

**University of Cape Town**

**The South African Bread Cartel: A single case study exploring the scope for responsive regulation of white-collar crime in a developing country**

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*For Mommy and Daddy*

*I feel your presence all around and within...*

*I miss you every minute of every day...*

*I love you and I thank you for everything*

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## ABSTRACT

Criminology traditionally focused on street crimes. In 1939, Sutherland introduced the concept of white-collar crime, which encouraged criminologists to turn their attention to crimes of the rich and powerful. In particular, Australian researcher John Braithwaite has produced a large body of work on white-collar crime. Braithwaite is critical of the professionalisation of criminology that marginalises the community from regulatory activities. Braithwaite argues that the business and community sectors should play a more significant role in regulating white-collar crime within conventional justice systems. According to Braithwaite, community activists and industry watchdogs can play a role in holding white-collar criminals accountable and possibly elicit restorative overtures for victims. Braithwaite acknowledges that his model is ideally suited to a developed state with the financial resources and skills to establish and oversee alternative processes. However, he suggests that his model can be adapted to developing spaces by leveraging the capacity embedded in business and community sectors and augmenting deficiencies by partnering with international groups. Recently, the actions of a whistle-blower, supported by civil society mobilisation, exposed the South African Bread Cartel and led to hefty fines for the cartelists, legislative amendments and the development of class action jurisprudence. The bread cartel case demonstrates how communities can contribute to regulating cartels. This dissertation is a single case study of the bread cartel that investigates whether *responsive regulation* finds resonance in South Africa. Several semi-structured, in-depth interviews were conducted. The data was analysed thematically and explored themes like industry bodies, community activism and restorative justice. The findings are surprising. The success of the South African Bread Cartel seems almost accidental. The relationships between and the normative values of the state, business and community sectors appear to influence the scope for *responsive regulation*. In addition to capacity constraints across sectors, contextual factors like historical legacies and the size and shape of the economy may determine the scope for *responsive regulation* of white-collar crime in a developing country like South Africa. Such findings provide a map to guide future research.

**KEYWORDS:** White-collar crime, cartels, regulation, *responsive regulation*, capacity, whistle-blower, industry bodies, community activism, *restorative justice* and developing countries.

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## CHAPTER ONE: INTRODUCTION

### 1.1 COMMUNITY AT THE HEART OF REGULATION

Australian criminologist John Braithwaite (1996: 11) writes:

It is a criminal injustice system that systematically turns a blind eye to crimes of the powerful...

With these words, Braithwaite (1996: 11-13) joins the global conversation, drawing attention to flawed justice systems in the West. Criminal justice systems in countries like Australia and Canada generally fail to rehabilitate offenders, deter crime and tend to exacerbate ill-will and acrimony within society (Braithwaite, 1996: 11-13). Braithwaite (1989: 6) is similarly critical of the professionalisation of criminology that marginalises communities from regulation and advocates for communities to be at the heart of regulating crime. Accordingly, Braithwaite has produced a large body of work that aims to increase community involvement in responses to white-collar crime.<sup>1</sup> Themes such as crimes of the powerful and community regulation find resonance in South Africa. This country has endured systemic victimisation at the hands of colonialists as well as the apartheid and democratic governments (Beall, Gelb & Hassim, 2005: 684; Mbongwa, van der Brink & van Zyl, 1996: 51-52; Njovane, 2015).<sup>2</sup> Furthermore, non-state governance has always been an organising feature of social life in South Africa and was instrumental in the change from apartheid to democracy and beginning a new era of unity.<sup>3</sup>

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<sup>1</sup> Braithwaite (1989) outlines *reintegrative shaming* in 'Crime, shame and reintegration'. Ayers and Braithwaite (1992) co-authored 'Responsive regulation – transcending the deregulation debate'. Braithwaite (2002) published 'Restorative justice and responsive regulation'.

<sup>2</sup> South Africa was colonised by Dutch and British colonialists and divided by the apartheid government (Njovane, 2015). The National Party won the 1948 (undemocratic) elections and adopted policies and legislation that legalised 'apartheid' (Mbongwa et al, 1996: 51-52). The Afrikaans word 'apartheid' translates to 'separateness'. Apartheid used the social construct of race to divide South Africans and, in doing so, entrenched 300 years of prejudice (Mbongwa et al, 1996: 51-52). Apartheid policies privileged Afrikaners and white people at the expense of black South Africans. Apartheid ended in 1994 with South Africa's first democratic election. The new democratic government has been less than ideal. For instance, the initial post-1994 responses to the HIV/AIDS epidemic led to unnecessary suffering and death (Grebe, 2011: 849-850).

<sup>3</sup> Omale (2006: 43-44) explains that community-oriented resolution processes like *restorative justice* are not a new phenomenon and that people living in Africa resolved conflicts through dialogue and forgiveness before colonisation. Despite divisive policies during apartheid, racially diverse civil society groups, trade unions, professional bodies as well as faith-based and non-government organisations (NGOs) forged links across racial lines to oppose apartheid and mobilise for democracy (Beall et al, 2005: 685). After apartheid, the Truth and Reconciliation Commission (TRC), which exemplified *restorative justice* principles, aimed to symbolically acknowledge and forgive apartheid-era political crimes in an attempt to restore relationships between white and black South Africans and build a racially united nation going forward (Minow, 1998: 320-322). Although the TRC is deeply contested, McLeod (2015) confirms that the TRC embodied *restorative justice* values which have always featured in the dispute resolution processes of traditional African communities. *Restorative justice*

## 1.2 GROWING PAINS

Beall et al (2005: 682-684, 691 & 699) explain that despite an era of unity, South Africa faces numerous challenges. Communities continue to suffer extreme inequalities along racial and income lines due to historical oppression. Almost half of the population scrapes by on approximately 6 per cent of total income while one-fifth accumulates the lion's share. Service delivery issues have persisted. There are tensions between the hope for development and economic growth to benefit all and the fear of corrupt links between state and business that benefit few and exclude most. The global food crisis<sup>4</sup> from 2006 to 2008 led to spiralling costs as the price of basics like wheat more than doubled in a year. The crisis hit African developing countries hardest and people took to the streets in protest (Pomeroy, 2008; Fleshman, 2008: 12-14 & 17; Rakhudu, 2008: 1; Adam, 2008). At a conference dedicated to global food security, the Director-General of the Food and Agricultural Organisation of the United Nations spoke the following sobering words:

It was only when the destitute and those excluded from the banquets of the rich took to the streets to voice their discontent and despair that the first reactions in support of food aid began to emerge (Fleshman, 2008: 17).

There were many reasons for similar discontent, despair and protest in South Africa as several cartels were exposed for price-fixing of basics like bread and milk (Rakhudu, 2008: 1). These unconscionable acts drew attention to features that created almost perfect conditions for anti-competitive business practices.

## 1.3 FROM CONTROL BOARDS TO COMPETITION AUTHORITIES

Vink (2012: 553-555 & 560-564) summarises the development of competition laws from the 1930s to the 1980s. Legislation<sup>5</sup> created a network of control boards that managed industries and industry information. A handful of farmers manipulated legislation to inflate food prices artificially. Cartels flourished because the state either actively encouraged or passively

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principles are embodied in South African law. *Restorative justice* is linked to the spirit of *ubuntu* which implicitly permeates the Constitution of the Republic of South Africa, 1996 (Skelton, 2013:122). *Restorative justice* principles are central to the Child Justice Act 75 of 2008.

<sup>4</sup> Rapid inflation intensified poverty, undermined stability and development and caused protests in developing countries from 2006 to 2008 (Berazneva & Lee, 2013: 28).

<sup>5</sup> The Marketing Act 59 of 1968 replaced the Marketing Act 27 of 1937. The Acts entrenched the dominance of white farmers and marginalised black farmers by controlling access to bank loans (Vink, 2012: 553-555 & 563; Mncube & Grimbeek, 2016: 338).

overlooked such collusion. Market interference led to the concentrated and uncompetitive industries that are so common in South Africa. Mncube and Grimbeek (2016: 337-338 & 346) explain that such practices continued for approximately 60 years. In the 1980s, deregulation began, culminating in legislation<sup>6</sup> that dismantled control boards. However, changing the structure of industries and the nature of business practices requires more than a mere amendment of laws. Deregulation made matters worse. Dropping restrictive legislation intensified competition in previously protected industries, which forced prices and profits down. Depressed prices created an opportunity for collusion. Businesses could generate more revenue by fixing the prices of various goods. In other words, competition pressures meant that businesses could make even more profit by colluding in deregulated markets than they did by fixing prices under state control. The outcome was that cartels continued to prosper in many industries despite legislative reform.

Maphwanya (2017: 49 & 64-67) provides background information about cartels. A cartel is formed when competitors within an industry agree to cooperate instead of competing with each other. It is easier to form a cartel in a concentrated industry dominated by a few large companies that manufacture relatively similar products. Like milk or cement. Industry associations often facilitate cartels by providing a platform for competitors to meet and share information. Cartels exacerbate social and economic problems by stifling competition, innovation and maintaining artificially high prices (Ngoma, 2017: 15). Lewis (2012: 202-203) explains that Murray & Roberts and Aveng operated a cement cartel through subsidiary companies for over three decades. The enduring nature of the cement cartel implies that experienced employees indoctrinated their subordinates into unlawful practices, which normalised collusion as a standard feature of business. It is challenging to change widespread collusion when industry and economic conditions, laws, and business culture encourage continued misconduct to earn extra profits. A mixed metaphor explains the idea best: Cartelists are Fat Cats that want to hold onto their Cash Cows. Nonetheless, the democratic government adopted new legislation to curb cartel collusion.

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<sup>6</sup> Marketing of Agricultural Products Act 47 of 1996.

The preamble of the Competition Act 89 of 1998 (the Act) states that it aims to correct the concentrated nature of industries, income and wealth inequalities by promoting competition and equal economic opportunities for all. The long title of the Act explains that regulatory bodies will be created to accomplish such aims. Specifically, the Competition Commission (Commission) monitors the business environment to detect anti-competitive practices. The Competition Tribunal (Tribunal) and the Competition Appeal Court arbitrate cases of competition law violations. The Act<sup>7</sup> empowers the Commission to create a leniency policy. Maphwanya (2017: 50 & 53) outlines the importance of the Corporate Leniency Policy (CLP). The CLP encourages cartelists to confess their misconduct to the Commission in exchange for immunity. Only the first company that reaches out to the Commission receives immunity in terms of the CLP, which motivates companies to confess. The policy is practical as the Commission saves the resources necessary to investigate cartels, which are notoriously difficult to detect. The South African Bread Cartel is a classic example of the cartel phenomenon. It demonstrates how the above factors converged to create a perfect storm for collusion in the bread industry.

#### **1.4 THE BIG BREAD DEBACLE**

The Tribunal decision in *The Competition Commission v Pioneer Foods*<sup>8</sup> describes the bread industry and the cartel. The bread industry was protected from competition for many years. The *Chamber of Baking (Chamber)* was the industry association that set the terms of the cartel agreement. The *Chamber* hosted meetings where bakery representatives shared information, discussed problems, and colluded to fix prices, volumes and market shares. The bakeries sold bread to distributors and large chain stores like Shoprite at prices and volumes set by the cartel agreement. Distributors are independent contractors who buy bread from the bakeries at a discount and then resell the bread to supermarkets, cafés and spaza shops<sup>9</sup> at a profit. However, the bakeries were always tempted to break the cartel agreement to earn extra profits by selling larger volumes at more significant discounts to retailers and distributors. The *Chamber* kept manufacturers in line by fining those who breached the cartel agreement. Over time, Tiger

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<sup>7</sup> Section 49E of the Act.

<sup>8</sup> *The Competition Commission v Pioneer Foods (Pty) Ltd* (15/CR/Feb07 and 50/CR/May08) (*Pioneer*) [14-17, 20, 40, 43-44, 47-48 & 50-52].

<sup>9</sup> Spaza shops are small cafés selling basics like bread, airtime and canned foods set up in garages or ad hoc corrugated structures in townships on the Cape Flats (Gastrow, 2019).

Consumer Brands Ltd, Premier Foods Ltd, Pioneer Foods (Pty) Ltd and Foodcorp (Pty) Ltd<sup>10</sup> emerged as giants controlling approximately 50 to 60 per cent of the bread market.<sup>11</sup> The bread industry was deregulated in 1991. The Act was adopted in 1998. Despite such changes, the *Chamber* remained integral to the industry and continued facilitating meetings where bakery representatives discussed problems and managed cartel business.<sup>12</sup> By 2006, the industry had problems. The cost of inputs like wheat and petrol had escalated rapidly,<sup>13</sup> and missing bread crates undermined the distribution of bread. Bakery representatives held several meetings to discuss solutions. The *Big Three* agreed to increase retail prices and decrease discounts to protect their profits in violation of the new competition laws. The bakery representatives hatched a plan to cloak their collusion by scheduling price and discount changes on different dates.

This is where Imraahn Mukaddam, a bread distributor from Elsie's River, enters the story. Weiner (2020: 58-64) describes the events that led to Imraahn blowing the whistle on the bread cartel. In December 2006, the manager of Premier Foods told Imraahn that his profit margin was being slashed from R1.20 to 75 cents per loaf. Imraahn retorted that he would take his business elsewhere. The manager said:

We got together. Across the board you are going to get 75 cents. Albany, Sasko and Blue Ribbon.

Prompted by these words, Imraahn laid a formal complaint with the Commission, and the big bread debacle began in earnest. The *Pioneer* judgment [3-4, 6-7 & 175] summarises the process of concluding settlement agreements between the Commission and the bakeries. Premier Foods was the first to approach the Commission and negotiate immunity from Tribunal proceedings

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<sup>10</sup> Premier Foods bakes Blue Ribbon bread. Tiger Brands owns Albany Bakeries. Pioneer Foods markets Sasko and Duens bread. Foodcorp sells Sunbake bread [39].

<sup>11</sup> The concentration in the bread market may be as high as 85 per cent (Gebhardt, 2014: 1). The *Pioneer* judgment [14 & 19] explains that the rest of the market is divided into many independent or in-store bakeries. Gebhardt (2014: 1 & 5) set out the importance of distribution in the industry. Distributing bread is extremely expensive and distribution networks are vital to supply fresh bread every day across the country. Despite smaller, independent bakeries, South Africans depend on Tiger Brands, Premier Foods, Pioneer Foods and Foodcorp to consume bread.

<sup>12</sup> The *Chamber* often met at churches and preceded meetings about price-fixing with words of prayer (Gebhardt, 2014: 1 & 5). The *Pioneer* [40] judgment states that the *Chamber* dissolved in 2002. This is inaccurate as the *Chamber* has an active website showcasing recent conferences and examination timetables for courses on breadmaking (Chamber of Baking, 2022). Curiously, the webpage that lists relevant legislation and policies omits the Act and the CLP (Chamber of Baking, 2022).

<sup>13</sup> The price hikes were likely related to the global food crisis.

in exchange for confessing to cartel collusion with Tiger Brands and Pioneer Foods in the Western Cape and informing the Commission about the national cartel.<sup>14</sup> Tiger Brands and Foodcorp were next to confess and conclude consent agreements with the Commission. Tiger Brands and Foodcorp paid hefty fines for collusion.<sup>15</sup> Pioneer Foods was the last hold-out. The Tribunal found Pioneer Foods guilty of price-fixing and punished the company severely.<sup>16</sup> In sum, the bread manufacturers were found guilty of setting prices and market conditions. The unprecedented administrative penalties may have been a satisfactory end to the debacle had it not been for a random encounter between Imraahn and human rights attorney Charles Abrahams (Abrahams, 2019: 168).

Hoffman (2016: 161-191) describes the high drama and high stakes as a slew of cases unfolded in the High Court, the Supreme Court of Appeal, and the Constitutional Court. The issue was whether the bread consumers and distributors had a legal right to bring class actions against the *Big Three*. Charles Abrahams acted for the consumers who were represented by the Children's Resources Centre, the Black Sash Trust, the Congress of South African Trade Unions (COSATU), the National Consumer Forum and five others. Advocate Paul Hoffman led the fight for Imraahn and approximately 100 other distributors. The judgments set important precedents. The court developed the class action procedures set out in *Ngxuza*.<sup>17</sup> The judgments expanded class actions from the purview of human rights violations to create a general class action remedy for the violation of all rights. The Department of Trade and Industry politicised the issue and amended the Act to create criminal liability for company directors and managers involved in cartel collusion (criminalisation amendment) (Lewis, 2012: 209-210).<sup>18</sup> Overall, it seems that the South African Bread Cartel case is an accidental success story.

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<sup>14</sup> The Commission investigated both the local and national aspects of the cartel and, for practical reasons, combined the matters for the Tribunal proceeding. Foodcorp was only involved in the national cartel. This dissertation focuses on the unlawful activities of Tiger Brands, Premier and Pioneer Foods (*Big Three*) in the Western Cape region (*Pioneer*, [1, 5 & 8]).

<sup>15</sup> Tiger Brands paid almost R99 million and Foodcorp paid over R45 million (5.7 and 6.7 per cent of the relevant division's turnover for 2006, respectively).

<sup>16</sup> Pioneer Foods paid R196 million.

<sup>17</sup> *Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government and Another v Ngxuza and Others* (493/2000) [2001] ZASCA 85.

<sup>18</sup> Section 73A of the Act.

## 1.5 THE CHALLENGE: CONTROLLING CARTELS

The current regulation of cartels is problematic. Kelly (2010: 321-322 & 329) questions the wisdom of the criminalisation amendment.<sup>19</sup> The prospect of criminal charges may cause commercial rainmakers to hesitate when making entrepreneurial decisions, adversely impacting innovation and growth. The criminalisation amendment sabotages the CLP. The policy offers immunity from the Tribunal's administrative penalties to the first company that confesses to collusion, which leaves the confessing company, as well as other members of the cartel, vulnerable to criminal charges.<sup>20</sup> Thus, cartelists may be hesitant to confess to cartel collusion. The criminalisation amendment raises legal questions.<sup>21</sup> How should the National Prosecuting Authority (NPA) and the Commission coordinate their respective processes to lay criminal charges against cartels? Perhaps the more important question is about the capacity of the criminal justice system. The local criminal justice system is in distress. Dennis Davis, judge president of the Competition Appeal Court, and David Lewis, who previously chaired the Tribunal, doubt the ability of the NPA to prosecute cartels (Crotty, 2016: 2). Overall, the NPA does not seem to have the expertise and resources to prosecute cartels and the criminal justice system has been slow to respond to cartels (Rowan-Braaf, 2019: 83-84). The NPA faces so many challenges, from skills deficits to corruption, that the prospects of successfully prosecuting any white-collar crimes are remote (Marchant & Van Vuuren, 2023: 23). There is an urgent need to remedy the situation because there are so many cartels in South Africa that cause so much harm to local communities. A World Bank report on the South African economy (2016: 34-35) warns that the situation is dire. The bread cartel is only one of 76 cartels in South Africa. Many cartels control industries that manufacture basics like milk and eggs. Collusion in these industries drives the prices of staple foods up and contributes to keeping the most vulnerable South Africans trapped in poverty (Ngoma, 2017: 15). The poorest South Africans spend approximately one-third of their income on basics like bread (Statistics South Africa, 2014: 55).<sup>22</sup> One-quarter of South Africans live below the food poverty line.<sup>23</sup> Women and children shoulder the greatest share of this burden (Chutel, 2017; Statistics South Africa, 2014:

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<sup>19</sup> Section 73A(4) of the Act introduces the amendment. Section 74 of the Act states that a guilty verdict leaves cartelists facing penalties of R500 000 or a decade behind bars.

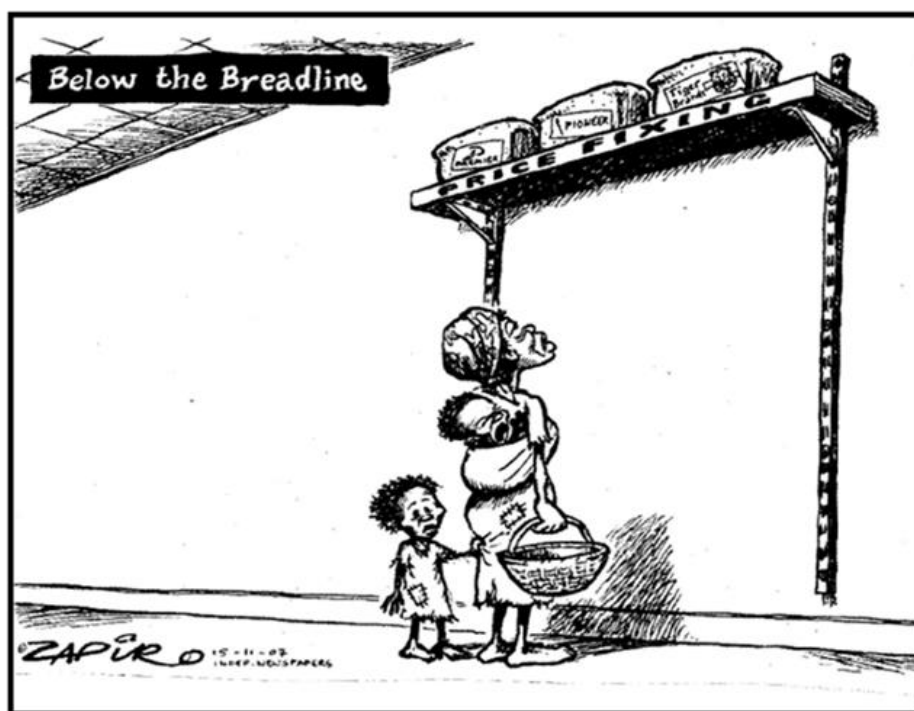
<sup>20</sup> Section 3.1 of the CLP.

<sup>21</sup> Lewis (2012: 210-213) questions the amendment's legality. A guilty verdict from the Tribunal that is subsequently used as evidence of guilt in a criminal matter may place an unconstitutional burden on the accused to prove themselves innocent.

<sup>22</sup> By comparison, typical households spend 11 per cent of their income on food.

<sup>23</sup> The food poverty line is the income level necessary for a person to meet their most basic dietary needs, which includes bread (Statistics South Africa, 2019: 3 & 8-11).

29 & 40). Cartel collusion exacerbates inequalities and poverty among South Africans (Ngoma, 2017: 15; Statistics South Africa, 2014: 29, 40 & 55). Quite literally, an increase in the price of bread means fewer slices on the table for many (Greeff, 2016). The cartoon below depicts how the *Big Three* put the most basic of foods beyond the reach of the most vulnerable South Africans (Zapiro, 2007: 20).<sup>24</sup>



**Figure 1. 'Below the bread line' (Zapiro, 2007: 20).**

Cartoon reprinted with permission.

