketing policy requires assessment of the influence within the AJV of foreign interests, and the role of corporate interests in establishing the naturalisation policy thus worked to keep the export control issue off the federal policymaking agenda).

The Department of Trade files which were obtained suggest that the 'non-decision' may have been made at a political level on the basis of the implications for Federal-State relations rather than on the Department's advice based on the implications for the national interest. Certainly there are indications that the Department was just as concerned with being in a position to assert that whatever arrangements were finally made for marketing Argyle diamonds were in the national interest as it was in actually ensuring that the national/public interest was protected.

A minute briefing the then Minister for Trade from the Department's Secretary, dated 18 January 1982 states that "the need is to ensure that national interest considerations are satisfied both presentationally and in substance and that there is reasonable transparency in whatever arrangements are made".*

Moreover, the 'grand issues' (in Lindblom's terms) of the primacy of the private enterprise system are implicitly and explicitly affirmed by the bureaucracy.** A draft background paper, intended as a 'think piece' for internal use, dated 8 December 1981, indicates the degree to which the concern over Federal-State conflict influenced policymaking. The paper canvasses the respective roles of the two governments and concludes that a more active involvement for the Commonwealth Government was desirable in relation to, inter alia, marketing. However, in relation to export controls, it states:

> Given the fact that extension of export control would run against current Government policy, and that the Minister for Trade and Resources has recently (20 October 1981) expressed

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* The minute goes on to note that the AJV would prefer to market through the CSO, but does not specify any national interest considerations, and then states: "I suggest that you use the opportunity to bring out the Commonwealth's interests in the marketing aspect and to stress the need for rather detailed discussions <u>before</u> final decisions are taken - but without seeking to impose any particular course of action on AJV - it is unlikely that AJV would take decisions that could easily be shown to be NOT in the national interest - but your need, as the responsible Commonwealth Minister, is to be satisfied in advance that this is the case and that it can be publicly seen to be so - it would be most unfortunate if, decisions having been made, the outcome were such [approximately 28 characters deleted] that the Government was forced to act by, for example, imposing export controls." (Department of Trade, 18 January 1982).

** "As you will appreciate, Australia has a private enterprise oriented economy. Decisions about production and marketing are matters for the companies concerned subject, of course, to relevant laws and regulations". (Department of Trade, 13 November 1981).

> his doubt about the use of such controls, ...it would seem to be premature to contemplate invoking export controls at this stage.

The paper goes on to explore the alternatives open to the Commonwealth, and in the process underscores the sensitivity of the matter for Commonwealth-State relations. It anticipates opposition from the W.A. Government in relation to any proposed informal liaison procedures involving an opportunity for the Commonwealth to offer its views on proposed marketing arrangements; instead it suggests that the Commonwealth should approach the companies involved directly and request that "their proposals, on marketing particularly, are submitted to the Commonwealth before decisions are made...."*

The available evidence is not sufficient to establish that a major factor in the Commonwealth decision to maintain the status quo was privileged access by the AJV to the policymaking process. There is, by the same token, nothing to suggest that Lindblom's hypothesis should be rejected. There is some suggestion that a major factor in the Commonwealth decision was concern over the implications for relations with the W.A. Government if export controls were to be introduced.

In relation to the broad area of social impact policy (as defined in chapter four), there appears to be strong support for Lindblom's hypothesis. The case study demonstrated the inability of

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* The files available at the moment do not indicate whether the Commonwealth pursued the suggestion of informal liaison on marketing arrangements, and if so, with what success.

the Commonwealth Government to recognise Aboriginal rights and interests in land and consequently the adverse impact of the project on Aboriginal communities in the region; the structural inability of the then Western Australian Government to enforce its own legislation relating to the protection of the Aboriginal cultural heritage; collusive activities between that Government and the AJV in relation to Aboriginal sites and the Good Neighbour Policy, an "expedited" environmental review study which short-circuited standard procedures under the extant environmental protection legislation, and the inability of the current W.A. Government to undertake a social impact assessment nor to disburse compensation payments in the face of opposition from the AJV. The policymaking processes described were characterised by continuous and unconstrained high-level contact between the AJV and the most senior Government policymakers; in contrast, liaison between the Government and the Aboriginal communities was generally carried out, if at all, by junior officials.