## 1.6 COMMUNITY AT THE HEART OF REGULATION

The social and economic costs of cartels are unconscionable. The ubiquity of cartels implies that criminal, civil and administrative responses to white-collar crime are not effectively curbing the phenomenon and that new regulatory responses are necessary. Braithwaite enters the theoretical conversation and draws attention to traditions of plural regulation around the

<sup>24</sup> Cartoon reprinted with permission. The cartoon was originally published in *The Star*. 15 November 2007. P 20. For more Zapiro cartoons, visit [www.zapiro.com](http://www.zapiro.com).

world (Braithwaite, 2002: 26). Braithwaite's (1993: 13) case study of the international pharmaceutical industry demonstrates that plural community governance embedded within legal systems may reduce crime and corruption. A vast global industry differs substantially from a comparatively small cartel in South Africa. This dissertation is about regulation and takes up the challenge embedded in Braithwaite's work (1996: 11-13). First, like the West, the local criminal justice system is fundamentally flawed due to capacity gaps and corruption. Looking to the West for lessons on how to repair the criminal justice system, we discover that even with additional resources and the best criminology technology, criminal justice systems cannot solve the crime problem (Garland, 1996: 447). Second, community-oriented dispute resolution is an innate part of local culture (Omale, 2006: 43-44). Braithwaite's invitation is for South Africa to learn from the shortcomings of Western justice systems, the challenges within the NPA and embrace local *restorative justice* and *responsive regulation* customs to re-imagine a conceptually innovative criminal justice system. Specifically, I investigate the conditions that enhance the scope for *responsive regulation* of white-collar crime in a developing country by conducting a single case study of the South African Bread Cartel. The case study adds to knowledge by exploring whether and how Braithwaite's ideas have utility in regulating cartels, as a specific form of white-collar crime, in a country that differs from Braithwaite's Australian home. The project adds to existing data on white-collar crime, which, according to Berghoff and Spiekermann (2018: 300) and Simpson (2019: 195), is in short supply and points to themes for future research.

The dissertation begins with a literature review that outlines developments in white-collar crime and showcases Braithwaite's work. Chapter Three sets out the methodology used to collect and mine the data. The findings and discussion chapters follow. The project ends with concluding remarks. At this point, I would like to pause and share my story.

## **1.7 MY STORY**

I grew up in our shop, a typical corner café in Simon's Town. We lived upstairs and the shop was on the ground floor. In the mornings, I would race into the shop on my way to school, often just as crates of bread were being delivered. I would put my school bag aside and help my father pack the bread. My father and the bread distributor often complained that the bread companies did not care about the *man in the street* because they kept putting their prices up

and did not care about them either as they kept cutting their discounts. My father taught me many lessons in those moments. *We must stock bread. It is a staple for our customers. Bread brings customers into our shop, and hopefully, they will buy other things, too.*

The harshest lesson came in the proudest moment of my young life. At eight, I was finally allowed to operate the cash register and serve small customers. I saw defeat in the slump of a mother's shoulders as she looked at the coins in her hand and realised that she did not have enough money to buy bread for her children because the price had gone up. This lesson motivated my academic studies. In 2015, I did a short stint as a student in the competition law department of the legal firm *ENS Africa*. Unaware that the firm may have represented a company accused of price-fixing, I got into trouble for suggesting that colluders should be harshly punished. My superior firmly told me that I should *work for the Commission*. I took her sentiments to heart, and after qualifying as an attorney, I registered for a Master of Laws in Criminology, Law and Society.

The day that I met with Imraahn,<sup>25</sup> he beamed as he told me that his daughter had recently graduated with a law degree and that she planned to pursue postgraduate studies.<sup>26</sup> His daughter's accomplishments became more poignant when I subsequently learnt that Imraahn had not been able to provide his sons with the same opportunity because blowing the whistle on the bread cartel had led to financial problems (Weiner, 2020: 67). As I reflect on Imraahn's story, I cannot help but consider my own... At the start of this project, I was caring for my elderly, sickly parents. Over 132 days, both my mother and father passed. My parents' lessons have guided me from working alongside them behind the shop counter to writing this dissertation, and it feels like there was no other topic for me than this single case study of the South African Bread Cartel.

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<sup>25</sup> Imraahn is the only respondent whose identity I have chosen to reveal in this dissertation, even though other respondents also indicated that I may do so. I identify Imraahn to honour the personal sacrifices he has made in breaking the bread cartel.

<sup>26</sup> Imraahn consented to me writing about his children via WhatsApp on 2 October 2023.

## CHAPTER TWO: LITERATURE REVIEW

This project explores the scope for *responsive regulation* of white-collar crime in developing countries by conducting a single case study of the South African Bread Cartel. The literature review begins by considering the significance of Edwin Sutherland's pioneering contribution to criminology debates on white-collar crime. Definitions and trends in the theoretical development of white-collar crime are broadly sketched. The *regulatory spectrum*, a conceptual tool I developed, is then described to showcase Braithwaite's contributions within the broader regulation trends. Key concepts of *reintegrative shaming*, *responsive regulation*, the *regulatory pyramid* and *restorative justice* are discussed. The literature review outlines Braithwaite's case study of the international pharmaceutical industry and ends by identifying the gaps filled by this project.

### 2.1 UNDERSTANDING WHITE-COLLAR CRIME

The historical development of white-collar crime culminates in exposing the invisible offences of the rich and powerful. Definitional debates and challenges in developing theory limit the regulation of white-collar crime (Friedrichs, 2002: 244).

#### 2.1.1 From pickpockets to Ponzi schemes<sup>27</sup>

Edwin Sutherland drew attention to crimes committed by professional, respectable, wealthy men compared to crimes committed by the lower classes in his 1939 address to the American Sociological Association (Simpson, 2019: 189).<sup>28</sup> Others had acknowledged the crimes of the rich and powerful before Sutherland.<sup>29</sup> Ross (1907: 45-48) used the term *criminaloid* to describe the upper class, who had likely accumulated their wealth through less than honest

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<sup>27</sup> More than 100 years ago, Charles Ponzi operated such a successful pyramid scheme that the crime was named after him (Darby, 2021).

<sup>28</sup> The association was called the American Sociological and Economic Societies at the time of Sutherland's address (Simpson, 2019: 189).

<sup>29</sup> In 1848, Karl Marx and Friedrich Engels exposed the exploitative underbelly of capitalism in '*The Communist Manifesto*' (Cole, 2019). In 1899, DuBois pointed out that courts typically punished poorer black people harshly for petty crimes while wealthier white people received lighter sentences for crimes like embezzlement (Simpson, 2019: 189). Bonger (1916) argued that capitalist values caused both 'crime in the streets' and 'crime in the suites' (Braithwaite, 1985: 2).

dealings, yet seemed to escape criminal liability and enjoy an elevated social status.<sup>30</sup> Whilst crimes of the wealthy were not an unrecognised phenomenon, Sutherland's address was significant because it broke stereotypical images of criminals as street villains, raised questions about factors like poverty in explaining criminal behaviour, and compelled the study of white-collar crimes (Levi & Lord, 2017: 3).

### **2.1.2 Much ado about definitions**

More than 80 years after Sutherland's watershed address, the meaning of white-collar crime remains deeply contested (Benson, 2015: 551; Friedrichs, 2002: 244; Kapiso, 2016: 6; Simpson, 2013: 310). The uncertainties can be traced back to Sutherland as he proposed several definitions of white-collar crime over 17 years, and each version added obscurities (Friedrichs, 2002: 244; Geis, 1991: 11-12; Simpson, 2019: 190). Such lengthy debate may seem like much ado about definitions as there are disadvantages to fixating on defining and explaining a concept with existing theories (Friedrichs, 2002: 244; Geis, 1991: 11; Simpson, 2013: 313-315 & 2019: 190 & 201). For instance, attempts to explain white-collar crime with conventional theories inevitably result in the project straying from Sutherland's intention to study the crimes of the rich and powerful. There is less opportunity to explore fresh approaches to understanding and responding to white-collar offenders. Others argue that a vague definition allows criminologists more freedom to develop creative theories explaining white-collar crime. This debate may never be resolved. However, Friedrichs (2002: 244) and Simpson (2013: 313-315; 2019: 190 & 201) argue that precise definitions are essential. The definition influences how academics research and develop theories to explain the offence and how the state responds to the offence. A generally accepted definition encourages academic research. It becomes easier to collect and analyse data and confirm and compare results through additional studies (Geis, 1991: 8-9). The twists and turns of the definitional debates on white-collar crime, as described below, have shaped trends in theoretical explanations. It is important to understand how the definition of white-collar crime has developed over the years.

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<sup>30</sup> Ross's (1907: 45-46) description of prosecutorial impotence against the upper classes has critical criminology undertones as he implied that the wealthy leveraged their position within the social structure to accumulate more influence.

Sutherland's first definition is that white-collar crimes are offences committed by well-regarded, upper-class, professional men (Geis, 1991: 11-12). This definition focuses on the offender's characteristics and demographics. In other words, this definition includes any crime committed by wealthy professional men from theft to corruption. In '*White-collar criminal*,' Sutherland (1949) adds that such offence is committed in the course of the offender's occupation (Geis, 1991: 11-12). This definition introduces the upper-class man's occupation or occupational setting. For example, a world-famous wealthy doctor who uses the information he overhears on the golf course to earn illicit profits on the stock exchange does not commit white-collar crime because insider trading did not occur within his occupation. A criticism of this definition is that it creates confusion by adding an occupational setting to the original definition that focused on the nature of the offender (Friedrichs, 2002: 244; Simpson, 2019: 190).<sup>31</sup> In '*Crimes of corporations*,' Sutherland (1956) re-emphasises the offender's high status and adds that the conduct should violate the law (Geis, 1991: 11-12). Clinard and Yeager (1980: 16-19) explain the significance of this development. This definition adds regulatory response as an additional aspect of white-collar crime. Typically, the criminal justice system responds to street crimes, while administrators and regulators respond to white-collar offenders.<sup>32</sup> However, more confusion is created because Sutherland expands the definition of white-collar crime to include crimes committed by companies. Edelhertz (1970) explains white-collar crime as a deceptive, unlawful offence that benefits the offender or the organisation by earning extra profits or preventing losses. This definition expands the ambit of white-collar crime by dropping high status as a defining characteristic of the offender. Still, it does little to distinguish between those crimes committed by organisations and individuals. Confusion about the white-collar offenders as people or organisations continued until Clinard and Yeager (1980: 16-19) provided clarity. White-collar crime is a category of offences that aims to obtain financial benefits (or avoid losses) and typically attracts administrative or civil fines. Clinard and Yeager (1980: 16-19) create white-collar crime as an overarching typology that includes both occupational and corporate or organisational crime. Occupational crime includes offences committed by individual employees against their employers during their employment and to their personal enrichment (Braithwaite, 1985: 19; Friedrichs, 2002: 243). Corporate or organisational crime refers to companies and/or their employees committing offences on behalf

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<sup>31</sup> To make matters worse, the study investigated offences committed by almost 100 companies and/or their employees yet was inappropriately titled *White-collar crime* (1949) (Braithwaite, 1985: 2-3). Interestingly, the publication was so damning that the data was anonymised to avoid civil liability until decades later when the corporate culprits were named in a subsequent edition (Braithwaite, 1985: 2).

<sup>32</sup> Although, this is changing as more jurisdictions are criminalising corporate misconduct (Kelly, 2010: 324-325).

of companies and against external parties to improve the company's financial position (Braithwaite, 1985: 19; Simpson, 2003: 6-7).<sup>33</sup> There are key differences. Occupational crime includes a wider range of offences, including petty crimes like theft (Braithwaite, 1985: 19; Geis, 1991: 17). Corporate crime encompasses fewer offences (Braithwaite, 1985: 19; Geis, 1991: 17). Employees commit occupational crime against their employers for personal benefit (Simpson, 2003: 8). Employees and companies commit corporate crime against others to earn extra profits for the company (Simpson, 2003: 7). The company, acting through its employees, is liable for corporate crime (Clinard & Yeager, 1980: 18-19).<sup>34</sup> The employee is personally liable for occupational crime. White-collar crime, as an overall category that is divided into occupational and corporate crime, facilitates research and theory development and is generally accepted by academics (Braithwaite, 1985: 3, 18-19; Geis, 1991: 17). However, it must be remembered that typologies are never perfect or complete and a white-collar crime could benefit both the company and the employee (Levi & Lord, 2017: 4). As an example, a manager may be promoted for securing a tender received through corrupt bidding.

### **2.1.3 Understanding cartels**

A cartel occurs when representatives or employees from several companies enter an unlawful contract to reduce the risks and competition of commercial enterprise creating artificially favourable market conditions to increase the companies' bottom line. Companies earn extra profits for as long as the cartel operates undetected. Any personal benefit that a company representative receives from cartel collusion is incidental, as the primary objective of a cartel is for the companies involved to make extra money. According to the definitions above, cartels are a form of corporate crime. This dissertation uses the broader concept of white-collar crime because it is an exploratory study that aims to identify general relationships between variables and raise additional research questions for investigation, which may then use stricter definitions. Defining white-collar crime has been no easy task. Key definitional obscurities can be observed in the theories that developed to explain the phenomenon. Dominant trends vary between searching for the cause of white-collar crime in the individual or the organisation.

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<sup>33</sup> Such a definition can accommodate the flurry of new emerging terms such as environmental crime, state crime, economic crime, and organisational deviance (Levi & Lord, 2017: 4; Berghoff & Spiekermann, 2018: 291-292).

<sup>34</sup> However, the criminalisation amendment in section 73A of the Act is an example of a law that criminalises the conduct of managers and employees who commit offences on behalf of companies.

## 2.2 EXPLAINING WHITE-COLLAR CRIME

Since Sutherland's address, scholars have attempted to use conventional criminology theories to explain white-collar crime (Simpson, 2013: 313). Definitional challenges have inhibited the development of ideas, and, in general, theories have not fared well during empirical testing (Benson, 2015: 552; Simpson, 2013: 313). In this sub-section, Gottfredson and Hirschi's (1990) *theory of low self-control* and *trait theory* are outlined as models searching for the cause of white-collar crime in the individual. Sutherland's *differential association* and Cohen and Felson's (1979) *routine activities* model are theories that look to the broader organisational context for the cause of white-collar crime.

### 2.2.1 Sketching theoretical trends

*Differential association*, a learning perspective, suggests that companies and organisations cause white-collar crime (Hirschi & Gottfredson, 1987: 968; Simpson, 2019: 196-199). For example, companies inadvertently socialise employees to accept that white-collar offences are a normal and justifiable part of business and are necessary to maximise profits, which is the overarching objective of business. Sutherland (1949: 241) suggests that businesses may learn from other businesses to commit offences for extra profits. This implies that the cause of white-collar crime originates in the company, the business sector and the broader social system rather than the individual. Recall the cement cartel between Murray & Roberts and Aveng, as discussed in Chapter One. The cartel had been in operation for several decades and organisational culture had socialised employees into accepting cartel collusion as a standard business practice (Lewis, 2012: 202).

*Trait theory* suggests that certain people are likelier to commit white-collar offences due to their personality traits (Benson, 2015: 553). Trait theorists claim that white-collar offenders tend to be narcissistic and insecure and commit offences to mitigate the risk of losses or personal failures (Benson, 2015: 553; Geis, 1991: 14). Clinard (1952) identified elements of *differential association* and *trait* perspectives as explanations for white-collar crime in his study of wartime black markets (Geis, 1991: 14). This implies that the cause of white-collar crime may be compound. In other words, the cause of white-collar crime may stem from the individual, the organisation or both. Geis (1991: 20-21) and Levi and Lord (2017: 9-10) explain that the current trend is shifting towards organisational causes of white-collar crime because

company values tend to influence employee offences. *Rational choice theories* like *routine activities* include the organisation as a variable influencing corporate crimes. Company values, managerial attitudes, company cultures and sub-cultures, and more practical issues like accountability and compliance audits, contribute to creating opportunities for and costs of crime.

### 2.2.2 Low self-control

Hirschi and Gottfredson (1987: 958-959) and Simpson (2013: 315-316) discuss *low self-control* as a cause of white-collar crime. Gottfredson and Hirschi (1990) developed a general crime theory<sup>35</sup> and argued that the theory also explained white-collar crime. *Low self-control* is a general tendency to commit crime that develops because of inadequate socialisation by families and communities. People with *low self-control* are more likely to take risks to chase rewards that are easily attained. White-collar crime may fit this profile because such offences are likely to lead to more significant financial gains than sustained employment. Gottfredson and Hirschi (1990) claim that there is no material difference between the profile of a white-collar offender and the caricature of a young, impulsive street villain (Benson, 2015: 556). This has been refuted. White-collar offenders tend to be older, conservative, settled in established careers with the skills and fortitude to plan schemes and delay the gratification of profits until the schemes come to fruition (Simpson, 2013: 316). The theory has failed to withstand empirical scrutiny (Benson, 2015: 556).

### 2.2.3 Routine activities

*Routine activities* is a *rational choice theory* that predicts that crime occurs when potential offenders and victims converge at the same time and place without a capable guardian (Cohen & Felson, 1979: 589; Levi & Lord, 2017: 9). For white-collar crime, the concept '*lure*' is used to represent victims or targets which are expansively defined as any pecuniary temptation such as potentially fixing prices to increase profits (Benson, 2015: 553). Guardianship is broadly defined to include formal state laws, industry codes of conduct, company rules, external audits and consumer watch groups. The model explains that a potential criminal will consider the

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<sup>35</sup> A general theory of crime uses a single model to explain the full range of crime phenomena (Geis, 1991: 22). Such a theory is unlikely to provide an adequate explanation for crimes as diverse as murder, shoplifting and cartel collusion.

*lure*, all the regulations and the broader environment to rationally weigh the potential risks and profits in deciding whether to commit the offence. The wider environment refers to opportunity structures within organisations, industries and professions (Benson, Madensen & Eck, 2009: 179). The *lure* is available to all professionals in all sectors. Still, prospective offenders do not necessarily have equal access to the *lure*, as the larger environment shapes such access (Benson, 2015: 553). Levi and Lord (2017: 10-11) explain that organisational norms and management expectations contribute to shaping opportunity structures. For instance, company culture may dictate that breaking rules and regulations is acceptable if it results in higher earnings. The social, political, legal and economic environment too play a role. As discussed in Chapter One, the state historically protected industries before changing the laws in favour of free market enterprise. Mncube and Grimbeek (2016: 337) explained that rapid deregulation increased the *lure* as more profit became available through illicit price-fixing. Thus, the value of routine activities is that the model explains crime by considering the offender, the *lure* and the regulations within the broader industry, economy and the legal system (Benson, 2015: 553). It is a refreshing perspective as it shifts attention beyond the nature of the offence and offender to understanding white-collar crime as the convergence of the victim and offender in a specific environment. Braithwaite brings innovative ideas to theoretical explanations of white-collar crime.

### 2.3 INTRODUCING BRAITHWAITE

Braithwaite is bold in his assessment of conventional responses to crime in the West. First, the criminal justice system is deeply flawed (Braithwaite, 1996: 11-13). Second, criminology is guilty of professionalising crime regulation and sidelining communities from the process, which increases crime (Braithwaite, 1989: 1-2 & 6-8). Third, returning community to the heart of regulating crime will reduce crime because all offences attract community censure (Braithwaite, 1989: 1-2 & 6-8).<sup>36</sup> Braithwaite devoted his life's work to resolving issues within the criminal justice system and developing creative strategies for placing the community back at the heart of regulation. In '*Crime, shame and reintegration*' (1989), Braithwaite introduces *reintegrative shaming* and is instantly established as an eminent criminologist akin to

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<sup>36</sup> Christie (1977: 1-2) is similarly critical of criminology and agrees that community should be at the centre of regulation.

Durkheim (Walgrave, 2020: 3 & 5).<sup>37</sup> With this publication Braithwaite (1989) immediately flips theoretical debates on white-collar crime around by focusing on social and legal responses instead of merely attempting to isolate its cause. The invitation is clear. In South Africa, we should learn from the shortcomings of Western criminal justice systems and begin to re-imagine a justice system that places community at centre stage.

This section reviews current trends in criminal, civil and administrative responses to white-collar crime. The deterrence and rehabilitative models are discussed. The South African framework for cartels is situated within the broader trends. After that, Braithwaite's core concepts of *reintegrative shaming*, *responsive regulation* and the *regulatory pyramid* are introduced. Questions are raised about the possibilities for responsive regulatory approaches in developing states like South Africa. The section ends by reflecting on Braithwaite's study of the pharmaceutical industry and critiquing his models.

### **2.3.1 The regulatory spectrum: Setting the stage for Braithwaite**

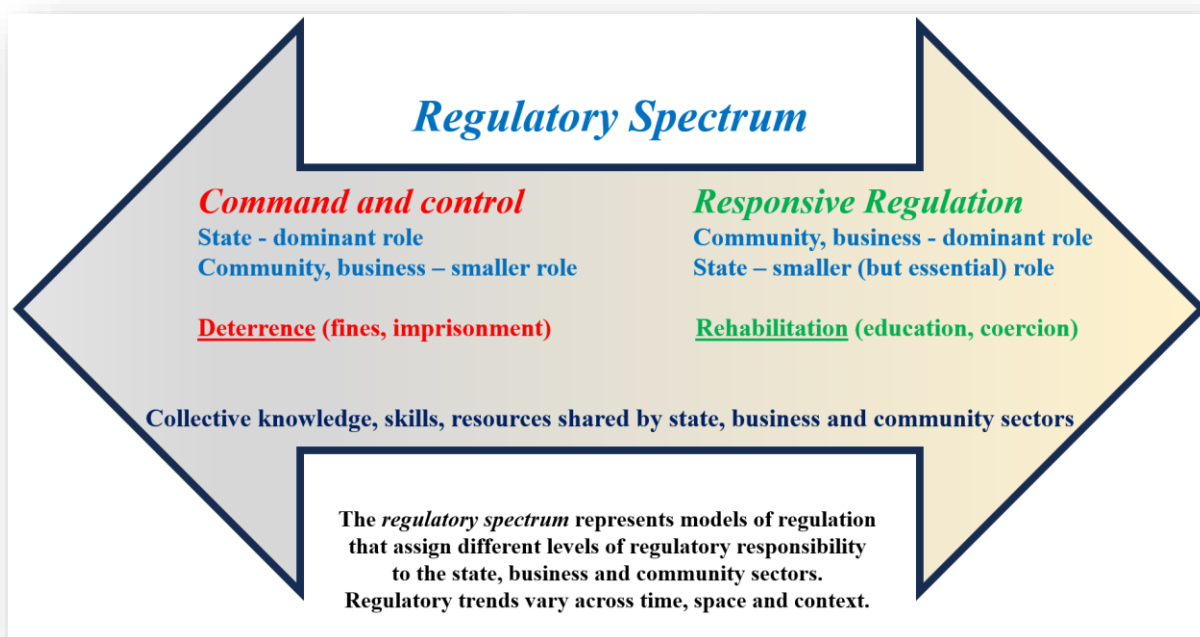
Braithwaite's study of the responses to white-collar crime is welcomed by the academic community, which agrees that regulatory responses to the offence are key to understanding the phenomenon (Clinard & Yeager, 1980: 16; Levi & Lord, 2017: 3; Simpson, 2013: 310).

Levi and Lord (2017: 11-13) outline regulatory trends. Generally, business regulation is conducted by administrative bodies rather than the police. The last 40 years have raised questions about the role of criminal prosecution in regulating white-collar crime. Some argue that white-collar offences should be prosecuted to deter such crimes. Others prefer to use the threat of criminal prosecution to encourage obedience through administrative warnings and penalties. Despite this debate, current trends suggest that the state, business and community sectors together police the business sector. Each jurisdiction chooses its approach based on historical, political and practical considerations. Two opposing schools of thought, *command and control* and *responsive regulation*, have emerged. Figure 2 below depicts a *regulatory spectrum*, which is a visual aid that I developed to capture the differences between *command and control* and *responsive regulation*, as well as contextualise Braithwaite's work within

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<sup>37</sup> *Reintegrative shaming*, *responsive regulation*, and *regulatory pyramids* incorporate restorative principles and add fervour to the global interest in *restorative justice* as an alternative approach to conventional legal systems (Walgrave, 2020: 3 & 5).

overall regulatory trends. It is helpful to refer to Figure 2 throughout this sub-section. The state leads the regulation of white-collar crime in a *command and control* model. In *responsive regulation*, the business and community sectors dominate the regulation of white-collar crime, and the state's role is relatively minor. Binary classifications between the two models are not helpful, as most regulatory systems involve a unique combination of elements from both models. The state, business and community sectors draw from a collective pool of knowledge, skills and resources to regulate crime (Parker & Braithwaite, 2005: 120-121). The *regulatory spectrum* shows *command and control* and *responsive regulation* as contrasting models poised on opposite sides of the spectrum that each emphasise different roles for the state, business and community sectors in regulating white-collar crime.