In summary, the case studies on naturalisation and social impact policies provide strong and convincing evidence in support of Lindblom's hypothesis. In relation to Federal marketing policy the evidence was not conclusive; there was, however, no material which negated the hypothesis. Major reasons for the qualified conclusions in relation to the marketing case study were (i) the difficulty in obtaining information relating to the policymaking process; (ii) the absence of specific countervailing interests facing the corporate interests involved; and perhaps most importantly, (iii) the existence of a federal political structure which may have been the proximate constraint on Commonwealth policymaking in relation to diamond marketing in particular.*

This study, whilst providing empirical support for Lindblom's proposition that business exercises disproportionate influence in polyarchies ostensibly subject to popular control, also points to the danger of assuming that business influence will in all cases be the determining factor; the existence of a plurality of specific and general interests competing, cooperating and bargaining for influence in their own right within a federal political structure, subject to polyarchal constraints injected a substantial element of indeterminancy and uncertainty into all the political conflicts at Argyle.

Conclusion

This chapter has attempted to provide a theoretical framework in which to place the interconnections of public and private power which are clearly evident in the establishment of a major resource project such as Argyle. The focus of this study has been to explain and analyse the processes (rather than the outputs) of public policymaking relating to the Argyle project. Inevitably, the boundary between the policymaking process and the policy itself is not always clear; consequently this study has dealt with both.

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* See Henning (1983) for an analogous conclusion in relation to regional development funding in Sweden - regional bargaining conflicts dominated private/public bargaining conflict.

A clear theme permeating the policymaking processes at Argyle has been the inability of public policymakers to recognise the existence of conflicting interests. In relation to the naturalisation and marketing policies, the potential contrariety between organised corporate interests and unorganised public interests was largely invisible. In relation to social impact policies, it was argued that much policymaking (both public and private) was directed to maintaining the relative invisibility of Aboriginal interests.

The structural inability on the part of public policymakers to recognise the existence of conflicting interests can be seen as a corollary of Lindblom's hypothesis that corporate interests receive privileged treatment. So long as the existence of conflicting interests is not granted recognition, governments are not required to fulfil the role of mediator assigned under pluralist ideology. To mediate between opposing interests may have undermined the prevailing 'unity of interests' paradigm (Dixon 1984b) whereby resource development is characterised as <u>always</u> in the public interest and therefore as of universal benefit.

It seems likely that these ideological constraints, operating at a structural (as opposed to a conscious) level, are the explanation for the instances of 'irrational', 'uncoordinated' or 'non-existent' policymaking referred to in the case studies.

Public policy relating to a project such as Argyle is not independent of the historical, political and economic context in which it is made. Thus, Harman and Head (1981, 11-25) have identified five basic features of resource development in northern Australia, including the existence of a strong partnership between state and capital;* Layman (1981, 158) has pointed out the historical development leading to the 1960s emphasis on an enlarged role for the public sector in undertaking development planning and attracting private capital for large scale development projects; Rumley (1983) has identified the existence of extreme social and economic inequalities in the Kimberley.

The recognition of the broader contexts within which policymaking takes place is not, however, equivalent to accepting that these factors determine the specific content of the policymaking process. A major theme of the present study has been to point to the crucial significance of bargaining as a determinant of policy outcomes, notwithstanding the existence of more fundamental political and economic forces.

The ubiquity of bargaining, negotiation and exchange point to an underlying fluidity and uniqueness in policymaking processes. In each policy area analysed, the policymaking process produced unique policies adapted to the needs of the AJV, the W.A. and Commonwealth Governments.** As the political and economic needs of these major actors develop, as bargaining strengths change, we can expect policies to change and develop. Unlike diamonds, policies aren't forever.