**Figure 2. Regulatory spectrum**

The *command and control* approach,<sup>38</sup> depicted on the left side of *the regulatory spectrum* in Figure 2, aims to curb white-collar crime by sending businesses a clear message that white-collar offences are unacceptable and will be punished with imprisonment and/or harsh fines. Benson (2015: 555) summarises the premise and long-term implications of the model. The *control model* assumes that the business sector has few constraining values and wants to profit as much as possible at the expense of the community sector and, therefore, requires punitive state control. This model may temporarily improve corporate compliance but, over the long term, harms the relationship between the state and business sectors, which inhibits innovation and the public good. Benson (2015: 555) describes *responsive regulation*, which falls on the right side of the regulatory spectrum in Figure 2, as more rehabilitative than punitive. *Responsive regulation* incorporates punitive sanctions, but harsh punishments are reserved for recidivists who repeatedly frustrate corrective attempts. Businesses have considerable flexibility and freedom in self-regulating with minimal state oversight, which, over the long term, may increase white-collar offences and harm communities.<sup>39</sup> The South African regulatory environment was outlined in Chapter One. The laws and policies have elements of both deterrence and rehabilitative models. In terms of the CLP, companies may voluntarily confess their misconduct to the Commission and attempt to reform by developing internal compliance capacity. For instance, a company may hire a legal practitioner certified in compliance management. The Commission and the Tribunal are administrative bodies empowered to order white-collar offenders to pay penalties or take corrective action. Victims of cartelists may also institute civil claims against companies in the hopes of being awarded damages. The criminalisation amendment allows the state to punish company representatives implicated in cartel collusion with imprisonment and/or significant penalties. Overall, the deterrence model seems more dominant than the rehabilitative model in South Africa. Braithwaite's responses to white-collar crime involve greater community involvement and fall on the right side of the *regulatory spectrum*. Braithwaite's primary responses to white-collar crime are set out below.

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<sup>38</sup> *Command and control* is based on the deterrence model in which punitive state sanction is central to crime control (Beccaria, 1764).

<sup>39</sup> Benson (2015: 552) suggests that the insufficient oversight of the business sector contributed to the 2008 financial crisis.

### 2.3.2 Reintegrative shaming

*Reintegrative shaming* is a general theory of crime that borrows strands of thought from *inter alia* control, reaction and learning theories (Uggen, 1993: 481). The model defines shame as all forms of social censure, from gossip to financial penalties (Braithwaite, 1989: 80-81). Murphy and Harris (2007: 901) distinguish between *reintegrative* or *stigmatic shame*. *Stigmatic shame* excludes wrongdoers from society and tends to promote recidivism. *Reintegrative shame* chastises the wrongdoer restoratively, intending to prevent recidivism and maintain social bonds.<sup>40</sup> *Reintegrative shaming* may effectively respond to white-collar offenders as they care deeply about their social positions and reputations (Braithwaite, 1989: 125). Strang (2020: 23-26) outlines a few of the model's predictions. *Reintegrative* and *stigmatic shame* were initially considered opposites on a spectrum. The model predicted that there would be more *reintegrative* and less *stigmatic shame* in *restorative justice* processes. Correspondingly, there would be more *stigmatic* and less *reintegrative shame* in conventional criminal courts. Empirical testing of *reintegrative shaming* revealed something interesting. An Australian study compared *restorative justice* and conventional justice responses to similar cases. The data showed that *restorative justice* created more of both *reintegrative* and *stigmatic shame* than conventional criminal courts. The reason was that *restorative justice* created more opportunities for both the victim and offender to talk and share freely. In other words, offenders and victims often shared mixed feelings about their situation. For example, a victim of burglary may express compassion, empathy and anger towards the thief. The thief, in turn, may apologise to the victim for the crime and resent the victim for reporting the crime. These findings led Braithwaite to amend his model. *Reintegrative* and *stigmatic shame* were reconstructed as independent forms of shame that may or may not occur simultaneously instead of falling on opposite sides of a spectrum (Strang, 2020: 26-28). Murphy and Harris (2007: 900, 910 & 912-913) tested the model by studying tax offenders in Australia. The study confirmed that *reintegrative shame* lowered recidivism, *stigmatic shaming* increased recidivism and that adopting *reintegrative shaming* practices would promote regulatory compliance.<sup>41</sup> The model shows that the community can wield great power in regulating white-collar crime. Although Braithwaite's 1989 model of *reintegrative shaming* is somewhat dated, the model forms the bedrock of Braithwaite's work and shapes the concepts of *responsive regulation* and *restorative justice*.

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<sup>40</sup> *Stigmatic* and *reintegrative shame* would fall on the left and right sides of the *regulatory spectrum* respectively.

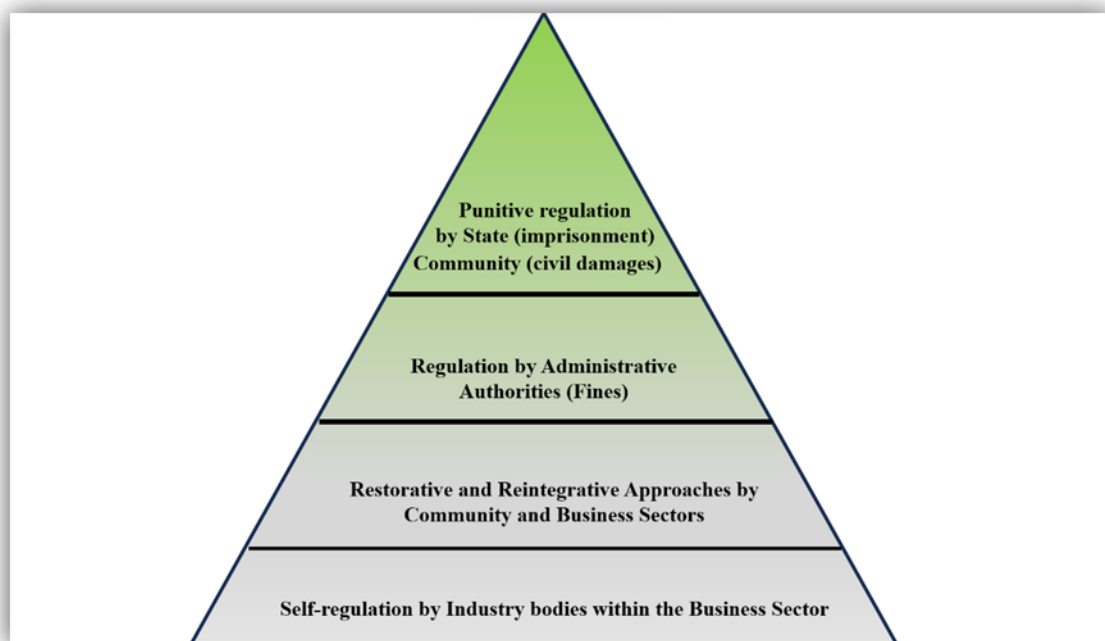
<sup>41</sup> *Reintegrative shaming* includes sending educational letters to recipients informing them of their rights (Murphy & Harris, 2007: 913).

### 2.3.3 Responsive regulation

*Responsive regulation* falls on the right side of the *regulatory spectrum* in Figure 2 above. The model builds on *reintegrative shaming*. Benson (2015: 555) describes the approach. The model assumes that the business sector will voluntarily comply with rules unless they do not understand the regulations or cannot afford the compliance costs. Regulatory authorities entice compliance through education, gentle coercion and *reintegrative shaming*. An example of *responsive regulation* is an industry association that creates a code of conduct and value system that is binding on all the companies within the industry and is published on their website and publicised to their suppliers, customers as well as the regulatory authorities (Maphwanya, 2017: 655-66; Levi & Lord, 2017: 5 & 12). In this way, a network of people from the state, business and community sectors can play a role in regulating the industry's behaviour (Levi & Lord, 2017: 12). Another example is that the competition authorities may organise free or subsidised seminars educating business managers about the new competition laws to increase compliance and begin building a new culture of ethical business practices. *Responsive regulation* involves building open, transparent and cooperative relationships between the state, business and community sectors. However, people are at the heart of *responsive regulation*, and this creates opportunities for collusion (Levi & Lord, 2017: 5 & 12). Representatives from regulators and businesses may cross paths at industry body meetings, product launches and/or social events like fundraisers. Such encounters inevitably create social connections. Das Nair and Mncube (2012: 2 & 14) explain that competitors meet regularly through professional association meetings and share industry-related information, which creates the ideal circumstances to enter a cartel arrangement. Regulatory capture is a real risk (Braithwaite, 2006: 888). Recall how the *Chamber of Baking* facilitated the bread cartel as set out in Chapter One. Braithwaite (2006: 888) emphasises proactive community monitoring of the business sector for this reason. NGOs, community groups, journalists and activists should adopt innovative business regulation strategies. For instance, community groups should publicise white-collar offenders, organise consumer boycotts, call for state action in pursuing criminal charges against the offenders and/or institute civil litigation on behalf of the victims of such offences (Braithwaite, 2006: 888). Community organisations should run workshops training community leaders to monitor businesses and organise mobilisation campaigns. In this way, a network of state, business and community organisations regulates white-collar crime.

### 2.3.4 The regulatory pyramid

Braithwaite (2006: 886-889) describes the *regulatory pyramid (pyramid)*. This approach combines conventional justice, *responsive regulation* and *restorative justice*. Consider the *pyramid* depicted in Figure 3, which is based on Braithwaite's (2006: 887) diagram and has been adapted by me.



**Figure 3. Regulatory pyramid (Braithwaite, 2006: 887)**

The *pyramid* is a tiered approach that involves the community, business and state sectors responding to white-collar offences on a case-by-case basis. The first reactions are *restorative* and *responsive* and involve education and coercion. Should this fail, additional *responsive* and *restorative* attempts may be made. Education and coercion are present with each additional attempt to elicit corrective behaviour from the white-collar offender as the matter progresses up through the tiers of the *pyramid*. For instance, the first response to an infraction may come from an industry association that gives the white-collar offender a notice explaining the nature

of the infraction and providing guidance for corrective action. If the white-collar offender fails to comply, the professional association may expose the misconduct to all its members, customers and suppliers via their website or journal. With each continued infraction, the educational aspect of the response decreases while the coercive aspect increases. Social mobilisation adds another layer to the *pyramid*. Consumers may blow the whistle on the company or organise a protest outside the white-collar offender's head office. If the offender takes corrective action at any tier of the *pyramid*, the matter deescalates down the *pyramid*, and more *restorative* and *responsive* remedies become available again. If the white-collar offender repeatedly resists coercive and educational attempts at rehabilitation, the subsequent responses will be more severe. For instance, regulatory authorities may investigate the company and levy significant fines. Finally, the company may face civil claims from the community or business sectors and/or criminal prosecution by the state (Braithwaite, 2006: 886-889). The state plays a supportive role by accessing regulatory capacity within the community and business sectors. It may seem that because the *pyramid* accommodates both rehabilitative and deterrence responses, it can fall on either side of the *regulatory spectrum*. However, the *pyramid* is an educational, coercive tool that aims to encourage corrective behaviours from businesses, which implies that it is more rehabilitative and belongs on the right side of the *regulatory spectrum*.

### 2.3.5 'Speak softly but carry a big stick'

The expression 'speak softly but carry a big stick' captures the essence of Braithwaite's regulatory approach, as this subsection will demonstrate (Shearing, 2020: 60).<sup>42</sup> Braithwaite (2006: 884-885 & 891) acknowledges the limitation of his responses to white-collar offences. *Responsive regulation* will only elicit corrective behaviour from companies if continued non-compliance carries a credible threat of state prosecution that will result in imprisonment and/or fines. Typically, developing states struggle to prosecute white-collar crimes because detecting, proving and punishing white-collar offenders requires resources and skills that are in short supply. Braithwaite suggests two possible solutions for developing countries. First, if the state does not have sufficient resources and capacity to respond to white-collar crime, then the community sector must mobilise its capacity and resources to supplement the state's

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<sup>42</sup> Shearing (2020: 60) attributes the expression to Braithwaite's 1997 article '*On speaking softly and carrying big sticks: Neglected dimensions of a republication of separation of powers*'. The expression's origins are contested (BookBrowse, n.d.; Calgary Herald, 2022). It may derive from an African proverb or a Latin phrase (BookBrowse, n.d.; Calgary Herald, 2022). Another version of the sentiment associated with Napoleon is 'an iron fist in a velvet glove' (BookBrowse, n.d.). American president Theodore Roosevelt is often credited with the phrase as he spoke the words in a speech more than 100 years ago (Calgary Herald, 2022).

deficiencies. This is fiscally prudent as the community sector requires fewer public resources than the state. Second, if the community sector does not have the capacity to support the state in controlling white-collar crime, as is particularly common in developing countries, the industry should reach out to the international community for assistance. Gerber and Jensen's (2000: 700, 705 & 707) description of the Nestlé scandal demonstrates these principles. Nestlé sold infant formula in developing countries knowing that the milk was harmful to babies if mixed with unclean water or if leftover milk was unrefrigerated, (conditions that are likely to be common in such countries). Community organisations in the developed nations put their skills and resources at the disposal of activists in the developing nations, and together, they forced Nestlé to reform. According to Braithwaite (2000: 232-234), developed countries are ideal for *responsive regulation* because established states are a vital part of their strategy for regulating white-collar offences. Developed nations are likely to have well-resourced justice systems and have the necessary skills to create a layered network of regulators. Furthermore, state prosecutors in developed countries are likely to be skilled in bringing successful criminal cases against white-collar offenders (Braithwaite, 2006: 884-885 & 891). In short, the state 'speaks softly' by intervening minimally and trusting the community and business sectors to regulate most white-collar crimes. Should the state decide to intervene, white-collar offenders will likely face a 'big stick' in the form of a lengthy, expensive criminal trial followed by a guilty verdict, punitive sanctions and reputational damages. This dissertation takes up Braithwaite's (2006: 889-894) challenge to explore the solutions suggested to adapt *responsive regulation* to developing spaces like South Africa. Such plural regulation has impacted crime in the pharmaceutical industry (Braithwaite, 1993: 16-17 & 20-22).

### **2.3.6 Reflections on the international pharmaceutical industry**

Braithwaite has conducted extensive research and written several books and journal articles about the international pharmaceutical industry.<sup>43</sup> Corrupt practices like paying off officials, selling unsafe medications and taking advantage of legal loopholes plague the industry (Braithwaite, 1993: 13-15; Gerber & Jensen, 2000: 699). Braithwaite (1993: 16-17 & 20-22) shows that business and community sector initiatives supported by legal reform<sup>44</sup> have had a

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<sup>43</sup> Braithwaite published '*Corporate crime in the pharmaceutical industry*' in 1984 (London: Routledge & Kegan Paul). Braithwaite, along with G. Duke and J.P. Moloney, published '*Pharmaceuticals, corporate crime and public health*' in 2014 (Cheltenham: Edward Elgar).

<sup>44</sup> Private law remedies should be used to ensure that corrupt executives lose benefits like annual bonuses (Braithwaite, 1993:18).

marginal impact on lowering white-collar crime and suggests a few approaches. Employees may act as informal regulatory agents against white-collar crime. Employees may be committed to their companies, but they are driven by their personal beliefs and professional codes of conduct. It is possible that employees can use company hotlines to report misdeeds.<sup>45</sup> Industry codes of conduct add an additional layer to the *regulatory pyramid*. Companies may follow these codes to avoid being reported to industry watchdogs by their competitors, suppliers, or customers. Companies may also monitor each other to ensure that all members of the industry are adhering to regulations and no member gains an advantage by saving the costs of compliance. As discussed above, a potential shortcoming is that working in proximity creates opportunities for collusion (Das Nair & Mncube, 2012: 14). Braithwaite (1993: 13) attributes the marginal reduction in white-collar offences in the pharmaceutical industry to such strategies as opposed to conventional legal penalties.

### 2.3.7 Critiquing Braithwaite

Shearing (2020: 58) and Walgrave (2020: 7) suggest that Braithwaite's theories involve the community in creating plural governance networks that act as a countervailing force against the government and business sectors to maximise personal freedoms and rights. This observation points to problematic assumptions at the core of Braithwaite's models. The emphasis on personal freedoms, rights and duties implies an assumption of normative consensus in society (Shearing, 2020: 58; Uggen 1993: 497). However, South African governance is plural which involves a contestation of values among different regulatory bodies (Baker, 2012: 276-279; Beall et al, 2005: 685; McLeod, 2015, Omale, 2006: 43-44; Skelton, 2015: 122). The community sector resisting the pressures of business and the state implies conflicting value systems among South Africans. This push-and-pull between the sectors suggests power differentials between the sectors and opposing values among South Africans. Local diversity and social problems suggest that power differentials may be more pronounced than relative. Beall et al (2005: 682-684) provide an example of competing values and relative power differentials among South Africans. Most communities hope for sustained economic growth to benefit everyone. Some communities participate fully in the democratic economy. Others remain on the outside, unable to access government services and employment

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<sup>45</sup> Weiner (2020: 435) comments that companies may use hotlines recordings to identify and victimise whistle-blowers and may not provide employees with a safe mechanism to report misdeeds. Accordingly, whistle-blowers and employees tend not to trust hotlines in South Africa.

opportunities, with little power to change their circumstances. Some believe the business and state sectors collude to accumulate power and wealth for the upper classes. Others argue that the state's increasingly prohibitive laws and regulations discourage local and foreign entrepreneurs, ultimately damaging the prospect of jobs and economic growth (Christensen, Hegazy & van Zyl, 2016: 7). *Responsive regulation* is based on a culture of sharing and cooperation. Assumptions and promises at the core of Braithwaite's model, as well as the accidental success of the bread cartel, imply questions about the conditions that shape the potential for *responsive regulation* of white-collar crime in South Africa. The dissertation aims to fill this gap.

## 2.4 MINDING THE GAP

Since Sutherland's landmark address, numerous scholars have researched white-collar crime, creating a body of work on the subject. Nonetheless, there is much work to be done to develop nuanced understandings and explanations for such a diverse subject. Sutherland (1949: 234) wrote that there was insufficient data for him to adequately test the *differential association* model. This remains a challenge as authors call for additional data (Simpson, 2013: 325). Thus, it is no surprise that the literature calls for more in-depth case studies on individual instances of white-collar crime that investigate the social and legal responses to the offence (Berghoff & Spiekermann, 2018: 300). Simpson (2019: 195) is frustrated by the paucity of data that prevents the development of better theories and interventions. Braithwaite's international pharmaceutical industry case study helped address the need for data in the field. The case study supported Braithwaite's call for a more significant role for the community in crime regulation as *responsive* and *restorative* approaches helped to reduce white-collar crime in the industry (Braithwaite, 1989: 6 & 8; 1993: 13). However, the international pharmaceutical industry is a far cry from the South African Bread Cartel. The pharmaceutical industry is a massive international economy compared to a much smaller bread cartel. Corruption in the pharmaceutical industry played out across an international first-world stage while the bread cartel took place in a young developing democracy like South Africa. The developed world has considerable resources and skills to regulate the pharmaceutical industry. South Africa has limited resources and skills for regulating white-collar crime. Such sharp contrasts raise questions about conditions that enhance the scope for *responsive regulation* of white-collar crime in developing countries like South Africa. This single case study on the South African Bread Cartel fills these gaps. The next chapter sets out the methodology for this project.

## CHAPTER THREE: METHODOLOGY

Researchers make decisions throughout the research process that influence the direction and scope of the project. This dissertation is no different. In this project, the research question, ethical research principles and practical constraints have shaped decisions about methodology and data analysis. In this chapter, I describe and justify such choices and reflect on various ethical considerations. I also discuss factors that limit the value of the findings and/or the scope of this project.

### 3.1 A SINGLE CASE STUDY

This dissertation comprises a single case study of the South African Bread Cartel that sets out to determine the conditions that enhance the scope for *responsive regulation* of white-collar crime in South Africa. Stake (2000: 119 & 127-128) and Flyvbjerg (2006: 224) outline the advantages of case studies. A single case study allows researchers to narrow their focus and thoroughly investigate a specific case. The sharp distillation of a case means that it can be differentiated from others and studied within its historical, economic, and legal context. I conducted a case study to explore the cartel phenomenon within unique South African conditions. The study was limited to one case to deepen my investigation into a classic example of a common white-collar crime phenomenon (OECD, 2015: 5; Word Bank, 2016: 34-35; Yin, 2009: 48 & 53). The bread cartel was selected as the subject of the case study because it is a seminal example of the cartel phenomenon that exposed how historical patterns continue to shape society. The case drew attention to the concentrated market structure of the economy, cultures within the business sector that continue to allow collusion and profits with impunity, as vast inequalities continue to divide our society. Furthermore, *bread* has such profound symbolic importance. Consider the following idioms. *Breaking bread* is sharing a meal. *Bread-and-butter* means to earn a living. Providers are called *breadwinners*. A more practical reason for choosing the bread cartel is that there is significant secondary data about the case because it sparked substantial academic and media attention. Yin (2009: 25) claims a case study is a research methodology. Stake (2000: 119) argues that a case study is a decision to investigate a particular case and not a research methodology. Stake's (2000: 119) interpretation is preferred because researchers can use different methods to obtain textured data about the case to address

the research question (Babbie, 2010: 309; Flyvbjerg, 2006: 224; Stake, 2000: 119; Yin, 2009: 35). Such flexibility is another reason I conducted a single case study of the bread cartel.

## **3.2 DATA COLLECTION METHODS**

Case studies are flexible enough to incorporate qualitative and quantitative data sources (Putney, 2012: 119; Stake, 2000: 119). Babbie (2010: 23-25 & 309) explains the advantages and disadvantages of using qualitative data in case studies. Qualitative data capture greater description and colour for a deeper understanding of an issue. However, the subjective differences in interpreting qualitative data may introduce uncertainties in the dataset. I collected qualitative data because its richness created flexibility to build a rounded understanding of the issues for this study and generate ideas for future projects. I collected both primary and secondary qualitative data.

### **3.2.1 Secondary data sources**

I used various secondary data sources, including academic journal articles and books, print media publications and the documentary *Crumbs: Toppling the Bread Cartel* (the documentary). Secondary data helped me to understand *inter alia* the bread industry, competition laws and business practices before and after democracy. The documentary was invaluable as it reflected the impact of the bread cartel on the lives of the whistle-blower and other activists. Reading widely and watching the documentary guided the interview process and informed several methodological decisions.

### **3.2.2 Primary data collection**

I conducted semi-structured, in-depth interviews. The interviews were semi-structured to ensure relative comparability of the data from different respondents (Patton, 2002: 343-347). Semi-structured interviews helped me to address key themes with all respondents within 60 to 90 minutes (Patton, 2002: 343-347). I struck a balance between talking about the main themes and free-flowing conversation so that the data was both relatively comparable and reflected each respondent's lived experience of the cartel (Patton, 2002: 343-344 & 347-348; Morris, 2018: 3 & 5). The flexible semi-structured interview allowed the respondents and I to discuss auxiliary topics that arose spontaneously during the interview (Patton, 2002: 343-347). The in-

depth aspect of the interview helped me to collect comprehensive data that provided more value and insight than secondary data sources and/or standardised interviews. As a result, I gained a deeper understanding of each respondent's insights and experiences of the cartel (Patton, 2002: 343-347). Such depth was an advantage as the respondents were a diverse group of people. In sum, the in-depth semi-structured interviews created a rich, textured dataset with themes that were sufficiently comparable across different interviews for the purpose of data analysis.

The first step in the interview process was to design interview guides. Two interview schedules were designed to address the key themes. The first guide focused more on the legalities of regulating white-collar crime.<sup>46</sup> I intended to use this guide when interviewing legal practitioners and judicial officers. The second interview schedule emphasised community sector responses to cartels.<sup>47</sup> I used this guide to interview the whistleblower, other activists and journalists. The first section of the schedules listed questions to guide respondents to choose whether they identified primarily with the legal or social sphere. The respondents' answers to this section then determined whether the first or second schedule was used for the interview. In other words, the first guide was used to interview people who identified with the legal aspects of regulation. Similarly, the second schedule guided interviews with respondents who felt more strongly connected to the social sphere. The main section of each schedule contained a short list of open-ended questions about key themes with a few differences to emphasise either the legal or community aspects of regulation. The final section asked an overarching open-ended question so that respondents could share their thoughts freely. In theory, my decision to use two interview schedules was sound. It was important to me to respect the ethical principle of autonomy, which includes the right to self-determination, by allowing respondents to choose whether they felt more strongly associated with the legal or community aspects of regulation (Draucker, Martsolf & Poole, 2009: 345).<sup>48</sup> I expected similar interview schedules to yield comparable data that also captured unique sentiments from respondents on opposite sides of the *regulatory spectrum*. In retrospect, this proved an unnecessary complication that resulted in too much interview data about too many themes that could have been analysed to address several different research topics as part of a larger research project

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<sup>46</sup> Appendix A – Basic interview guide 1 for respondents from the legal arena.

<sup>47</sup> Appendix B – Basic interview guide 2 for respondents from the social sphere.

<sup>48</sup> One respondent felt he was at the intersection of the social and legal responses to regulation. I respected this sentiment in adherence to the principle of autonomy. I asked questions about each theme in the interview schedules without adhering too firmly to either schedule.

with extensive funding.<sup>49</sup> One interview guide that touched on key legal issues and focused on the *responsive regulation* of cartels would have been more straightforward, more effective and may have generated data that was more comparable and relevant to the research question. However, I could not have known this when I developed the interview schedules because of my inexperience as a researcher. The insight came slowly as I refined my research question and engaged with the data. Nonetheless, the interview data was sufficiently nuanced and comparable to complete the dissertation.

I conducted 16 interviews. The sample size was limited for methodological and practical reasons. The project was exploratory, and case studies typically use smaller samples (Daniel, 2012: 237 & 242). Practically, arranging, conducting, and transcribing interviews required a considerable amount of time, money, and perseverance (Morris, 2015: 7). I was working independently (under supervision), and I had to complete the dissertation within both my financial budget and university time constraints (Daniel, 2012: 240). Respondents with first-hand experience and/or expert knowledge of the bread industry, the bread cartel, the legal proceedings, and community activism around the issue were recruited with nonprobability sampling (Babbie, 2010: 192-194). Specifically, I used purposive and snowball sampling (Babbie, 2010: 193-194; Etikan, Musa & Alkassim, 2015: 1-2). The initial respondents were selected using purposive sampling based on the documentary, print media articles and other secondary sources. Snowball sampling from the initial group of respondents led to the recruitment of additional respondents (Babbie, 2010: 194-195).<sup>50</sup> Accordingly, the sample was biased and unrepresentative of the population (Babbie, 2010: 192-194). Such bias is not only justified but also appropriate as it led to the careful selection of respondents with the requisite knowledge and/or experience to contribute meaningfully to the project (Babbie, 2010: 192-194). This sampling strategy was successful as I was able to interview Imraahn, other activists, legal practitioners, judicial officers and journalists who were involved with the bread cartel case.

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<sup>49</sup> This obstacle created a learning opportunity. On the one hand, a large volume of data was difficult to analyse. On the other hand, the data is available should I obtain the funding to conduct future research. The lesson was understanding that research is a journey from too much data and complex research questions to a more precise research question that can be answered by analysing a few key themes in the data.

<sup>50</sup> I watched the documentary and made a list of people who made comments relevant to my research. Similarly, I listed people who wrote and/or were mentioned in books, print media and academic journal articles about the bread cartel. At the end of each interview, I asked respondents if they could think of anyone I should talk with for my project. I would then approach the person and ask for an interview. I followed this process to recruit 14 respondents. My supervisor helped me to organise an interview with a judicial officer. I also interviewed an acquaintance who is a legal practitioner with expertise in competition law.

I ensured that the respondents interviewed gained the most value and sustained the least harm from the experience (Draucker et al, 2009: 343). In the documentary, Imraahn described how blowing the whistle on the bread cartel led to a prolonged legal battle that caused him emotional and financial distress (Greeff, 2016). Similarly, Marcus Solomon, Director of the Children's Resources Centre, expressed anger at the *Big Three's* crimes (Greeff, 2016). Thus, I designed a distress protocol to help protect respondents from any adverse emotional reactions that arose from participating as respondents in the project (Draucker et al, 2009: 343).<sup>51</sup> The distress protocol provided for three scenarios. If a respondent showed mild symptoms of emotional distress, a short break would be suggested before resuming the interview. Respondents would be referred to pro bono counselling services, and/or the interview would be rescheduled if the respondent became more overwrought.<sup>52</sup> Should respondents have expressed frustration with or powerlessness over white-collar crime, I intended to suggest they become involved with community-based organisations. Accordingly, I prepared a simple leaflet with contact information for such local organisations.<sup>53</sup> In this way, my research adhered to the principles of beneficence and nonmaleficence (Draucker et al, 2009: 345; Wassenaar, 2006: 67). I always had soft and hard copies of the distress protocol and the contact information sheets during the interviews. The distress protocol proved to be an unnecessary precaution as none of my respondents appeared to experience emotional discomfort. Preparing a distress protocol was valuable as I became more attuned to the intense emotions of the respondents and conducted the interviews with this awareness.

I conducted the interviews during the COVID-19 pandemic. Accordingly, I offered respondents the choice of an online or face-to-face interview. Most respondents were working professionals and expected the interview to proceed online via *Zoom* or *Microsoft Teams (Teams)*. I obtained a paid *Zoom* account to conduct the interviews online. I already had access to *Teams* as a registered student. Before the interviews, I sent respondents a *Microsoft Outlook* calendar invitation with a *Zoom* or *Teams* link. The interviews proceeded smoothly and without issue. Six out of 16 interviews were conducted face-to-face. I assumed responsibility for ensuring compliance with standard COVID-19 protocols.<sup>54</sup> The respondents chose the venue subject to

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<sup>51</sup> Appendix C – Distress protocol.

<sup>52</sup> Appendix D - Contact information for respondents: Counselling services.

<sup>53</sup> Appendix E – Contact information for respondents: Community organisations.

<sup>54</sup> I took reasonable precautions to conduct interviews in safe conditions. I wore a face mask and brought additional face masks in case the respondent had not brought one. I always had sufficient alcohol-based sanitiser. Where possible, I placed a transparent plastic shield between the respondent and me to optimise safety. I politely reminded respondents to wear their face masks.

two limitations. First, the venue had to be reasonably quiet and private to conduct a quality interview. Second, the venue, as well as travelling to and from the venue, had to be safe for the respondent and me.<sup>55</sup>

I asked each respondent for permission to record the interview for data analysis purposes (and assured respondents that I would respect their choices about anonymity). All respondents agreed to the interview being recorded. The recording feature on *Zoom* or *Teams* was used to capture online interviews. For face-to-face interviews, the recording function on my iPhone was used. I tried to balance maintaining eye contact and rapport with respondents and taking copious notes by hand during the interviews. Immediately after each interview, I jotted down my initial thoughts and impressions. A paid *Otter Voice Meetings Note* account was obtained for transcription (Otter Voice Meeting Notes, 2023). Using software to generate basic interview transcripts saved time. The transcripts contained errors, spelling mistakes, and incorrect punctuation marks and provided little context. So, I read through the notes I made during and after the interview, listened to each interview and edited the transcript. The editing process involved adding context by *inter alia* identifying the speakers, correcting the spelling mistakes, and adding punctuation marks and paragraph breaks. This time-consuming process was a crucial first step in data analysis (Bird, 2005: 234-237).

### 3.3 THEMATIC ANALYSIS

Data analysis started during the data collection phase of the project (Bird, 2005: 227-229; Braun & Clarke, 2006: 81-2). I became more familiar with the data and started to get an overall sense of key themes in the data while listening to each interview recording. Some academics argue that thematic analysis forms a part of other qualitative data analysis approaches, such as narrative analysis (Braun & Clarke, 2006: 78; Nowell, Norris, White & Moules, 2017: 2). Babbie (2010), the author of the postgraduate student bible entitled *The Practice of Social Research* does not mention thematic analysis as an analytical technique. However, according to Braun and Clarke (2006: 78) and Nowell et al (2017: 2), thematic analysis is an independent data analysis method. I agree. Thematic analysis allows researchers to study the dataset and find and report on significant traits within the data in service of the research question (Braun

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<sup>55</sup> I conducted face-to-face interviews in respondents' offices, my supervisor's office, or a quiet corner at a respondent's club (Kelvin Grove). I met respondents in coffee shops twice and scheduled the interviews at quiet times of the day to minimise noisy disruptions. All interviews proceeded smoothly. All recordings captured clear audio.

& Clarke, 2006: 79; Crosley, 2021; Nowell et al, 2017: 2). Thematic analysis was adopted for several reasons. Thematic analysis is a relatively simple, adaptable qualitative data analysis method that has the potential to yield a multidimensional understanding of data (Braun & Clarke, 2006: 81 & 83; Crossley, 2021; Novell et al, 2017: 2). Thus, I was able to use thematic analysis despite my inexperience as a researcher. The flexibility of thematic analysis created the freedom to use a combination of inductive (bottom-up) and deductive (top-down) approaches to find meaning in the transcribed interviews (dataset). My strategy was to plunge myself into the data. I listened to each interview twice and identified themes and sub-themes related and unrelated to the research question and the literature. Simultaneously, I downloaded, installed, and started learning to navigate *NVivo*.<sup>56</sup> Initially, data was analysed inductively. I put aside my knowledge of Braithwaite's theories, studied the data, and created an extensive coding frame.<sup>57</sup> After that, I took a more deductive approach, re-read the literature review in my research proposal, and augmented my coding frame with themes from the literature. At this stage, I had over 100 codes and sub-codes. In this way, I was able to enjoy the flexibility of inductive and deductive thematic analysis without sacrificing the structure and rationality necessary for a scientific study (Novell et al, 2017: 2). The process of data analysis was repeated several times. Each time the codes were refined and simplified until I found coherence between the research question, central themes and data. Ultimately, my coding frame was narrowed to three main themes<sup>58</sup> that derived deductively from the literature and one central theme<sup>59</sup> that I derived inductively from the data. Each theme had several sub-themes. The hard work of coding the dataset according to the coding frame began. After that, I performed second-tier data coding, which involved using *NVivo* to collate all the data about each theme. For instance, I navigated *NVivo* to read all the data about mobilisation. Copious notes were taken throughout this process. I summarised points that came up repeatedly in the data. These notes became the foundation of the findings chapter.

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<sup>56</sup> *NVivo* is software for qualitative data analysis (Dhakal, 2022: 270).

<sup>57</sup> Dhakal (2022: 270-272) explains a few technical aspects of *NVivo*. Codes and sub-codes are technical synonyms for themes and sub-themes identified in the dataset. First-tier coding is the process of categorising bits of data (words/phrases) according to the different codes/sub-codes. Second-tier coding, which includes various tools, is concerned with mining the data for meaning. A coding frame is a technical term for an organised framework of codes and sub-codes.

<sup>58</sup> The business sector (industry bodies), the community sector (activism) and legal responses to cartels (the state criminal justice system and community-oriented *restorative justice*).

<sup>59</sup> Economy and market structure.

### 3.4 LIMITATIONS

Using a single case study introduced limitations likely to doubt the project's findings (Yin, 2009: 61-62). The case study cannot be readily replicated by studying additional cases within similar contexts because South Africa, as a newly democratic, developing country, is unique (Yin, 2009: 61). The results are not generalisable and cannot be used to explain similar phenomena (Flyvbjerg, 2006: 224-225). A further limitation is that my singular theoretical focus on Braithwaite excluded other theoretical explanations for cartels (Yin, 2009: 35-36). The above factors limit the value of my study and its findings. However, such limitations are justified by the following factors. The project was exploratory. The knowledge that became available by conducting a single case study was so in-depth and specialised that it more than compensated for the limitations, particularly because of the unique context of the case study. (Flyvbjerg, 2006: 223 & 226). A single case study is well-suited to testing theory (Flyvbjerg, 2006: 227). The research design was the most practical choice for this project because I am the only researcher working on this project (under supervision) and did not have access to the extensive resources necessary to conduct a multiple-case study. Lastly, running a small, relatively inexpensive project was prudent as I can take the findings and feedback from my supervisor and external examiners to consider the potential for and the value of an extensive multiple case study in the future.

Interview data was the only primary data collected for this project, which introduced several limitations. First, the integrity of the data could not be verified by triangulation. Second, the sample was biased. Activists and other respondents from the social spheres of regulation were generally easier to contact and more willing to participate in the project than representatives from the state and business sectors. Nick Dennis, the former CEO of Tiger Brands who had resigned after the bread cartel saga, would only speak to me if I travelled from Cape Town to Gauteng to meet with him face-to-face. Jannie De Villiers, the Executive Director of the *Chamber of Baking*, and Avish Kalicharan, the Compliance and Ethics Director of Tiger Brands, were unwilling to participate in the project. Third, I could only obtain an interview with two people who had direct experience in the bread industry – Imraahn and another independent bread distributor. The other 14 respondents were legal practitioners, economists, activists, and journalists directly or indirectly involved in the bread cartel matter. The unbalanced and biased nature of my sample likely shaped the narrative created by the data. Such limitations were not insurmountable. Respondents from the social side of the *regulatory*

*spectrum* provided ample data that spoke to the research question. I was able to interview competition law experts. Where necessary, I asked respondents to share their thoughts and opinions on the bread industry. Thus, meaningful data was generated. Furthermore, the inner workings of the bread industry became less important as my focus became the *responsive regulation* of white-collar crime. Lastly, 16 interviews is an acceptable sample size for a minor dissertation.

In the civil proceedings, the *Big Three* entered settlement agreements with the consumers and distributors. The terms of the settlement agreements were confidential, and this was a drawback from a research perspective. This limitation was mitigated as I could ask respondents to share their opinions on such agreements. This aspect became less important as I clarified and refined my research question to focus on *responsive regulation*.

Research is not an objective process. My personal experiences, perceptions, beliefs and my personal story, as shared in Chapter One, influenced the research process. For instance, I identified strongly with Imraahn as I am also the daughter of a shopkeeper, and I worked in my parents' shop for the first ten years of my adult life. Consciously, I strove to remain as objective as possible. Subconsciously, my values and passions seeped into the data collection and analysis stages of the project.

Financial resources, research skills and university time frames limited this dissertation. I incurred costs during primary data collection. The costs included a paid *Zoom* account for online interviews, travel expenses, chocolate slabs and/or non-alcoholic beverages for face-to-face interviews. I also purchased an *Otter Voice Meetings Note* account to transcribe interviews. I limited my sample to 16 respondents due to these prohibitive costs. I was not able to complete the project within the required time due to my mother's prolonged illness and death, followed shortly by my father's death. The Faculty of Law gave me an extension to complete this study. This dissertation has been my first independent research project. At the onset, I did not have the skills and knowledge to complete it, but I developed the necessary know-how through experiential learning and supervision (Flyvbjerg, 2006: 223).

### 3.5 ETHICS

Ethical clearance was obtained from the Faculty of Law Research Ethics Committee at the University of Cape Town on application (Wassenaar, 2006: 72).<sup>60</sup> Ethical clearance was valid for one year, and primary data collection was completed during this period. I conducted this project transparently and engaged with respondents considerately. Each person was contacted by email or phone to request their participation in the project. In the initial email, I introduced myself by stating my name, qualifications, current studies and provided a short description of the dissertation. I explained why and how they could contribute meaningfully to the project. For instance, I mentioned that their commentary in the documentary was relevant to the dissertation. I included my supervisor's name and attached an invitation letter from my supervisor to the email.<sup>61</sup> Follow-up emails were necessary at times. When prospective respondents expressed an interest in participating in my dissertation, I replied with the appropriate information about setting up an interview and attached an information sheet and consent form to the email.

Information and consent sheets were prepared for people who were participating in the project in their personal capacities, and another set of sheets for respondents who were representing organisations.<sup>62</sup> The information sheets contained more than enough details for people to decide whether they wanted to participate in the project (Wassenaar, 2006: 72-73). The consent forms offered respondents confidentiality (Wassenaar, 2006: 67). The consent forms asked respondents for their signature as a tentative indication of informed consent and stated that this may be withdrawn at any stage (Wassenaar, 2006: 72-73). The consent forms also asked respondents if they consented to recording the interview for data analysis purposes. Upon request, interview schedules were provided to respondents. I offered respondents the opportunity to read the entire dissertation or a summary of the key findings upon its completion. I have noted the respondents' preferences in my records and will comply with their requests after completing this project (Wassenaar, 2006: 73).

At the start of each interview, I read the information and consent sheets with the respondent and offered to provide additional information. Respondents signed a hard copy of the consent

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<sup>60</sup> Appendix F – Certificate of approval for ethical clearance.

<sup>61</sup> Appendix G – Invitation letter from Emeritus Professor Elrena van der Spuy.

<sup>62</sup> Appendices H and I - Information sheets for individuals and representatives of organisations, respectively. Appendices J and K – Consent forms for individuals and representatives of organisations, respectively.

form and handed it to me at face-to-face interviews. For online interviews, the respondent's verbal agreement was recorded as this served as informed consent during the COVID-19 pandemic (de Vries, Burgess, Blockman, & Ntusi, 2020: 636). In this way, I respected the respondents' autonomy and obtained their informed consent (Draucker et al, 2009: 345; Wassenaar, 2006: 72-73). Information about people and institutions published in secondary sources has been included in the project responsibly and with my supervisor's guidance.

The principle of justice dictates that the research process should not unfairly benefit the researcher or burden the respondent (Wassenaar, 2006: 68). Respondents may benefit from participating in the interviews. For instance, respondents may feel heard and that they are contributing to the body of knowledge on the subject. Arguably, there are more benefits like career advancement or publications for the researcher. In adherence to the principle of justice, I strove to bear the costs of participation. For face-to-face interviews, I offered to compensate respondents for transportation. None of the respondents accepted this offer. At the end of each interview, I gave respondents a slab of chocolate to convey my appreciation for their time and contribution. I paid for the respondents' non-alcoholic beverages for the two interviews conducted in coffee shops. For online interviews, I offered to transfer or pay for the data consumed during the interview. The respondents politely declined this offer. Regrettably, I could not give the online respondents a slab of chocolate. I may still benefit from this process more than the respondents; however, the interviews were conducted with this awareness, and by sharing my findings, I include the respondents in the overall process. In the next chapter, I set out the findings yielded from the dataset.

## CHAPTER FOUR: FINDINGS

Three core principles define Braithwaite's (1989: 6 & 8; 1996: 11-13) work. *Legal* systems should give way to *justice* systems by reducing technical complexities and focusing on restoring relationships.<sup>63</sup> People and communities, rather than institutions like courts and prisons, belong at the heart of crime regulation. Communities should seek ways to move from *command and control* towards *responsive regulation* along the *regulatory spectrum*. In this chapter, I engage with Braithwaite's principles by setting out findings based on data collected from 16 interviews. The deductive themes are business and community sectors and legal responses to cartels. The inductive theme is economy and market structure. To start, I summarise respondents' reflections on the bread cartel.

### 4.1 REFLECTIONS ON THE BREAD CARTEL

The findings reveal mixed feelings about the bread cartel case. Respondents both celebrate the ripples of change created in the community, business and state sectors and worry about problems like knowledge gaps and market structure that threaten to undermine community regulation of white-collar crime. According to the data, the bread cartel case was 'a massive victory for civil society'.<sup>64</sup> Three-quarters<sup>65</sup> of respondents explained that the case created limited change in South Africa. About one-third<sup>66</sup> of respondents emphasised change in the community, business and state sectors. The community sector started understanding the cartel phenomenon and the implications of competitive and anti-competitive business practices. Imraahn said:

... the biggest achievement of the exposure of the bread cartel was making competition-related issues ... very relevant to consumers and to the public in general. Now they could relate how competition or lack of competition impacted them... Price fixing became a topic at the table.... It [bread cartel] had this real social impact in terms of creating awareness and understanding

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<sup>63</sup> The subtle linguistic shift from *legal* to *justice* systems conveys a move away from the use of technical laws and loopholes to escape liability towards the more straightforward goal of making things fairer between people.

<sup>64</sup> Respondent 10 is an activist who has been involved in several mobilisation projects, including the bread cartel.

<sup>65</sup> 12 respondents.

<sup>66</sup> Four respondents.

how it [business practice] related to the lived experience of ordinary people, especially poor people.

The bread cartel case sent a strong message to the business sector that the era of profits with impunity was over.

I think that certainly the business community, since the bread cartel, is far more aware of what they can and can't do and what the consequences of engaging in cartel conduct may be.<sup>67</sup>

According to the findings, after the bread cartel matter, businesses understood that they were now subject to regulatory oversight and that non-compliance would have economic and legal consequences. The case also 'established the credibility of the competition authorities'<sup>68</sup> and led to developments in the law. The Act was amended so that employees with managerial authority who caused or had knowledge of cartel collusion could face criminal charges in their personal capacities.<sup>69</sup> The civil cases also had powerful impacts on the law. The bread cartel case explored how victims' rights for damages against companies that had confessed to or been found guilty of contravening the Act could be claimed in civil court.<sup>70</sup> Class action procedures were expanded and clarified. Imraahn said:

This is the first case where the Act is tested in terms of how you claim for [civil] damages ... Most important to me is the class action... *Mukaddam versus Pioneer Foods and Others*<sup>71</sup> together with SCA finding in the *CRC v Pioneer Foods*<sup>72</sup> [which wrote the procedure for class actions]. It opens the gate for class actions and collective litigation.

The mobilisation around the cartel created a narrative that filtered into legal decisions as 'the outrage that was felt was able to be harnessed by the Commission ... and shaped the discourse that came before the Tribunal...'.<sup>73</sup> However, most<sup>74</sup> respondents felt that the bread cartel case

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<sup>67</sup> Respondent 6 is an advocate with expertise in competition law.

<sup>68</sup> Respondent 2 was involved with developing the competition law framework.