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* The other four features are (i) a high degree of foreign ownership; (ii) the existence of Federal/State conflict; (iii) the existence of a frontier ethos; and (iv) the existence of a debate over the benefits and costs of resource development (Harman and Head 1981, 13).

** And also in a number of policy areas not discussed here, for example, the W.A. Government decision to retrospectively override a Supreme Court challenge to the AJV's mining tenements by Afro-West Mining and Exploration Pty. Ltd. See AFR, 16 October 1981.

APPENDIX A

Abbreviations

AAT	Administrative Appeals Tribunal
ACMC	Aboriginal Cultural Material Committee
ADC	Aboriginal Development Commission
ADM	Argyle Diamond Mines Pty. Limited
ADMJV	Argyle Diamond Mines Joint Venture
ADS	Argyle Diamond Sales Limited
AEJV	Ashton Exploration Joint Venture
AFR	Australian Financial Review
AG	Australian Consolidated Industries
AGPS	Australian Government Publishing Service
AIAS	Australian Institute of Aboriginal Studies
AJV	Ashton Joint Venture
ALP	Australian Labor Party
Aust. Bus.	Australian Business
BRW	Business Review Weekly
CGFA	Consolidated Goldfields of Australia Limited
CRA	CRA Limited; formerly Conzinc Riotinto of Australia Limited
CSO	Central Selling Organisation
DAA	Department of Aboriginal Affairs
EIS	Environmental Impact Statement
EPA	Environmental Protection Authority
ERMP	Environmental Review and Management Program
FIRB	Foreign Investment Review Board
GNP	Good Neighbour Policy

IAG	Impact Assessment Group
KJV	Kulumburu Joint Venture
MMC	Malaysian Mining Corporation
NAC	National Aboriginal Conference
Nat. Times	National Times
NMC	Northern Mining Corporation
RTZ	Rio Tinto-Zinc Corporation
SMH	Sydney Morning Herald
WA	Western Australia
Warmun	Warmun Community Inc.
WEST	The West Australian
WM	The Western Mail
WMC	Western Mining Corporation

APPENDIX B

A Note on Government Sources.

The research for this study involved a serious attempt to examine the processes of public policymaking, at both State and Federal levels.

At the State level, reliance was placed largely on interviews with officials and such documents as could be obtained. There is no Freedom of Information legislation in Western Australia.

At the Federal level, reliance was placed on requests for documents under the Freedom of Information Act.

Requests were made to the Department of Aboriginal Affairs (12 January 1984), Treasury and FIRB, Department of Resources and Energy and Department of Trade (24 April 1984).

At the date of writing (22 October 1984), only the Department of Aboriginal Affairs request had been finalised (on 23 March 1984). The Department of Trade granted access to 43 out of 242 relevant documents on 11 July 1984, and released a further 90 after an internal review was sought, and is currently consulting 'interested parties' regarding the possibility of releasing a further 40. Approximately 70 documents were held to be exempt. An appeal to the Administrative Appeals Tribunal has been lodged in respect of 44 of these.

The response from Treasury dated 20 July 1984 was to release scores of press clippings and press releases. The only substantive internal working documents released were lists of government organisations consulted on various relevant matters.

The Treasury decision was made in the first instance by the Secretary, thus preventing the application of internal review procedure. As well, a conclusive certificate was issued in relation to internal working documents relevant to my request, which has the effect of preventing the AAT overturning the decision; it may only address the reasonableness of the decision. Notwithstanding, an appeal to the AAT has been lodged.

The Department of Resources and Energy responded on 28 August 1984, with a list of documents held, but having made no decision relating to access. At date of writing, no decisions or access have been made. An appeal to the AAT is contemplated.

Fees were charged by the Department of Aboriginal Affairs and the Treasury; no fees were charged by the Department of Trade.