<sup>69</sup> Section 73A of the Act.

<sup>70</sup> Section 65 of the Act.

<sup>71</sup> *Mukaddam v Pioneer Foods (Pty) Ltd and Others* (CCT 131/12) [2013] ZACC 23.

<sup>72</sup> *Trustees for the time being of Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* (050/2012) 2013 (2) SA 213 (SCA).

<sup>73</sup> Respondent 3 has extensive experience with competition law and works in the legal field.

<sup>74</sup> 12 respondents.

had little substantive impact. The market structure ‘did not change’,<sup>75</sup> the industry was ‘still dominated by a couple of big producers’,<sup>76</sup> and the *Big Three* were ‘still busy’<sup>77</sup> colluding. A key lesson was that the community sector and the competition authorities should monitor the business sector.

... I remember interviewing the Competition Commission [for] my article. I asked, “have you guys tracked the bread price, have you monitored what's happened?” If I recall correctly, I think they said no, that they never did that...<sup>78</sup>

The bread cartel case also pointed to the need for community education to fill knowledge gaps about the law. It is essential that ‘when you are involved in an important part of economic regulation’<sup>79</sup> that you ‘educate the public about what it is that you're doing’.<sup>80</sup> Justice remained elusive. For Imraahn, ‘there is still a disjuncture’<sup>81</sup> between the ‘damages which he suffered’<sup>82</sup> and ‘what was ultimately achieved’<sup>83</sup> because no remedy could ‘repair that harm’.<sup>84</sup> The consumers, too, received little compensation as they were threatened with an expensive, lengthy trial to accept a small settlement.

It was going to take another 10 years and with the resources we had and the people who sponsored us, it was going to be extremely difficult. So, we settled out of court... The idea was if we ever won - we were looking at billions - we would set up bread cooperatives, bakeries... But with [a small amount of] rands, you can just about buy a few loaves of bread, and it's done.<sup>85</sup>

Respondents had mixed feelings about the impact of the bread cartel. On the one hand, the matter created threads of change through the community, business and state sectors. On the other hand, the case emphasised the need for community education and the importance of

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<sup>75</sup> Respondent 11 is a price-winning journalist who has written about the bread cartel.

<sup>76</sup> Respondent 11.

<sup>77</sup> Respondent 4 is an independent bread distributor.

<sup>78</sup> Respondent 11.

<sup>79</sup> Respondent 2.

<sup>80</sup> Respondent 2.

<sup>81</sup> Respondent 1 is an attorney who was involved with the civil litigation around the bread cartel.

<sup>82</sup> Respondent 1.

<sup>83</sup> Respondent 1.

<sup>84</sup> Respondent 1.

<sup>85</sup> Respondent 9 is an anti-apartheid activist who is currently working as a director of a civil society organisation.

monitoring the business sector, given its anti-competitive structure. A discussion about industry bodies and activism follows.

## 4.2 KEY COMMUNITY AND BUSINESS REGULATORY MECHANISMS

Braithwaite's (2006: 886-889) *pyramid* suggests a cooperative, tiered approach involving the state, community and business sectors in regulating white-collar crime. An industry body is a common example of how the business sector participates in regulating business practices. However, industry bodies create opportunities for corrupt deals and cartel collusion because competitors and administrators meet regularly to discuss business affairs (Das Nair & Mncube, 2012: 2 & 14; Levi & Lord, 2017: 5 & 12). Activism and mobilisation (I use the terms interchangeably) are collective, coordinated regulatory efforts of social groups including *inter alia* whistle-blowers, consumers, trade unions, faith-based organisations and NGOs (Braithwaite, 2006: 888).

### 4.2.1 Industry bodies

I spoke to ten respondents about the role of industry bodies in regulating white-collar crime. Only a single respondent believed that industry bodies could play a regulatory role in the business sector.

I think industry bodies... drive change... An industry body can say, “look this is what you guys need to be doing in terms of self-regulating because if you don't self-regulate there is a threat of government posing regulations” and they can call out members that are not displaying the right ethics... and say “if you don't abide by our rules and regulations, you're no longer a member, you don't have our stamp of approval” and that can have a potential negative reputational impact.<sup>86</sup>

The suggestion that an industry body may use threats like state intervention or reputational harm to entice compliance has valuable implications. It raises the possibility of a relationship between industry bodies on the one hand, and the state, community and market structure on the other hand. It follows that industry bodies may play a meaningful role in regulating white-

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<sup>86</sup> Respondent 11.

collar crime if the following two conditions are met. State action poses a credible threat. The industry is competitive. At best, this is a tentative finding because it is based on the opinion of one respondent, who was also the only person to support the notion of industry bodies regulating white-collar crime. This opinion stands out as an exception and deviation from the remaining perspectives. Most<sup>87</sup> respondents warned that industry bodies should not assume a regulatory role because when competitors meet to share information the temptation to collude and/or enter into cartel agreements is extremely high.

Self-regulation of cartels has never worked. Industry bodies are the very bodies that the cartelists use to coordinate cartel activity. Most of the cartels that we have covered and prosecuted formed on the sidelines of the industry association... So, I don't think that would ever work.<sup>88</sup>

The above concerns are confirmed by the *Chamber's* role in the bread cartel and industry:

I think it was right to say that the *Chamber* was a mechanism for regulating the ... cartel. I don't think that anybody particularly disguised that fact. [The *Chamber*] regulated price and quality and stuff like that... I imagine supervised compliance with the agreements that they reached... Jannie De Villiers was a very important figure in the industry. He was sort of "Mr Bread Industry"... It was pretty much well-known that [regulating the bread cartel] was arguably their [the *Chamber's*] most important function. With him [Jannie De Villiers] as the Kingpin.<sup>89</sup>

The language in the quote was significant. 'Mr Bread Industry' has derogatory tones and seems to ridicule De Villiers. 'Kingpin' has criminal connotations. The respondent's language usage showed that he perceived De Villiers and the *Chamber* as criminal. Such sentiments found resonance as another respondent suggested that imprisoning people would be the 'best regulatory system'<sup>90</sup> possible. The issue of criminal sanctions for cartelists raises questions about the possibility of the Commission and the NPA successfully prosecuting a manager or director for collusion. This will be discussed later in the chapter. It may be possible to mitigate the risk of collusion within industry bodies. For instance, such associations may adopt

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<sup>87</sup> Eight out of 10 respondents.

<sup>88</sup> Respondent 7 works in the Commission's cartel division.

<sup>89</sup> Respondent 2.

<sup>90</sup> Respondent 3.

‘competition policies that regulate what information can be shared’<sup>91</sup> or a ‘monitor’<sup>92</sup> can be appointed to attend association meetings to ensure ‘independent oversight’ of association affairs.<sup>93</sup> Despite the risk of collusion, half<sup>94</sup> the respondents said that industry bodies have a place within a broader regulatory network. For instance, industry bodies can provide a platform for businesses to discuss ‘safety standards’<sup>95</sup> or ‘educate their members’<sup>96</sup> about ‘new competition law’.<sup>97</sup> In sum, most of the data confirmed key points in the literature. Respondents were sceptical about industry bodies as a vehicle for business sector regulation and felt that such organisations impeded regulatory compliance by creating opportunities for collusion. The single dissenting view, that endorsed the regulatory potential of industry bodies, suggested that the nature of and the relationship between business, community and state sectors and the market structure may influence the scope for *responsive regulation* of white-collar crime. Mobilisation is discussed next.

#### 4.2.2 Community mobilisation

A fundamental tenet of Braithwaite’s (1989: 8; 2006: 888) work is that the community sector should drive crime regulation, proactively monitor business practices and respond to crimes with increasingly assertive activist strategies. I discussed activism with all respondents. One respondent explained the role of mobilisation succinctly.

We don't have a responsive government... [or a] ... caring government... [Social] movements are necessary to keep a constant watch over formal structures to ensure that they do what they are supposed to do - which is to prevent and act against cartels. That's number one... [Social mobilisation] is also responsible on the private sector side to watch over those companies to ensure they don't engage in this uncompetitive behaviour... The tentacles of collusion extend quite far. You need bottom-up community activism.<sup>98</sup>

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<sup>91</sup> Respondent 6.

<sup>92</sup> Respondent 2.

<sup>93</sup> Respondent 6.

<sup>94</sup> Five out of 10 respondents.

<sup>95</sup> Respondent 2.

<sup>96</sup> Respondent 2.

<sup>97</sup> Respondent 2.

<sup>98</sup> Respondent 12 is a researcher and an activist who was involved in the bread cartel campaign.

Respondents recognised that community mobilisation was crucial to monitor and regulate the state and business sectors, particularly in an environment prone to corruption. An overwhelming majority<sup>99</sup> of respondents felt that mobilisation can play a positive role in regulating white-collar crime. Responses were divided almost equally between the three positive effects of mobilisation. As mentioned earlier, activism efforts may have created more awareness around competition law and business practices in the community. Mobilisation may deliver a ‘reputational hit’<sup>100</sup> that companies ‘struggle to recover from’<sup>101</sup> and adverse publicity may have a ‘negative impact’<sup>102</sup> on a company’s brand. However, the *Big Three* seem to have escaped such consequences because ‘they were all involved’<sup>103</sup> in the collusion. Activism may have created layers of influence that subtly pressured judicial outcomes.

Where you had people in the parking lot outside the window when the case was being heard, there's no way that that doesn't act as a form of pressure on adjudicators, especially those who are sympathetic to the cause of those outside.<sup>104</sup>

Mobilisation ‘frames the manner in which the case is seen’<sup>105</sup> by reflecting broader ‘socioeconomic rights’<sup>106</sup> and ‘policy issues’<sup>107</sup> beyond the ‘narrower legal issue’.<sup>108</sup> Such framing may influence judicial outcomes because ‘judges are human beings’<sup>109</sup> and ‘courts are not monastic castles from which [the] walls are not permeable.’<sup>110</sup> So ‘the moral framing of a case’<sup>111</sup> may ‘persuade a judge to see the case the way you want that case to be presented’<sup>112</sup> which is ‘halfway to winning’.<sup>113</sup> Whilst an overwhelming majority of respondents acknowledged the value of activism as a regulatory tool, a similar majority argued that serious issues limited the scope of mobilisation. Almost all<sup>114</sup> respondents explained that racial and income inequality may lead to knowledge gaps, power differentials and problematic

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<sup>99</sup> 14 respondents.

<sup>100</sup> Respondent 2.

<sup>101</sup> Respondent 2.

<sup>102</sup> Respondent 1.

<sup>103</sup> Respondent 1

<sup>104</sup> Respondent 2.

<sup>105</sup> Respondent 3.

<sup>106</sup> Respondent 1.

<sup>107</sup> Respondent 1.

<sup>108</sup> Respondent 1.

<sup>109</sup> Respondent 3.

<sup>110</sup> Respondent 3.

<sup>111</sup> Respondent 3.

<sup>112</sup> Respondent 3.

<sup>113</sup> Respondent 3.

<sup>114</sup> 15 out of 16 respondents.

relationships between South Africans. The data implied that activism around the bread cartel was problematic because it was ‘very short-lived’<sup>115</sup> and though it may have created awareness around the issues, it failed to create ‘effective change in the interest of the community’.<sup>116</sup> About one-third of respondents<sup>117</sup> said that local communities are divided and implied that this may be because of racial and income inequalities.

The cake-buyer couldn’t care what the hell the price [of bread] is. But the poor man does. There’s this divide...<sup>118</sup>

Respondents explained that inequality ‘creates hierarchies’<sup>119</sup> which entrench outdated thinking like ‘cheap black labour doesn’t matter, and black life is cheap’.<sup>120</sup> Knowledge gaps may be a manifestation of such inequalities. The community sector had ‘so many constraints’<sup>121</sup> and lacked the ‘body of technical knowledge’<sup>122</sup> or skills necessary to coordinate sustainable activism in the bread cartel matter. For instance, one-quarter<sup>123</sup> of respondents felt that the issue at the heart of the mobilisation campaign, ‘a right to bread,’<sup>124</sup> should have been constructed more widely as ‘a right to food’<sup>125</sup> which may have led to greater community involvement. Half of the respondents agreed that the ‘difficulty with social mobilisation in South Africa is that South Africans do not understand and have not been introduced to what a useful tool the Constitution is in their hands’.<sup>126</sup> A few<sup>127</sup> respondents suggested that community knowledge around competition law may have had similar knowledge gaps.

He [Imraahn] didn’t know what to do! He didn’t know what he could do! He was out of it. He really didn’t have an idea. I then told him about the

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<sup>115</sup> Respondent 14 is an economist who works for a research institution.

<sup>116</sup> Respondent 14.

<sup>117</sup> Five respondents.

<sup>118</sup> Respondent 8.

<sup>119</sup> Respondent 16 is an anti-apartheid activist in the Treatment Action Campaign (TAC). The TAC is a community activist organisation that defeated the state in court, ultimately ensuring that the state provided medication to HIV-positive moms to prevent the virus from infecting their babies at birth (Treatment Action Campaign, 2021).

<sup>120</sup> Respondent 10.

<sup>121</sup> Respondent 10.

<sup>122</sup> Respondent 10.

<sup>123</sup> Four respondents.

<sup>124</sup> Respondent 16.

<sup>125</sup> Respondent 16.

<sup>126</sup> Respondent 13.

<sup>127</sup> Three respondents.

Competition Act, and I filled him in on his rights and what could be done about it [price fixing in the bread cartel].<sup>128</sup>

Inequalities imply questions about the relationships between South Africans compared to the dynamics implicit in Braithwaite's models (Beall et al, 2005: 682-684; Shearing, 2020: 58; Walgrave, 2020: 7). Education alone was insufficient. Three respondents felt it was necessary to 'not only educate but [to] inspire agency'<sup>129</sup> to activate community potential in mobilising against white-collar crime.

When you are involved in... any complex, difficult, important policy, you must educate the public about what you're doing... Once people start to get educated, they start to identify transgressions or issues that they feel need to be discussed... One of the ways of participating in the process is to stand outside the parking lot and shout while [the court is] adjudicating. And another way is by being alert to these kinds of practices and reporting them.<sup>130</sup>

Braithwaite (2006: 889-894) suggested that communities in developing economies address knowledge gaps by connecting with activists in developed nations. A respondent explained that the *Big Three* may have had investments abroad and that Imraahn could have formed a 'reciprocal relationship'<sup>131</sup> with international activists for more sustained mobilisation around the cartel. The reality may be more complex. Obtaining international assistance may be more challenging as South Africa is 'not the flavour of the month or the decade anymore'.<sup>132</sup> International support seems remote because Tiger Brands,<sup>133</sup> for example, appears to have investments in other developing countries, which may face similar resource and knowledge gaps and be unable to support South Africans (Tiger Brands, 2022). About one-fifth<sup>134</sup> of respondents suggested that donor funds often may have hidden costs. Imraahn said that 'you have to sell yourself and compromise for funding as an NGO', implying that such funds may re-direct or usurp grassroots mobilisation efforts. Widespread education, agency and resources may not be sufficient for successful activism. The missing ingredient, according to a quarter<sup>135</sup>

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<sup>128</sup> Respondent 8.

<sup>129</sup> Respondent 14.

<sup>130</sup> Respondent 2.

<sup>131</sup> Respondent 16.

<sup>132</sup> Respondent 15.

<sup>133</sup> Tiger Brands has a presence in Cameroon, Nigeria, Zimbabwe, Peru and Chile (Tiger Brands, 2022).

<sup>134</sup> Three respondents.

<sup>135</sup> Four respondents.

of respondents, may be scientific evidence. Activists may have raised awareness around the bread cartel, but the campaign was not sufficiently grounded in science to dismantle cartels.

[The bread cartel case] didn't destroy the cartels... What really happened was a justification for why the existing pricing regime or market structure needs to be respected... [which was] scientifically grounded [by the state with] high-end economists... The state relies on scientific strengths to do that. If you disagree with a policy proposal and the legal sanction [and] you want to challenge that but you're not querying the scientific foundations of it, then actually, you will argue from a very weak position... Credible alternatives must be grounded in science.<sup>136</sup>

Activists, according to one-quarter<sup>137</sup> of the respondents, should support mobilisation campaigns with scientific evidence to counter state policies and laws to have a realistic prospect of creating the outcome desired by the community. The respondent further pointed out that the reticence of scientists to participate in community activism was a symptom of larger divisions within the community. 'South African society has been weakened'<sup>138</sup> and factions may have formed between the state, community and business sectors. Respondents seemed to have mixed feelings about the state and business sectors. Almost half<sup>139</sup> the respondents explained that the unity and power within the community sector dissipated after 1994. The respondents were divided equally between two viewpoints. One-quarter<sup>140</sup> of respondents explained that the crippling effects of collusion between the state and business sectors caused divisions within communities.

The ANC compromised with Capital and part of the deal was that they would demobilise the population...The crux of the '94 compromise was that "we [the ANC] will keep the masses passive and keep conditions for business stable".<sup>141</sup>

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<sup>136</sup> Respondent 14.

<sup>137</sup> Four respondents.

<sup>138</sup> Respondent 15.

<sup>139</sup> Seven respondents.

<sup>140</sup> Four respondents.

<sup>141</sup> Respondent 10.

Similarly, one-quarter<sup>142</sup> of respondents were concerned that the *Big Three's* penalties should go to 'school feeding programmes', which can be done without 'upsetting the market',<sup>143</sup> which is often the case when 'the price of bread'<sup>144</sup> is artificially 'lowered'<sup>145</sup> for '6 months'.<sup>146</sup> Conflicting values are corroborated by the literature and challenge the assumption of normative consensus in Braithwaite's models (Beall et al, 2005: 682-684; Shearing, 2020: 58; Walgrave, 2020: 7). Unsurprisingly, six respondents said that they 'don't trust the government'<sup>147</sup> and believed that the current state has become 'like the apartheid state,'<sup>148</sup> the 'biggest obstacle to the improvement of the conditions of our people'.<sup>149</sup> Despite such mistrust, one-quarter<sup>150</sup> of respondents said they wanted state support in regulating white-collar crime. Imraahn said that he was a 'strong advocate for state intervention'. Others<sup>151</sup> agreed and explained that the 'stick'<sup>152</sup> to compel communities and businesses to participate in regulating white-collar crime 'must come from the state'.<sup>153</sup> Overall, the community seemed to feel powerless and explained that 'we must continue to be vigilant',<sup>154</sup> but when 'something is not going right, we will still rely on the state and the regulatory institutions to act'.<sup>155</sup> Data reiterated the importance of the dynamics between the three sectors and revealed a deep tension at the heart of the state-community relationship, which may influence the scope for *responsive regulation* of white-collar crime in South Africa.

#### 4.2.3 Reflections on industry bodies and community mobilisation

The data suggested that the contribution of industry bodies to regulating white-collar crime is limited because they are likely to facilitate collusion. The data provided little support for Braithwaite's (2006: 888; 1993: 17) contention that businesses can self-regulate through industry bodies and confirmed that industry bodies may lead to corruption and collusion (Levi & Lord, 2017: 5 & 12; Das Nair & Mncube, 2012: 2 & 14). Mobilisation may be a powerful

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<sup>142</sup> Four respondents.

<sup>143</sup> Respondent 12.

<sup>144</sup> Respondent 12.

<sup>145</sup> Respondent 12.

<sup>146</sup> Respondent 12.

<sup>147</sup> Respondent 2.

<sup>148</sup> Respondent 9.

<sup>149</sup> Respondent 9.

<sup>150</sup> Four respondents.

<sup>151</sup> Four respondents.

<sup>152</sup> Respondent 15.

<sup>153</sup> Respondent 15.

<sup>154</sup> Respondent 12.

<sup>155</sup> Respondent 12.

regulatory mechanism in both developed and developing countries (Braithwaite, 2006: 884-885). However, the findings implied that the community sector cannot readily regulate white-collar crime due to inequalities, knowledge gaps and problematic relationships between the community, business and state sectors. Overall, the findings suggest that there are relational dynamics between the sectors that interact with the broader historical, social and economic context that may constrain the prospects of *responsive regulation* of white-collar crime.

### 4.3 ‘SPEAK SOFTLY BUT CARRY A BIG STICK’

In Chapter Two, I used the *regulatory spectrum* to demonstrate how deterrent and rehabilitative legal systems are different approaches to the same issue. Briefly, *command and control* emphasises state control and more punitive punishments (Benson, 2015: 555; Levi & Lord, 2017: 11-13). *Responsive regulation* allows the community and business sectors to lead the state in regulating white-collar crime through gentle education and moderate pressure on the business and community sectors (Benson, 2015: 555; Levi & Lord, 2017: 11-13). I discussed criminal, civil and administrative and *restorative justice*<sup>156</sup> measures as responses to white-collar crime with 16 respondents. The key finding was that a credible threat of punitive sanction is essential for all regulatory systems.

There's always the stick behind the carrot.<sup>157</sup>

I have organised my findings to determine whether the community sector (through mobilisation) and/or state sector (through the threat of punitive sanction) carry sufficient clout to compel the business sector to adhere to competition laws within a *responsive regulation* approach.

#### 4.3.1 Community: Can mobilisation coerce business to comply with regulations?

About two-thirds<sup>158</sup> of respondents were opposed to restorative approaches to white-collar crime in South Africa for several reasons. First, the nature of bread limited the scope of common mobilisation strategies like consumer boycotts. Bread is vital to the most vulnerable

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<sup>156</sup> I asked respondents about *restorative justice* as an example of a mechanism that can be incorporated into *responsive regulation* because South Africans are generally more familiar with this concept as the TRC had *restorative* elements.

<sup>157</sup> Respondent 15.

<sup>158</sup> 10 respondents.

South Africans because it's a 'staple'<sup>159</sup> food. Consumers should be able to 'punish those who engage in cartel conduct by voting with their feet and shopping elsewhere',<sup>160</sup> but 'you can't tell people to boycott bread.'<sup>161</sup> Respondents pointed out that 'our apartheid history'<sup>162</sup> of anticompetitive laws and practices meant that the 'whole industry'<sup>163</sup> was often participating in the cartel and 'boycotting a whole industry is often not an option'.<sup>164</sup> As mentioned in Chapter One, protectionist laws may have played a role in building such concentrated industries (Vink, 2012: 564). About one-third<sup>165</sup> of respondents felt that the local market structure impeded any potential for *restorative justice* in addressing white-collar crime. Respondents explained that the 'concentration'<sup>166</sup> in the bread industry was too intense. *Restorative justice* remedies may increase competition by helping to dismantle the *Big Three*'s market dominance. However, respondents said the *Big Three* would resist any approach 'grounded in breaking up monopolistic control over the bread value chain'.<sup>167</sup> This finding suggested a link between the extent of competition within an industry and the scope for *responsive regulation* of white-collar crime. One-quarter<sup>168</sup> of respondents suggested that inequalities may create power imbalances that favour the business and state sectors and disadvantage the community sector. The *Big Three* 'forced'<sup>169</sup> a settlement agreement on the civil society organisations by threatening a lengthy, expensive trial in the civil case instituted on behalf of the consumers. Imraahn explained that the business sector has resources that outgun the community's piggy bank, which inevitably tips the scales in their favour.

Community mobilisation and social pressure are not sustainable. Industry has endless resources and can play the long game. They know that the wave [of activism] will pass... The kind of change that is needed is a five-year process. Activists work on a three-month process. Industry knows this.

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<sup>159</sup> Respondent 13.

<sup>160</sup> Respondent 6.

<sup>161</sup> Respondent 6.

<sup>162</sup> Respondent 6.

<sup>163</sup> Respondent 6.

<sup>164</sup> Respondent 6.

<sup>165</sup> Five respondents.

<sup>166</sup> Respondent 1.

<sup>167</sup> Respondent 14.

<sup>168</sup> Four respondents.

<sup>169</sup> Respondent 9.

Such power imbalances may limit the potential for *restorative justice* approaches in curbing white-collar crime.<sup>170</sup> I asked what needed to change to engender their support of *restorative* or *responsive regulatory* procedures in addressing white-collar crime. Respondents<sup>171</sup> suggested that a revolution or ‘paradigm shift’<sup>172</sup> that placed the ‘poor’<sup>173</sup> in the ‘dominant class’<sup>174</sup> was necessary. They further explained that this was improbable because the ‘alliance between the Black Elite and the Capitalists’<sup>175</sup> was ‘very strong’,<sup>176</sup> and they didn’t ‘give a fuck’.<sup>177</sup> This finding pointed to a link between the community’s relationship with the state and business sectors and the scope for *responsive regulation* of white-collar crime. *Responsive regulation* is based on cooperation between the state, business and community sectors which requires more amity and less animosity (Braithwaite, 2006: 886-889). Tentatively, an amicable or acrimonious relationship between the community, on the one hand, and state and business, on the other hand, respectively, enhances or limits the scope for *responsive regulation* of white-collar crime. Respondents were more-or-less equally divided between two viewpoints. One-quarter<sup>178</sup> of respondents believed that there is a corrupt relationship between the state and business sectors. Imraahn said:

Our political landscape... under the ANC and the DA doesn’t allow for real consumer input or the recognition of legitimate voices and stakeholders. They are all influenced by industry.

However, Imraahn also said:

You don’t want to disrupt the industry to the extent that you have de-industrialisation. We need a lot more industrialisation to create jobs... there must be a balance.

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<sup>170</sup> Nonetheless, *restorative justice* principles are recognised in local law. As stated in Chapter One, *restorative justice* is reminiscent of *ubuntu* and shapes the Constitution of the Republic of South Africa, 1996 (Skelton, 2013:122).

<sup>171</sup> Three respondents.

<sup>172</sup> Respondent 10.

<sup>173</sup> Respondent 10.

<sup>174</sup> Respondent 10.

<sup>175</sup> Respondent 10.

<sup>176</sup> Respondent 10.

<sup>177</sup> Respondent 10.

<sup>178</sup> Four respondents.

Three respondents suggested that industry should be protected to encourage industrialisation, economic growth and employment.<sup>179</sup> Literature supports both positions, the notion of a corrupt state-business alliance as well as increasingly demanding state bureaucracy that inhibits business entrepreneurship (Beall et al, 2005: 692 & 684; Christensen, Hegazy, & van Zyl, 2016: 7). A corrupt state-business alliance implied division with the community on the one side opposing the business and state sectors on the other side. Alternatively, compliance costs limiting profits suggested tension between industry and the state (Benson, 2015: 555). In sum, two-thirds of respondents indicated little potential for *responsive regulation* of white-collar crime because the community either does not have sufficient clout or believes that it does not have sufficient clout to entice the business sector to participate in *responsive regulation*. More broadly, the findings suggested that nuances in the relationship between the state, business and community sectors are connected to the scope for *responsive regulation* of white-collar crime, which requires closer investigation. This brings the discussion to the state and whether the state has leverage to induce the business sector to participate in *responsive regulation*.

#### 4.3.2 State: Can the legal system coerce business to comply with regulations?

Six respondents doubted the state's desire and capacity to compel the business sector to participate in *restorative justice* for several reasons. The nature of cartels and cartelists reduces the prospect of *restorative justice* or *responsive regulation*. Cartelists are 'very dodgy characters',<sup>180</sup> and cartels 'double down and conceal as much of the conduct as possible'<sup>181</sup> when exposed. *Responsive regulation* is not even an option in a 'well-established jurisdiction'<sup>182</sup> like America, which has prohibited cartels for over a century.<sup>183</sup> Respondents

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<sup>179</sup> Ironically, industrial development was a key factor underpinning protectionist laws that led to the proliferation of cartels in the first place (Mncube & Grimbeek, 2016: 337).

<sup>180</sup> Respondent 7.

<sup>181</sup> Respondent 6.

<sup>182</sup> Respondent 7.

<sup>183</sup> Respondent 7's comment may not be entirely accurate. Braithwaite (2013: 461) explained that the American legal system incorporates *Qui Tam* which stands for *qui tam pro domino rege, quam pro se ipso in hoc parte sequitur* and translates to the person that litigates does so for the benefit of the sovereign, the state and his or herself. *Qui Tam* allows whistle-blowers and prosecutors to work together to prosecute white-collar criminals. The state benefits as the whistle-blower provides evidence to help build the case against the white-collar offender. The state prosecutor decides whether to litigate based on the whistle-blower's evidence. The whistle-blower receives a percentage of the money recovered if the trial is successful. *Qui Tam* can be considered a *responsive regulation* strategy because it involves collaboration and a sharing of resources between the state and the community sectors. *Qui Tam* may be incorporated into the *regulatory pyramid* to create additional leverage to encourage businesses to confess and make reparations to the community and state sectors without state proceedings (Braithwaite, 2013: 465).

agreed that cartels need ‘focused and powerful prosecution’.<sup>184</sup> However, the data suggested that in South Africa, the prospect of state sanction may carry little weight for several reasons.

They [the state] continued to give repeat tenders to companies that they already knew were delinquent.<sup>185</sup>

If the state rewarded the *Big Three* with lucrative opportunities after their collusion in the bread industry had been proven, the business sector has little incentive to take corrective measures in response to state threats. Another reason the business sector may disregard state threats of prosecution is the recent amendments to the law. I spoke to nine respondents about the CLP, the criminalisation amendment and the NPA and their responses were divided equally into three categories. A few were ‘quite pleased’<sup>186</sup> with the criminalisation amendment. Others emphasised the importance of the CLP because there are ‘very, very few cases in which the leniency program had not played the leading role in fingering cartels’.<sup>187</sup> This led to the fear that the criminalisation amendment would undermine the CLP.

The commission ... relies on the corporate leniency policy so heavily to uncover these cartels. There's a concern that if it [the commission] can't give immunity from criminal prosecution... [and] it is so reliant on the leniency policy to get whistle-blowers to blow the whistle... That's going to erode its ability to prosecute ultimately... And you're going to have people who are very reluctant to come forward because they're coming forward to a body that is going to prosecute them.<sup>188</sup>

The criminalisation amendment raised concerns about the NPA and the competition authorities sharing jurisdiction over prosecuting cartels as well as the capacity of the NPA to successfully prove cartel collusion. Findings imply that the NPA’s capacity to prosecute cartels influences whether the prospect of state sanction can compel the business sector to participate in restorative justice. Four out of nine respondents implied that the NPA was so riddled with corruption and capacity constraints that there was little prospect of a successful prosecution of a manager or director for cartel collusion.

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<sup>184</sup> Respondent 6.

<sup>185</sup> Respondent 12.

<sup>186</sup> Respondent 1.

<sup>187</sup> Respondent 2.

<sup>188</sup> Respondent 6.

I think the NPA is so fundamentally disabled by what's happened over the past decade that they struggle to prosecute a basic corruption case. So, the idea of prosecuting a cartel case with no precedent is just beyond them. Frankly, I don't think that we're going to see a successful cartel case prosecuted for the next five years, maybe even longer. I can't see it happening. I think the NPA is, I mean it sounds rather alarmist, but I think it's so fundamentally broken that probably the next decade is going to be very disappointing.<sup>189</sup>

The NPA may not employ many prosecutors skilled in competition law as 'it takes 20 years of job training to get a prosecutor up to the stage where they can actually prosecute a corruption case'<sup>190</sup> and the prosecuting authority 'lacks those sort of people'.<sup>191</sup> Overall, the data suggested that the criminalisation amendment and the state of the NPA have weakened the capacity of the conventional legal system to curb white-collar crime. Despite this, more than half of the respondents<sup>192</sup> thought *restorative justice* principles could be incorporated into the conventional legal system. Imraahn said that *restorative justice* is 'not applicable for cartel behaviour'. Instead, Imraahn preferred conventional courts incorporating *beneficial justice* principles in sentencing and judgments. He explained that the 'capacity of the legislative framework' should be 'strengthened' to focus on compensating victims 'for damages' instead of 'punitive fines' for the colluders. Two respondents felt that colluders should compensate victims in exchange for shorter prison sentences.

The task of the prosecutor is to place before the criminal court the information that shows just how badly the complainant has been burnt in the commercial crime that is being tried. It is then open to the court to say, "I'm going to lock you up for 20 years, but if you repay R10 million, I'll lock you up for 10 years, and if you repay R20 million, for five years and so on". So that the guilty party has a choice as to whether they want to sit it out and keep the spoils.<sup>193</sup>

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<sup>189</sup> Respondent 6.

<sup>190</sup> Respondent 13.

<sup>191</sup> Respondent 13.

<sup>192</sup> Five out of nine respondents.

<sup>193</sup> Respondent 13.

Imraahn explained that the Tribunal used *restorative justice* precepts in creating the order that it issued against Pioneer Foods. He said that Pioneer ‘paid close to a billion in fines’ that was ‘divided up into different social interventions’, including a ‘fund’ to ‘ensure that new entrants were allowed into the market’ and a subsidy to lower the bread price for six months. Overall, respondents supported the deterrence model of punishment but questioned the state’s ability to investigate and prove cartel collusion to punish cartels in South Africa. Respondents felt that *restorative justice* ideas should only be incorporated in the sentencing of cartelists. The findings implied that the nature of the offender, specific offence and the state’s capacity to prosecute the offence may limit the potential for *responsive regulation* or *restorative justice* in respect of white-collar crime.

#### **4.3.3 Reflections on ‘speak softly but carry a big stick’**

The findings forthcoming from this research inquiry suggest that the nature of bread as an essential product, the highly concentrated bread industry, and knowledge gaps among communities may limit the scope for *responsive regulation* of white-collar crime in South Africa. The implication is that *responsive regulation* strategies may be suitable for less essential products manufactured in more competitive markets. *Responsive regulation* is based on a culture of trust and cooperation (Benson, 2015: 555). The complex and heterogeneous relationships between South Africans will likely shape the potential for *responsive regulation* of white-collar crime in South Africa. The implication is that the scope for *responsive regulation* of white-collar crime increases if the relationship between the community, state and business sector is more amicable and decreases if the relationship is more contentious. Braithwaite (2000: 232-234; 2006: 884) is clear that *responsive regulation* requires a well-resourced, capable legal system. The nature of cartels and cartelists shape the state’s ability to coerce businesses to participate in *responsive regulation* of white-collar crime in South Africa. Debatable amendments to the rules governing cartels and problems of corruption and capacity within the NPA limit the scope for *responsive regulation* of cartels. Activism in the bread cartel case and the criminalisation amendment suggest a shift towards *responsive regulation* along the *regulatory spectrum* because state laws bolster community efforts. But this is not the case, as ill-advised amendments and capacity issues within the state imply that state sanction does not pose a significant enough threat to coerce businesses to participate in *responsive regulation*. A last reflection is that there may be a link between the potential of an association body to self-

regulate the industry, the nature of the state and the market. Data confirmed that the potential for industry associations to regulate the business sector will be maximised if supported by a well-resourced, capable state and a highly competitive market. In sum, the scope for *responsive regulation* seems inextricably linked to and influenced by the characteristics and capacity of the business, state and community sectors, the nuances of the relationship between South Africans and the market structure and economy. Overall, the research findings conclude that neither the community nor the state has the capacity to persuade and/or coerce businesses to participate meaningfully in *responsive regulation*.

#### 4.4 THE PROFESSIONALISATION OF COMPETITION LAW

In Chapter One, I referred to the bread cartel case as an *accidental success story*. The core principle of Braithwaite's (1989: 6 & 8; 1996: 11-13) work is that the community should lead crime regulation within a simplified legal system reoriented to creating justice between people. The findings collected in this research inquiry showed that Imraahn, supported by civil society organisations, was at the heart of the conflict and demonstrated that the community sector could successfully take on regulatory challenges.

It was a massive victory for civil society... It also highlighted the power of Mukaddam, the power of a whistle-blower, one person with a conscience and some courage.<sup>194</sup>

However, the findings also demonstrated that many factors, including knowledge gaps, complicated relationships, and market structure, may undermine the potential for *responsive regulation*. Such factors, as well as the complexity of competition law, may push communities further away from the heart of crime regulation.

One of the great regrets around competition law was that it became so much a matter for the most learned Senior Counsel. Partly because of its complexities. But partly because of its clientele who almost inevitably had very deep pockets. Oftentimes they outgunned the Commission. Never mind the consumers who were affected by it. So that was the biggest regret was that it became such an intellectually complicated subject, and they very

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<sup>194</sup> Respondent 10.

quickly developed a speciality in the bar and in law firms. And if you were accused, you went to Webber Wentzel or Bowmans...<sup>195</sup>

The findings implied that the success of the bread cartel case was accidental because so many conditions on the ground that shape community and state responses to white-collar crime may inhibit the prospects for *responsive regulation* of white-collar crime in South Africa. Despite the enormous challenges facing South African society - the bread cartel was exposed, some relief was obtained for consumers and distributors, the Act was amended, the *Big Three* were fined, and activists lived to fight another day... What does this mean for the scope for *responsive regulation* of white-collar crime in South Africa?

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<sup>195</sup> Respondent 2.

## CHAPTER FIVE: DISCUSSION

This chapter discusses the findings and the literature to identify relationships and links between variables and the scope for *responsive regulation*. Such links are then discussed with reference to the South African Bread Cartel. The scope for *responsive regulation* in South Africa beyond the bread cartel is then considered. Last, the chapter considers how the findings confirm and challenge Braithwaite's (2006: 889-894) models. The chapter begins by analysing the community, state and business sectors' ability to compel cartels, as well as other white-collar offenders, to participate in *responsive regulation*. The advantages and disadvantages of Braithwaite's solutions for knowledge and capacity gaps in developing countries are analysed with reference to the findings. I developed a new model based on *responsive regulation* and the *regulatory pyramid* adjusted for conditions that occur commonly in developing countries to address shortcomings of Braithwaite's solutions. Final thoughts about Braithwaite's core principles are shared before offering some concluding remarks.

### 5.1 'SPEAK SOFTLY BUT CARRY A BIG STICK'

'Speak softly but carry a big stick' implies that the community, business and state sectors should intervene as little as possible in regulating white-collar crime (Shearing, 2020: 60; Braithwaite, 2006: 884-886). The threat of community activism, industry body reprisal and state sanction should be sufficient to coerce businesses to comply with regulations within a *responsive regulation* paradigm (Braithwaite, 2006: 884-886).

#### 5.1.1 Community: Can mobilisation coerce business to comply with regulations?

The findings are persuasive that the community sector forms an integral part of an integrated regulatory network and can contribute meaningfully to regulating white-collar crime. In the bread cartel matter, Imraahn exposed the collusion. There is compelling evidence of a relationship between the nature or characteristics of the community and the scope for *responsive regulation* of white-collar crime. As discussed in Chapter Two, community activism was skillfully and strategically used to bring about the desired reform in the Nestlé scandal. In the bread cartel case, local communities had knowledge gaps that may have undermined their ability to mobilise around the issues. People may not understand their rights

or how to navigate state bodies to enforce their rights. Communities do not always have the necessary skills and resources to monitor business practices. Activists may not have training in organising, funding and executing a strategic sustainable mobilisation campaign. Inequalities imply that some communities may be indifferent to or disagree on issues that adversely impact mobilisation. Those living in Bishopscourt and Bishops Lavis are likely to have different views on the price-fixing of bread. In the bread cartel case, the nature of the community may have undermined the scope for *responsive regulation* of white-collar crime. The juxtaposition of the Nestlé scandal and the bread cartel illustrates that communities are heterogeneous and differ in their skill sets. This raises a question about the characteristics of the community sector that are best suited to enhancing the scope for *responsive regulation* of white-collar crime.

According to the results of this project, there may be a relationship between the nature of the product at issue and the nature of the community, on the one hand, and the scope for *responsive regulation* of cartels, on the other hand. Bread is an essential food item that is not easily substitutable and forms a vital part of the staple diet for the most vulnerable communities. Common mobilisation strategies like boycotting bread were not a practical option as most consumers needed to buy bread to feed their families. Furthermore, many consumers cannot exercise bargaining power by shopping elsewhere due to their circumstances. For example, consumers living in a South African township may not have the disposable income to take a minibus taxi to the nearby shopping hub to buy groceries and are forced to purchase basics from spaza shops. The situation may have been different if it was a luxury item consumed by a community that has the purchasing and bargaining power to shop elsewhere for a substitute product. The results imply that the nature of the product and the nature of the community, on the one hand, is linked to the scope for *responsive regulation* on the other hand.

Findings show that the relationships between the community, business and state sectors may influence the scope for *responsive regulation* of white-collar crime. In the bread cartel case, findings suggest that the community has two viewpoints on the relationship between the state and the business sector. Some respondents felt that the state-business alliance sabotaged community activism efforts. Others suggested that the sectors have formed corrupt connections to accumulate wealth and power through the continued suppression of the community by dividing the community into isolated, self-interested factions. It was suggested that activists

and academics were so divided that activists hesitated to use scientific arguments to support their mobilisation efforts. Other respondents felt that the community and state sector should intervene in the market sparingly to protect the market mechanism, industrial development and economic growth to boost employment. Such concerns are reflected in the Tribunal's remedies in the *Pioneer* judgment (Bonakele & Mncube 2012: 426).<sup>196</sup> Findings suggest that the level of trust between the state and community sectors is linked to the scope for *responsive regulation* of white-collar crime. Interviews with respondents in the bread cartel case reveal deep tensions at the heart of the relationship between the community, state and business sectors. People felt that state intervention was essential to regulating cartels but did not feel that they could trust the state or rely on the state's capacity to prosecute cartels. This perception leads to an inference that businesses will likely continue colluding without fear of consequence. The corrupt relationship with the state and capacity issues within the NPA will protect the sector from prosecution. Popular beliefs around alliances between the state and business sectors or the community and business sectors, as well as competing values between the sectors, may contradict the assumptions of equality and normative consensus that are implicit in Braithwaite's models (Shearing, 2020: 58; Walgrave, 2020: 7). Subjective opinions and value systems and objective facts on the nature of the relationship between state and business are likely to be considerably more complex and fractured. Overall, the relationships between the community, business and state sectors and the scope for *responsive regulation* of white-collar crime may be linked. This leads to a question about the kind of relationship between the state, business and community sectors that would enhance the scope for *responsive regulation* of white-collar crime. Findings imply that the nature and extent of trust in the relationships between the state, business and community sectors impacts the scope for *responsive regulation* of white-collar crime. Tentatively, a trusting relationship between the sectors may enhance the scope for *responsive regulation* of white-collar crime. The relational dynamics and competing value systems between and within sectors suggest that additional research is necessary to unpack assumptions about normative consensus and equality implicitly embedded in Braithwaite's models.

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<sup>196</sup> Briefly, a portion of the penalties paid by Pioneer Foods was used to establish the Agro-processing Competitiveness Fund to encourage new manufacturers to enter the bread industry to reduce concentration and increase competitiveness within the industry (Bonakele & Mncube 2012: 425-426).

### 5.1.2 State: Can the legal system coerce business to comply with regulations?

According to the respondents' views, an established a well-resourced criminal justice system is necessary to prosecute cartels.<sup>197</sup> However, the bread cartel matter indicates that the South African criminal justice system may have insufficient capacity to prosecute cartels for several reasons. Legal practitioners should have a thorough understanding of competition law and litigation experience to pursue cartels aggressively. Many prosecutors with such in-depth knowledge and experience have left the prosecuting authority. The NPA may not have sufficient human resources to prosecute cartelists. Findings suggest that the prosecuting authority is mired in corruption, which implies that prosecutors within the NPA may be vulnerable to bribery. For example, the director of a company being investigated for cartel activities may do a 'favour' for a prosecutor within the NPA in exchange for the investigation and charges against the cartel being dropped. The research shows that the criminalisation amendment has weakened the regulatory framework around cartels. It is challenging to detect and prosecute cartels, which is why the CLP is a potent weapon in the Commission's arsenal against cartels. The criminalisation amendment has sabotaged the CLP. Cartelists may hesitate to approach the Commission if they are subsequently charged criminally. However, respondents said the prospect of criminal prosecution of cartels is unlikely due to skills deficits and corruption within the NPA. The legality and constitutionality of the criminalisation amendment is contested. There is no guidance from the Legislature about how the Commission and NPA would share jurisdiction over the prosecution of cartels. The Commission and the Tribunal are specialised bodies that focus on competition matters, and the NPA is unlikely to prioritise such crimes. The overall situation is that cartels are unlikely to approach the Commission to enter a settlement agreement in terms of the CLP because of the risk of facing a criminal trial that the NPA may not be skilled or motivated enough to institute. An integrated view of a framework incorporating the competition authorities, the NPA, the Act and the CLP suggest that the recent changes have weakened the regulatory network. Findings verify that a highly developed and resourced state sector enhances the scope for *responsive regulation* of white-collar crime. Results further hint that problems within the local justice system undermine the scope for *responsive regulation* of cartels.

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<sup>197</sup> A capable criminal justice system is essential to prosecute cartels irrespective of whether control or rehabilitative policies are emphasised (Braithwaite, 2006: 884-894).

### 5.1.3 Business: Can industry bodies coerce business to comply with regulations?

*Responsive regulation* contends that an industry body is an important part of the regulatory network that curbs white-collar crime. Overall, findings refute this assertion and imply that industry bodies contribute little to regulating white-collar crime for several reasons. Respondents interviewed in this study indicate that there may be a link between the nature of the industry body and the propensity to collude within the industry. In the bread cartel case, the *Chamber* created and enforced the cartel agreement. This evidence suggests an additional point. A correlation may exist between the nature of an industry body and the propensity to collude within an industry, on the one hand, and the scope for *responsive regulation* of white-collar crime, on the other hand. Findings in the bread cartel case indicate that the *Chamber* made a marginal contribution to regulation while creating opportunities for industry stakeholders to discuss their businesses and possibly enter collusive arrangements. Business culture may also play a role. In the bread cartel case, historical developments in the law and business practices created an enduring culture of collusion that is difficult to correct with legislative changes. However, there may be industries where industry bodies enhance the scope for *responsive regulation* of white-collar crime. This raises questions about the nature of business culture, industry bodies and industries that enhance the scope for *responsive regulation* of white-collar crime.

According to the results of the bread cartel project, businesses may be motivated to self-regulate via industry bodies to avoid the credible threat of state regulation. Self-regulation seems more likely if there is a well-developed state with a strong criminal justice system. Evidence in the bread cartel case also suggests that companies may be more likely comply with industry body regulations if certain conditions are met. First, the company benefits from belonging to the industry body. For instance, membership may carry prestige. Or the industry body could organise seminars to provide valuable guidance on compliance matters. Second, such benefits offer companies a competitive advantage. For instance, suppliers or customers may prefer conducting business with companies that belong to the industry body. This points to a relationship between the propensity to collude, business culture, and the nature of industry bodies, on the one hand, and the market structure, on the other hand, that influences the scope for *responsive regulation* of white-collar crime. According to the respondents in this study, the bread cartel case revealed that the uncompetitive, concentrated market made it easier for

businesses to collude via an industry body (and more complicated for consumers to use mobilisation strategies like consumer boycotts because only a handful of large companies dominate the industry which limited competition). In other words, market structure and the scope for *responsive regulation* are related. This implies that there may be more scope for *responsive regulation* in highly competitive markets. An additional question is the kind of economy that is ideally suited to *responsive regulation* and whether the model can be adjusted for uncompetitive markets. In sum, the findings tend to refute the contention that industry bodies play a meaningful role in regulating white-collar crime. This finding is tentative, as it is influenced by business culture, market structure and state capacity.