The major reasons for refusal of access to Commonwealth documents included:

(i) that release would damage Commonwealth-State relations (S.33A)

(ii) that release would unreasonably affect persons' lawful business affairs (S.41)

(iii) that release would be a breach of confidence (S.45)

(iv) that release would jeopardise the maintenance of

a) the collective responsibility of the Ministry,

b) effective decision-making processes, and

c) the provision of candid advice between Departments and to Ministers (SS.34, 36).

The degree of access to the policymaking documents held by Governments has been superficial and consequently a significant constraint on the assessment of the policymaking process.

APPENDIX C

Profile of Argyle Diamond Production.

The data in this appendix is derived from the ADMJV Project Briefing (ADMJV 1982). Page references are to that document. The intention is merely to indicate the significance of Argyle in relation to the world diamond market.

Total world diamond production prior to the development of Argyle was 50 million carats per annum worth $4,000 million. It is estimated that Argyle's production of 25 million carats would only increase the value of world production by 4 per cent or $160 million per annum.

The increase in world supply is made up as follows:

	carats %	value %
Gem	8	2
Cheap Gem	25	10
Industrial (stones and boart	75	60
Averaged total	40	4

(Source: ADMJV 1982, 76)

The composition of Argyle's production is 5 per cent gem, 25 per cent near gem, 20 per cent industrial and 50 per cent boart (ADMJV 1982, 37,86).

In other words, Argyle will produce the following volumes of diamonds each year:

gems	1.75 million carats
near gems	6.25 million carats
industrials	17.5 million carats

World production in each category will therefore be

gems	20 million carats
near gems	25 million carats
industrials	24 million carats

The significance of Argyle's industrial diamond output is diminished by the fact that total world production of synthetic industrial diamonds is approximately 120 million carats at an average value of US$2 per carat (ADMJV 1982, 73).

The valuation of diamonds is an extremely complex process; the CSO grade each stone into one of approximately 5,000 categories based on qualities such as size, shape, colour and clarity. Clearly, supply and demand factors come into play as well, with CSO stockpiling and advertising designed to influence the price in each broad category.

The ADMJV Project Briefing lists "typical values" for four broad categories of rough diamonds (although it makes clear that wide variations in value occur in each category):

Category	Typical Values US$/carat
Gems	250-300
Cheap gem	20-30
Industrial stones	15-30
Boart	1-2

(Source: ADMJV 1982, 73).

The Project Briefing states: "Argyle quality is low by world standards. Most of the production is of below average quality in each category" (ADMJV 1982, 87). This statement can now be placed in perspective. The following table incorporates assumed values for each category*:

Category	Annual Production in carats	Assumed value/carat	Annual Sales
Gem	1.75 million	$60	$105 million
Cheap gem	6.25 million	$20	$12.5 million
Industrial stones	5.0 million	$5	$25 million
Boart	12.5 million	$1	$12.5 million
	25.5 million		$155 million

The estimates of the value of production in each category serve to indicate the significance of gem production to the economics of the project, and the sensitivity of the categorisation and valuation question to overall project revenue. In particular, it should be noted that it is necessary to assume a value for Argyle

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* There has been no attempt to convert US$ to A$ as in 1982, the two currencies were close to parity.

gems equivalent to approximately one-fourth of the 'typical value' for gem quality diamonds to reconcile proposed output and revenue.

Finally, it is possible to use the estimates of the value of production to provide a perspective on the significance of the marketing arrangements. The Argyle output will be marketed as follows: NMC will retain its 5 per cent share of total production and market independently. CRA/Ashton Mining will market their 95 per cent of output as follows: all gem production will be sold through the CSO; 75 per cent of near gems and industrials will be sold through the CSO; the remaining 25 per cent will be sold independently by ADS.

On the basis of the assumed average values, the monetary significance of each of the proposed marketing arrangements can be estimated:

	CSO	ADS	Arslenian
Gems	\$100 million	NIL	\$5 million
Near gems/ Industrial	\$32.5 million	\$12.5 million	\$2.5 million
Total	\$132.5 million	\$12.5 million	\$7.5 million

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