#### 5.1.4 Cartels and beyond

More broadly, respondents' opinions imply that relationships between the nature of both the white-collar offence and offender may influence the scope for *responsive regulation* of white-collar crime. In the bread cartel case, evidence shows that people constructed stereotypical archetypes of cartels as 'secretive'<sup>198</sup> and cartelists as 'dodgy'.<sup>199</sup> Presumptive characterisations of cartels and cartelists may prompt people to believe that a strong state response is essential to curb cartels. However, such stereotypes may be common perceptions or misperceptions about the nature of cartelists. Research is necessary to ascertain the personality and psychology of cartelists. Such a conclusion prompts several questions. What is the nature of cartels and cartelists? What are popular perceptions of cartels and cartelists? How do the nature and perception of cartels and cartelists influence the scope for *responsive regulation* of white-collar crime? Beyond cartels, what is the relationship between other forms of white-collar, occupational and corporate crimes and the scope for *responsive regulation* of such crimes?

## 5.2 RE-VISITING THE REGULATORY PYRAMID

According to Braithwaite (2006: 886-889), the *regulatory pyramid*<sup>200</sup> amounts to a hierarchical arrangement of victims, offenders, regulators and sanctions. The state is at the pinnacle of the *pyramid*, and its responses to white-collar crime must be certain and swift in the tradition of

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<sup>198</sup> Respondent 6.

<sup>199</sup> Respondent 7.

<sup>200</sup> The *regulatory pyramid* is depicted above in Figure 3.

Beccaria (1764). The state's authority with respect to punishments for white-collar crime motivates both cooperative dialogue between the three sectors at lower tiers of the *pyramid* and corrective actions by offenders. The hierarchical aspect is the defining feature of the *pyramid* and symbolises the relative regulatory authority and capacity of the state, business and community sectors.

### 5.2.1 Adjusting responsive regulation for developing countries

Briefly, the findings in this project verify the contention that a developed criminal justice system encourages the community and business sectors to participate in regulating white-collar offences but show that the local state is ill-equipped to elicit such cooperation. Braithwaite (2006: 884-889) anticipated that criminal justice systems in developing countries may not be sufficiently established to motivate cartelists to cooperate with communities within the tiered *pyramid*. Braithwaite (2006: 889-894) recommends that the state should utilise capacity embedded within the business and community sectors to develop the criminal justice system to compel cartelists to adhere to regulations in response to coercive community actions within the *pyramid*.

This study confirms the importance of the community in regulating white-collar crime but shows that inequalities, knowledge and capacity gaps constrain such contribution. The local community sector cannot augment the state's regulatory capacity with knowledge, skills and resources it does not possess. Such research findings may seem to disprove Braithwaite's (2006: 889-894) recommendations. However, Braithwaite (2006: 884-889) also anticipated that the community in developing countries may lack the resources and skills to regulate white-collar crime within the *pyramid*. Braithwaite's (2006: 889-894) solution is that activists from both developing and developed countries should join forces to supplement knowledge and capacity deficits. Perhaps Imraahn and the community groups could have forged alliances with activists from other countries where the *Big Three* had financial interests. Tiger Brands has investments in other developing countries (Tiger Brands, 2022). However, activists in such spaces may experience similar capacity constraints. A further concern is that competing interests between the international and local activist communities may result in the former group using its resources as leverage to displace the local agenda. Overall, the respondents felt there were limited prospects for local activists to partner with the international community to

resolve capacity challenges in mobilising around the bread cartel. Such views also appear to refute Braithwaite's (2006: 889-894) solution.

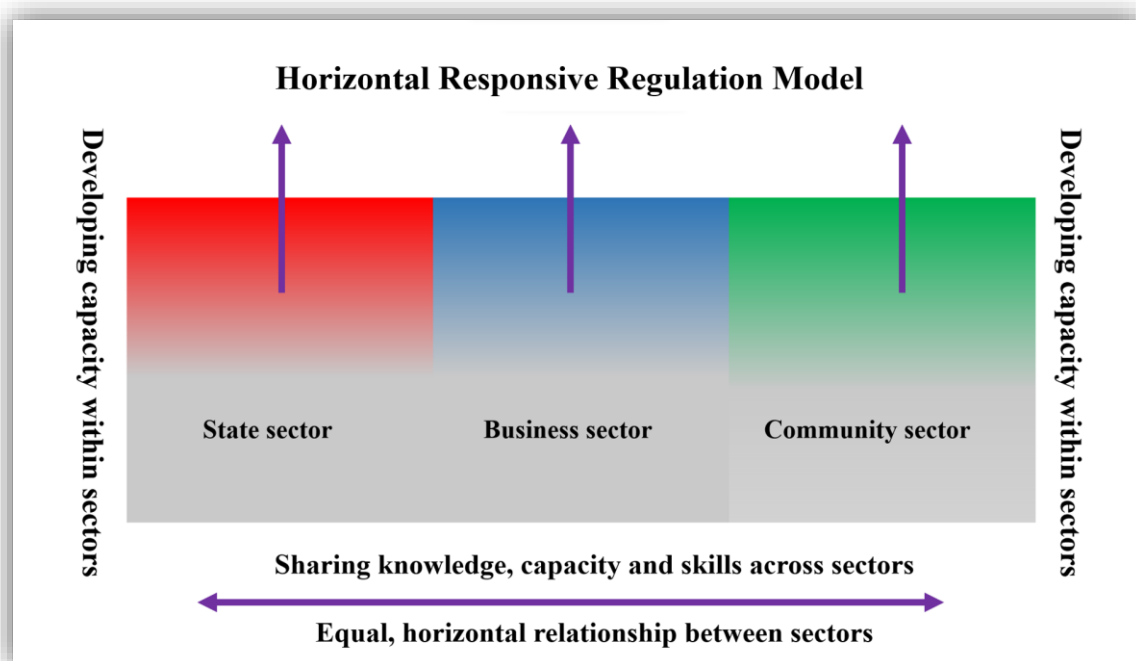
However, the above results are limited to the bread cartel case. This leads to questions. What characteristics of state, community and business enhance the scope for *responsive regulation* of white-collar crime more generally? What local sectors have had more success in regulating white-collar crime? Perhaps other industries have the necessary capacity to supplement state deficits. Additionally, specific international community groups that will support and not misdirect the local agenda may be able to assist local activists. The Treatment Action Campaign (TAC), as described by Grebe (2011: 849-852), provides a different perspective on state and community capacity. The TAC is an example of community activism that successfully combatted the crimes of the South African government and international pharmaceutical companies in denying the HIV/AIDS crisis and preventing the sick from accessing medications. Briefly, the TAC leaders used their collective experience and social connections to create a movement supported by scientists, politicians and local and international community organisations to sustain a fight against the state and pharmaceutical giants.

The juxtaposition of the bread cartel and the TAC has several implications. First, it confirms a connection between the nature and characteristics of state and community and the scope for *responsive regulation*. Different strata of state and community have different skills and face different challenges. This leads to a tentative conclusion that the community may have some capacity to provide limited support to augment the state's regulatory capacity and lends support to Braithwaite's (2006: 889-894) solution. Findings around international and local activist partnerships are mixed. Tentative conclusions are that these partnerships may or may not be able to supplement community capacity. The relationship between such partnerships, building local community capacity and the consequential impact on the scope for *responsive regulation* within the *pyramid* requires further investigation. This discussion also confirms the methodological limitations of a single case study and highlights the need for multiple case studies to investigate the connection between the nature and capacity of different strata of state and community and the scope for *responsive regulation* of white-collar crime.

### 5.2.2 Dropping the pyramid: From hierarchical to horizontal responsive regulation of white-collar crime in developing countries

The hierarchical structure of the *pyramid* has been emphasised to demonstrate the shortcomings of Braithwaite's (2006: 889-894) circular logic in adapting the *pyramid* for conditions in developing countries: A strong state and criminal justice system must be in place to encourage businesses to reform in response to community regulation. Weaknesses within the criminal justice system can be addressed by accessing community capacity. However, community regulation has little impact without a strong state. International support can help to offset challenges within the community sector. The circular logic has several implications. First, the state's capacity issues imply that the state is unlikely to pose a serious enough threat to solicit white-collar offenders to conduct business lawfully. This undermines the potential for *responsive regulation*. Second, the state in developing countries needs to draw on assistance from the local community to regulate white-collar crime. Third, the state's capacity issues and reliance on aid from other sectors in regulating white-collar crime questions its position at the pinnacle of the *pyramid* and the suitability of hierarchical relationships between the sectors. The principle guiding Braithwaite's solutions to capacity issues in developing countries - a sharing of capacity and resources across the state, business and community sectors - is sound. But a sharing of resources to bridge knowledge, capacity and skill gaps is far more reminiscent of a horizontal relationship between sectors rather than a *hierarchical* relationship. Braithwaite's *regulatory pyramid* should be adapted to a horizontal structure that more accurately represents the relationships, capacity constraints and sharing of resources common in developing nations. A horizontal relationship that emphasises sharing and co-creation of capacity is, arguably, a better approach to addressing the gaps in knowledge, skills and resources than Braithwaite's (2006: 889-894) circular logic. I developed the *horizontal responsive regulation model* to address such shortcomings. The model is depicted in Figures 4 and 5. Figure 4 shows the concept of the model. At the outset, representatives of state, business and community sectors should form an equal cooperative relationship and co-create a policy and adopt legislation to promote *horizontal responsive regulation (horizontal model)*, which has several goals. The sectors must work together and begin building a relationship and creating values that enhance the scope for *responsive regulation* of white-collar crime. The *horizontal model* aims to proactively build connections between the state, business and community sectors to share capacity, resources and skills. For instance, people from the Commission, Tribunal, NPA, and business and community organisations could form a panel (the panel). The primary

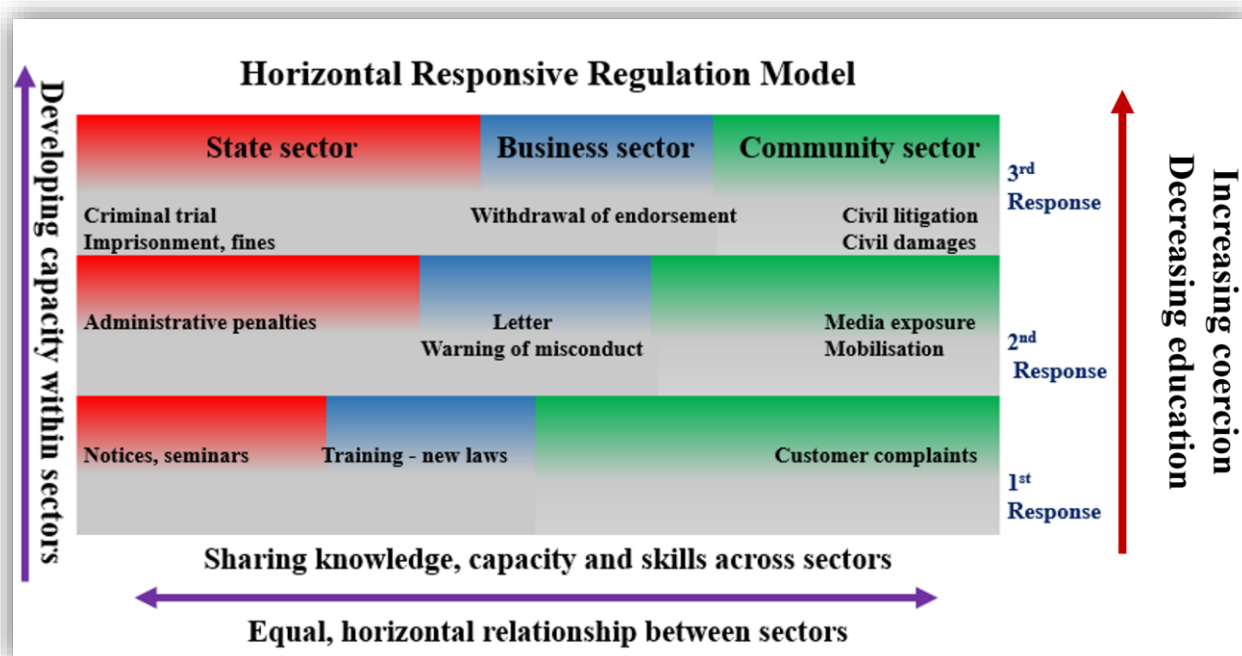
purpose of the *horizontal model* is to build capacity to regulate white-collar crime across all sectors. The panel could, for example, provide the business sector with full amnesty for all white-collar offences committed up until a specific date in exchange for full disclosure of all matters related to such crimes. The amnesty process will create a rich bank of data that can be used to build a better understanding of cartels (and all other white-collar crimes). The panel could use connections with international policing agencies to obtain case records of successful and unsuccessful prosecutions of cartels. A study of such rich datasets will help the sectors to develop the capacity to understand, detect, investigate and respond to white-collar crimes.<sup>201</sup>



**Figure 4. Conceptual Representation of the Horizontal Responsive Regulation Model**

<sup>201</sup> The data can be used for criminology research projects to generate evidence-based solutions to address regulatory challenges.

The overarching aim of the *horizontal model* is to develop the capacity to respond to white-collar crimes across all sectors. As capacity builds, a ‘tipping point’ will naturally be attained. At this point, the sectors may begin to specialise in their unique forms of responsive regulatory reactions to white-collar crime and continue to build capacity across sectors. The hierarchical relationship between the sectors, with the state at the pinnacle, falls away in the *horizontal model*. The equality and cooperation among sectors in developing the capacity to regulate white-collar crime are depicted in Figure 4.



**Figure 5. Horizontal Responsive Regulation Model**

The practical aspects of the *horizontal model* are depicted in Figure 5. As sectors specialise, the business and community sectors may focus on monitoring industries and business deals for common signs of collusion. The state most likely focuses on developing capacity within the NPA to prosecute and punish white-collar offences. The principles of *responsive regulation* guide the *horizontal model*. Responses to white-collar offenders should be informative and reintegrative, maximising education and minimising coercion. Community and business

sectors should play a more significant role in responding to a company's first offence. For instance, experts from the Commission and the South African Revenue Service may jointly assess a company's tax violations and compile a webpage with step-by-step information explaining the lawful procedures. (The information can be widely distributed to other companies within the industry to build capacity.) Responses to the first infraction are largely *reintegrative* and *restorative*. Repeat infractions will attract additional responses, becoming more coercive and less educational with each additional offence. For instance, community sector organisations may report the company's misconduct to the media, which will harm the company's reputation. Recidivists may face criminal and civil trials that aim to respectively prosecute the white-collar offender and obtain damages for their victims. The Commission, the NPA and community organisations may find ways to share resources for such trials. In other words, the *horizontal model* retains the tiered response to white-collar offences. The *horizontal model* addresses the circular logic undermining Braithwaite's (2006: 886-889) *pyramid* in developing countries. No regulatory system is perfect. The *horizontal model* shares many of the same shortcomings as the *pyramid*. The model is vulnerable to regulatory capture (Braithwaite, 2006: 888). Representatives from the state, business and community sectors coming together regularly and sharing information creates systemic opportunities for collusion and compromise at the expense of the community (Das Nair & Mncube, 2012: 2 & 14; Levi & Lord, 2017: 5 & 12). The *horizontal* and *pyramid models* do little to change the market and the economy, which are central in shaping opportunities for white-collar crimes. It is possible to use remedies cleverly to mitigate this risk. As suggested in the findings, the Commission could offer cartelists the option of paying a fine or entering a Black Economic Empowerment deal to establish a new bakery, which will improve inequality and increase competition in the industry. The *pyramid* and *horizontal models* are creative approaches designed to bring communities closer to the heart of regulation and challenge the existing criminal justice system (Braithwaite, 1989: 1-2 & 6-8; Braithwaite, 1996: 11-13). The question is, where does the community stand?

### 5.3 THE PROFESSIONALISATION OF CRIMINOLOGY

Braithwaite (1989: 1-2 & 6-8) advocates for more straightforward approaches to regulation that involve the community at the centre stage of the process. Key concepts discussed throughout this dissertation, including *reintegrative shaming*, *responsive regulation*, the *regulatory pyramid* and *restorative justice*, aim to return communities to the heart of the matter. Findings

suggest that competition law has become increasingly complicated, and senior advocates tend to represent parties at Commission and Tribunal proceedings and that this may displace the community from the regulatory process.

Consider the beginnings of the bread cartel debacle as set out by Weiner (2020: 61). Imraahn suspected the *Big Three* of price-fixing and approached popular journalist Maureen Maud<sup>202</sup> for assistance. Maureen put Imraahn in touch with attorney Malcolm Roup, who wrote letters of demand to the *Big Three*. During one of the first proceedings at the competition authorities in the bread cartel, former CEO of Tiger Brands, Nick Dennis, appeared before the Tribunal, represented by senior counsel Jeremy Gauntlett (Lewis, 2012: 193). Imraahn was present. People from COSATU, the Black Sash Trust, the Human Rights Commission and the National Consumer Forum represented the community (Lewis, 2012: 193). Imraahn and community representatives shared their views at the hearing (Lewis, 2012: 193). Imraahn also worked hard to keep the story alive in the media (Weiner, 2020: 62). Several years later, a chance meeting between Imraahn and attorney Charles Abrahams led to civil litigation that provided some financial relief for bread consumers and distributors (Abrahams, 2019: 168; Hoffman, 2016: 161-191). Years later, Imraahn found himself in the headlines again. An article titled '*Police slammed for the "illogical" arrest of two Elsies River activists*' (2020) demonstrates that the bread cartel case did little to restore the relationship between Imraahn and the *Big Three*. The article suggests that he was arrested for the alleged theft of bread crates. The article further speculates that the arrest may have been a continuation of the victimisation he suffered when the *Big Three* stopped supplying his business with bread back in 2006.

Findings show that the community may have been outgunned, faced adversity and made strategic errors in the mobilisation campaign. The relationship between Imraahn and the *Big Three* remains acrimonious. However, the community was not absent from regulatory processes. Nonetheless, evidence in the bread cartel case suggests that the community may face marginalisation from legal matters if current challenges, as set out in this project, are not addressed. Again, such findings are specific to the bread cartel case. The TAC is considered a successful example of community activism in the face of white-collar crime (Grebe, 2011: 849-852). Throughout this chapter, prohibitive assumptions within the model, as well as

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<sup>202</sup> Maureen Maud wrote a column called '*Argus Action*' in the Cape Argus that addressed consumer problems (Weiner, 2020: 61).

connections between variables, have been identified to emphasise the results of this study as well as indicate topics for future research. The conversation now turns to the concluding remarks.

## CHAPTER SIX: CONCLUSION

### 6.1 COMMUNITY AT THE HEART OF REGULATION

Braithwaite (1996: 13) writes:

A lack of theoretical imagination among criminologists has been one underrated reason for the failure of the criminal justice system.

The problem and the invitation are clear. We need to learn from the uncomfortable truth at the heart of crime regulation in the developed world: Legal systems cannot solve the problem of crime (Garland, 1996: 447-448). Braithwaite (1989: 6 & 8), along with other eminent academics,<sup>203</sup> suggests a return to community-based crime regulation. Such an approach involves the state, business and community sectors working together. This resonates in South Africa as *restorative justice* has always been a part of our traditions and customs (Omale, 2006: 43-44; McLeod, 2015; Skelton, 2013: 122). Despite such resonance, I sketch a few problems currently challenging South Africans to highlight the gap between theory and reality.

### 6.2 GROWING PAINS

Conditions in South Africa have worsened since Imraahn took on the bread cartel almost 17 years ago. The state has made little progress in delivering on its promises to South Africans in the last ten years (World Bank, 2023). Business is taking strain. Cable theft and general sabotage of infrastructure, as well as load shedding, push costs up and profits down (World Bank, 2023). Communities, in particular, are suffering. South Africa remains one of the most unequal countries in the world (Shifa, Mabhena, Ranchhod, & Leibbrandt, 2023: 2).<sup>204</sup> Frustrations have pushed people onto the streets in protests that threaten to erupt in violence (Stoltz, 2023: 8). The problems clearly illustrate the competing interests and values, tensions and anger are likely to characterise the relationship between state, business and community and

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<sup>203</sup> In *'Conflicts as property,'* Christie (1977: 1-2) takes inspiration from community dispute resolution in a Tanzanian village. *'Security governance, policing, and local capacity'* tells the story of the Zwelethemba community in the Western Cape that created a dispute resolution process to serve their unique values within the parameters of the conventional justice system (Froestad & Shearing, 2012: 6-7 & 51).

<sup>204</sup> In 2021, half of South Africans had access to 6 per cent of income, while the richest 10 per cent accumulated more than 80 per cent of income (Shifa et al, 2023: 2). In 2000, the poorest 40 per cent received 6 per cent of total income and the wealthiest 20 per cent earned more than 60 per cent of income (Beall et al, 2005: 683). Little has changed in 20 years.

add weight to findings that challenge the assumptions at the heart of Braithwaite's model (Shearing, 2020: 58; Walgrave, 2020: 7).

### 6.3 THE BIG BREAD DEBACLE?

I interviewed an independent bread distributor for this project. He suggested that the bread cartel was still in operation today and provided the following explanation:

When I think about the bread cartel? I think they are still busy with it. When you messaged me yesterday, the Blue Ribbon price went up, and it's the second time in three months that it's going up. And Sasko and Albany are doing the same thing. Within the space of three months, all their prices went up... I feel like they're still busy colluding... Like today, there's no Sasko on the market, and I feel Sasko did that deliberately because Blue Ribbon pushed their price up yesterday. Customers are more likely to go for the cheaper option. But if there is no more affordable option, they will take the expensive bread.<sup>205</sup>

Gebhardt (2014: 1 & 5) writes that the bread cartel matter has inadvertently created information asymmetry within the bread industry and beyond. Industry bodies used to prepare data that served practical purposes. For instance, the data would indicate how many new millers or bakers were needed to maintain production levels. This information would determine how many people needed to be trained for new positions. The industry bodies have stopped compiling data altogether. People within the bread business fear prosecution for sharing information to the extent that it is harming the industry. Jannie De Villiers, the executive director of the *Chamber of Baking*,<sup>206</sup> commented that his colleagues no longer chat about the rugby or the weather (Lewis, 2012: 203). However, the market remains incestuously concentrated – first, there are very few new bakeries, and second, senior employees who previously worked for Tiger Brands migrated to Premier and Pioneer Foods. Nonetheless, Gebhardt (2014: 1 & 5) focused on the bread prices in Krugersdorp, an area that was previously divided up between the bakeries. Gebhardt (2014: 1 & 5) confirmed that price competition between the manufacturers is evident. Ultimately, there are more questions than answers about

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<sup>205</sup> Respondent 4.

<sup>206</sup> Respondent 2 referred to Jannie De Villiers as "Mr Bread Industry".

the competitiveness of the bread industry. Data about the extent of concentration and competition is not readily available. As for Imraahn, he continues to serve his Elsie's River community as a passionate activist and recently celebrated his mother's 80<sup>th</sup> birthday.<sup>207</sup>

#### 6.4 FROM FINDINGS TO FUTURE RESEARCH

In this sub-section, I draw links between crucial research findings, prohibitive assumptions and the shortcomings of the *responsive regulation* model. My purpose is two-fold. I intend to highlight directions for urgent future research and build a case for re-imagining the *responsive regulation* model to regulate white-collar crime in the conditions typically found in developing countries. The *horizontal responsive regulation model*, as described in Chapter Five, is a rudimentary first step in this process.

Research evidence confirms that the community sector contributes to regulating white-collar crime (Braithwaite, 2006: 884-894). Such community contribution appears more circumscribed in the bread cartel case than the TAC (Grebe, 2011: 849-852). There is a relationship between the nature of the community and the scope for *responsive regulation*. The nuances of this relationship must be understood to discern the nature and characteristics of a community best suited to *responsive regulation*. Such a project has at least two implications. First, the results can inform training programs to teach the relevant characteristics to local communities. Second, communities that embody or resemble this profile can be identified to begin pilot regulatory programs experimenting with *responsive regulatory* approaches. Findings substantiate the supposition that a developed criminal justice system must be in place to support both the community and business sectors in regulating crime (Braithwaite, 2006: 884-886). There is little evidence to suggest that the business sector can self-regulate in contrast to the precepts of the *responsive regulation* model (Braithwaite, 2006: 886; 1993: 17). Business culture and too few competitors were cited as two factors impeding industry bodies in regulating white-collar crime. All South African industries are not equally concentrated. *Responsive regulatory* principles can be adopted in newer industries (untarnished by apartheid-era and democracy-era corrupt business cultures) that are more competitive.

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<sup>207</sup> Imraahn consented to me writing about his mother's birthday via WhatsApp on 3 November 2023.

The biggest challenges to the *responsive regulation* model concern the potentially faulty assumptions at the model's core and the adjustments that Braithwaite makes for developing countries. Shearing (2020: 58) and Walgrave (2020: 7) identify the two assumptions at the core of Braithwaite's models. There is normative consensus and relative equality among the state, community and business sectors. Research evidence in the bread cartel case challenge these assumptions. Findings suggest that there are competing value systems and power differentials between the sectors. This seems likely as it is often the case among plural regulatory bodies (Baker, 2012: 276-279). The evidence is a clear invitation to delve deeply. Braithwaite's work must be investigated to expose the assumptions embedded in his models. More excitingly, the nature of as well as the perceptions of the relationships between the state, community and business sectors must be explored. Arguably, this research holds the most promise for the scope of *responsive regulation* in regulating white-collar crime in South Africa. Braithwaite's (2006: 889-894) adjustments to *responsive regulation* for developing spaces exposed a faulty circular logic. Such logic does not entirely invalidate his suggestions for developing countries' capacity gaps – activists building bridges across the developing-developed world divide proved successful in at least two cases, the TAC and the Nestlé scandal (Gerber & Jensen, 2000: 700, 705 & 707; Grebe, 2011: 849-852). Feminist and white-collar criminologists often lament that theorists cannot 'add gender' or 'add white-collar crime' respectively to existing theories and 'stir' and expect good theories. Similarly, Braithwaite may be critiqued for simply 'adding developing countries' to the *responsive regulation* model and 'stirring,' which resulted in a faulty logic to the enduring problem of capacity deficits in developing countries. These observations led to the development of the *horizontal responsive regulation* model. Findings in the bread cartel case point to several challenges that limit the scope for *responsive regulation* of white-collar crime. Such factors include, but are not limited to, racial and income inequalities, competing value systems, power differentials and antagonism between the state, community and business sectors, capacity gaps, an inheritance of collusion in the business sector and an uncompetitive economy. I propose that *responsive regulation* should be re-created to address such issues and build towards normative consensus, cooperative relationships between all sectors, and overall increased capacity.

## **6.5 CONDITIONS THAT ENHANCE OR UNDERMINE... A LITTLE OF BOTH**

While writing this dissertation, I was convinced that the data would reveal that the conditions and structure in South Africa would undermine the scope for *responsive regulation* of white-

collar crime. My supervisor proposed that I re-phrase my research question to ask what conditions enhanced the scope for *responsive regulation* of white-collar crime in South Africa. The answers I have found are far more subtle than either position and indicate factors that both *enhance* and *undermine* such scope and, more importantly, point to relationships and questions for future research that can only help to improve the regulation of white-collar crime in South Africa.

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## APPENDICES

### APPENDIX A

#### BASIC INTERVIEW GUIDE 1:

#### FOR REPRESENTATIVES FROM LEGAL REGULATORY MECHANISMS

##### SECTION 1 INFORMATION SHEET AND CONSENT FORM

Thank you for meeting with me. Before we start, I'd like to re-visit/recap the information sheet and the consent form that I emailed to you before the interview.

##### Information sheet:

Guide the informant through the information sheet.

Invite questions from the informant.

Answer the informant's questions.

##### Consent form:

- Guide the informant through the consent form point by point.
- Note down the informant's responses as well as record the informant's responses (provided that the informant agrees to the interview being recorded).

##### SECTION 2 INFORMANT DETAILS

1. What is your name?
2. What is your occupation?
3. What is your current position or job title?
4. Are you participating in this research as a representative of any particular organisation(s)?

5. Where do you 'fit' in the network of regulatory systems around cartels?

Probes:

Examples of legal regulatory mechanisms: Are you employed by the Competition Tribunal, Competition Commission or NPA?

- Examples of social regulatory mechanisms: For instance, are you a bread distributor or involved with an NGO or an industry body?

### **SECTION 3 SUBSTANTIVE QUESTIONS**

#### **Introductory Question**

6. In general, what are your thoughts and reflections on the bread cartel story?

Probes:

What do you think about the way that the bread cartel unfolded from complaint to completion?

What do you think of the outcomes?

Was justice served?

#### **The Legal System**

7. Can you please describe the key policies and statutes that are in place for the regulation of cartels?

Probes:

What factors and considerations influence these policies?

What are the strengths of these policies and statutes?

What in your view are the key weaknesses or gaps of these policies and statutes?

How would you change the statutes and policies?

8. What are the key bodies that regulate cartels in South Africa?

9. How effective are these bodies in regulating cartels?

Probe:

What changes do you think are necessary to improve the effectiveness of these bodies in regulating cartels?

### **Industry Bodies**

10. What do you think about industry bodies as a possible regulatory mechanism for (or a way of regulating) cartels?

11. What do you think is the role and function of the Chamber of Baking?

Probe:

What role, if any, do you think the Chamber of Baking played in the bread cartel saga?

### **Restorative Justice**

Restorative justice is an approach to justice that allows perpetrators, victims and community representatives to come together to find workable solutions for all parties.

12. Do you think there is a role for restorative justice in the regulation of cartels?

13. What changes do you think would be necessary to adopt a restorative justice approach for regulating cartels?

Probes:

- Do you think changes like new legislation or an amendment to existing legislation are necessary?
- Could the role of existing bodies be expanded?
- Could the people already employed within existing bodies be trained?

- Would you say that the entire system requires re-imagining or re-creation to promote restorative justice?

### **Social mobilisation**

Social mobilisation may be described as individual or community action to bring about a desired social change. Social mobilisation can take the form of *on-the-ground* protest action or consumer boycotts or even raising awareness via online social platforms.

14. What do you think about social mobilisation as a possible regulatory mechanism for (or a way of regulating) cartels?

#### Probes:

- What do you think are the benefits of social mobilisation for the victims and perpetrators of cartels?
- What do you think are the pitfalls of social mobilisation for the victims and perpetrators of cartels?
- How much of a role did social mobilisation play in the bread cartel?
- What are the reasons for so little/much social mobilisation around the bread cartel?
- How can social mobilisation be strengthened in South Africa?

15. Lastly, what lessons about regulating white-collar crime and cartels, can be learnt from the bread cartel?

## **APPENDIX B**

### **BASIC INTERVIEW GUIDE 2:**

#### **FOR REPRESENTATIVES FROM SOCIAL REGULATORY MECHANISMS**

##### **SECTION 1 INFORMATION SHEET AND CONSENT FORM**

Thank you for meeting with me. Before we start, I'd like to re-visit/recap the information sheet and the consent form that I emailed to you before the interview.

###### Information sheet:

Guide the informant through the information sheet.

Invite questions from the informant.

Answer the informant's questions.

###### Consent form:

Guide the informant through the consent form point by point.

Note down the informant's responses as well as record the informant's responses (provided that the informant agrees to the interview being recorded).

##### **SECTION 2 INFORMANT DETAILS**

1. What is your name?
2. What is your occupation?
3. What is your current position or job title?
4. Are you participating in this research as a representative of any particular organisation(s)?
5. Where do you 'fit' in the network of regulatory systems around cartels?

###### Probes:

Are you a part of a legal or social regulatory mechanism?

- Legal regulatory mechanism: Are you employed by the Competition Tribunal, Competition Commission or NPA?
- Social regulatory mechanism: For instance, are you a bread distributor or involved with an NGO or an industry body?

## SECTION 3 SUBSTANTIVE QUESTIONS

### Introductory Question

6. In general, what are your thoughts and reflections on the bread cartel story?

#### Probes:

What do you think about the way that the bread cartel unfolded from complaint to completion?

What is your opinion of the outcomes?

Was justice served?

### Social regulatory mechanisms

7. What are the key social regulatory mechanisms that regulate cartels?

#### Probe:

What about employees, industry bodies, NGOs, social activists or journalists?

Can you think of any other social regulatory mechanisms that could help to regulate cartels?

8. What do you think of social groups and bodies as regulatory mechanisms for (or a way of regulating) cartels?

#### Probes:

How do social regulatory mechanisms work to regulate cartels?

What are the strengths of this network of social regulatory mechanisms?

- What are the weaknesses of this network of social regulatory mechanism?
- How can the capacity of social regulatory mechanisms be improved or strengthened?

## **Restorative Justice**

Restorative justice is an approach to justice that allows perpetrators, victims and community representatives to come together to find workable solutions for all parties.

9. Do you think there is a role for restorative justice in the regulation of cartels?

10. What changes do you think would be necessary to adopt restorative justice approach for regulating cartels?

### Probes:

- Do you think changes like new legislation or an amendment to existing legislation are necessary?
- Could the role of existing bodies be expanded?
- Could the people already employed within existing bodies be trained?
- Would you say that the entire system requires re-imagining or re-creation to promote restorative justice?

## **Social mobilisation**

Social mobilisation may be described as individual or community action to bring about a desired social change. Social mobilisation can take the form of *on-the-ground* physical protest action or consumer boycott or even raising awareness via online social platforms.

11. What do you think about social mobilisation as a possible regulatory mechanism for (or a way of regulating) cartels?

### Probes:

- What do you think are the benefits of social mobilisation for the victims and perpetrators of cartels?
- What do you think are the pitfalls of social mobilisation for the victims and perpetrators of cartels?
- How much of a role did social mobilisation play in the bread cartel?

- What are the reasons for so little/much social mobilisation around the bread cartel?
- How can social mobilisation be used as a tool to achieve the desired outcome?
- How can social mobilisation be strengthened in South Africa?

### **The Legal System**

12. What are the key policies and statutes in place for the regulation of cartels?

Probes:

- What do you think is particularly problematic about these policies and statutes?
- How would you change the statutes and policies?

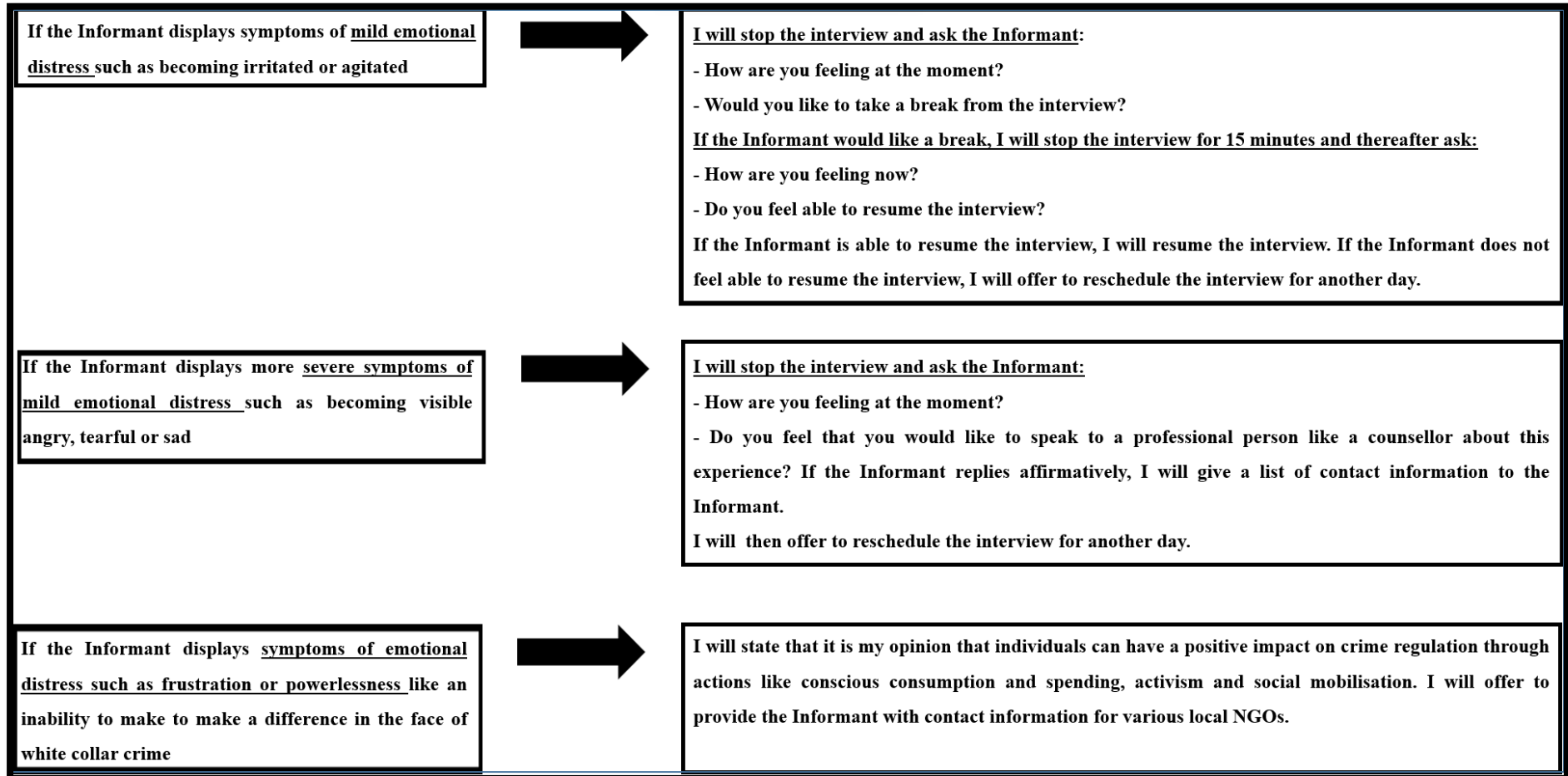
13. What are the key bodies involved in regulating cartels in South Africa?

Probes:

- What do you think is particularly problematic about these bodies?
- How would you change these bodies?

14. Lastly, what lessons about regulating white-collar crime and cartels, can be learnt from the bread cartel?

**APPENDIX C**  
**DISTRESS PROTOCOL**



## APPENDIX D

## CONTACT INFORMATION FOR RESPONDENTS: COUNSELLING SERVICES

Organisation	Contact Numbers	Website/Email Addresses	Physical Addresses
<p><b>Lifeline Western Cape</b></p> <p>This organisation provides access to <i>free</i> mental health care services</p>	<p>Counselling Line: 021 461 1111</p> <p>WhatsApp Call: 063 709 2620</p> <p>Cape Town Office: 021 461 1113</p> <p>Khayelitsha Office: 021 361 9197</p>	<p>Website: <a href="https://lifelinewc.org.za/">https://lifelinewc.org.za/</a></p> <p>General enquiries: <a href="mailto:info@lifelinewc.org.za">info@lifelinewc.org.za</a></p>	<p>Cape Town Office: 23B (Unit 1-4) Waverley Business Park, Kotzee Road, Mowbray, 7925</p> <p>Khayelitsha Office: Catholic Welfare and Development Centre, E505 Scott Street, Khayelitsha, Cape Town, 7784</p>
<p><b>The Counselling Hub</b></p> <p>This organisation provides access to <i>low-cost</i> mental health care services</p>	<p>To make a booking, call:</p> <p>Landline: 021 462-3902</p> <p>Mobile: 067 235-0019</p>	<p>Website: <a href="https://counsellinghub.org.za/">https://counsellinghub.org.za/</a></p>	<p>Cape Town Office: 52/54 Francis St Woodstock Cape Town South Africa</p>
<p><b>South African Depression and Anxiety Group (SADAG)</b></p> <p>This organisation provides links to many different mental health care services</p>	<p>Call: 0800 567 567</p> <p>24 hour helpline: 0800 456 789</p>	<p>Website: <a href="https://www.sadag.org/">https://www.sadag.org/</a></p> <p>Counselling queries: zane@sadag.org</p>	

## APPENDIX E

## CONTACT INFORMATION FOR RESPONDENTS: COMMUNITY ORGANISATIONS

Organisation	Contact Numbers	Website/Email Addresses	Physical Addresses
<p><b>Right2Know Campaign</b></p> <p>This is a social mobilisation and advocacy group.</p>	<p>Noma Mbayo is the Western Cape Organiser. Contact information:</p> <p>Landline: 021 447 1000</p> <p>Mobile: 073 8937140</p>	<p>Website: <a href="https://www.r2k.org.za/">https://www.r2k.org.za/</a></p> <p>Email address: <a href="mailto:westerncape@r2k.org.za">westerncape@r2k.org.za</a></p>	<p>107 Community House, 41 Salt River Road, Salt River, Cape Town, 7925</p>
<p><b>Corruption Watch</b></p> <p>This organisation is the South African partner of Transparency International and investigates and mobilises against corruption</p>	<p>Landline: 011 242 3900</p> <p>To report corruption: 0800 023 456</p> <p>There are several other contact numbers on the website for services like ‘call-backs’.</p>	<p>Website: <a href="https://www.corruptionwatch.org.za/">https://www.corruptionwatch.org.za/</a></p> <p>Email address: <a href="mailto:info@corruptionwatch.org.za">info@corruptionwatch.org.za</a></p>	<p>8<sup>th</sup> Floor, South Point Corner, 87 De Korte Street, Braamfontein, 2001, Johannesburg</p>

## APPENDIX F

## CERTIFICATE OF APPROVAL FOR ETHICAL CLEARANCE

Faculty of Law: **Research Ethics Committee**

Private Bag X3 ▪ Rondebosch ▪ 7701 ▪ South Africa  
 Room 6.29 ▪ Kramer Building ▪ Middle Campus  
 Tel: +27 021 650 3080 Fax: +27 021 650 5660  
 E-mail: [lamize.viljoen@uct.ac.za](mailto:lamize.viljoen@uct.ac.za) Internet: [www.law.uct.ac.za](http://www.law.uct.ac.za)

**Certificate of Approval for Ethical Clearance**

PRINCIPAL INVESTIGATOR/SUPERVISOR: ELRENA VAN DER SPUY	<b>ETHICS REFERENCE NUMBER: L0186-2021</b>
STUDRNT: VARSHA PATEL – [PTLVAR001]	ORIGINAL APPROVAL DATE: 06-SEPTEMBER-2021
FACULTY: LAW	APPROVAL EXPIRY DATE: 05-SEPTEMBER-2022
DEPARTMENT: PUBLIC LAW	

PROJECT TITLE: An Exploratory Analysis of South Africa's Regulatory Mechanisms for White Collar Crime: A Single Case Study of the Bread Cartel.

PURPOSE OF RESEARCH: Masters of Law degree in Criminology, Law and Society. This research considers alternative ways to reduce cartel activity so that the legal system is one part of a broader network of regulatory mechanisms including components such as industry bodies, consumer groups, non-government organisations and social activists.

**CONDITIONS OF APPROVAL**

This Certificate of Approval is valid for the above term provided there is no change in the protocol.

**Modifications**

To make any changes to the approved research procedures in your study, please submit a formal "Request for a Modification" to the REC Administrative Office. You must receive ethics approval before proceeding with your modified protocol.

**Renewals**

Your ethics approval must be current for the period during which you are recruiting participants or collecting data. To renew your protocol, please submit a "Request for Renewal" form before the expiry date on your certificate. You are responsible for submitting this by at least 2 months prior to the expiry date of clearance date issued.

**Project Closures**

When you have completed all data collection activities and will have no further contact with participants, please formally notify the REC: Law as well as your supervisor where applicable.

**Certification**

This certifies that the University of Cape Town Law Faculty's Research Ethics Committee has examined this research protocol and concluded that, in all respects, the proposed research meets the appropriate standards of ethics as outlined by the University of Cape Town Research Regulations Involving Human Participants.

\_\_\_\_\_  
**Dr Shane Godfrey**  
**LAW REC: LEAD REVIEWER**

**APPENDIX G**

**INVITATION LETTER FROM**

**EMERITUS PROFESSOR ELRENA VAN DER SPUY**



**Department of Public Law**

**Wilfred and Jules Kramer Law Building**  
**Middle Campus**  
**Private Bag X3**  
**RONDEBOSCH, 7701 South Africa**  
**Tel: +27 21 650 2988**  
**E-mail: [elrena.vanderspuy@uct.ac.za](mailto:elrena.vanderspuy@uct.ac.za)**  
**Internet: <http://www.publiclaw.uct.ac.za/>**

23 September 2021

**TO WHOM IT MAY CONCERN**

**Conducting research on the bread cartel: Exploring the challenges for regulation**

Varsha Patel, is registered for a LLM degree in the *Criminology, Law and Society* Programme in the Faculty of Law at the University of Cape Town. As part of the requirements of the degree she has to complete a minor dissertation on a topic of her choice. Ms Patel will be focusing on cartels focusing on the challenges relating to the regulation of cartels. In exploring this issue, she will be conducting a case study on the South African bread cartel.

Ms Patel has identified several individuals knowledgeable about the issues to be interviewed. In my capacity as supervisor, I would like to ask that you consider participating in her qualitative study. The issues relating to the regulation of cartels are complex and important. Her study will benefit greatly from inputs of persons like yourself. Be assured that Ms Patel's study will comply with the ethical requirements of doing research involving human subjects as required of students at UCT.

Thank you for considering her request to you to be interviewed.

Sincerely

Elrena van der Spuy (Prof.)  
 Centre of Criminology  
 Cell 0828909080

**APPENDIX H**  
**INFORMATION SHEET (INDIVIDUAL)**

**INFORMATION SHEET FOR RESEARCH PROJECT ON THE BREAD CARTEL**

**Introduction:** My name is Varsha Patel. I am a student at UCT registered for the LLM minor dissertation. My research is about cartels and how best to regulate cartels. I am studying this by doing a case study of the South African bread cartel.

**Background:** The bread cartel operated lawfully during Apartheid and continued operating unlawfully after 1994. In 2006, the Competition Commission received a complaint that bread producers were fixing the price of bread. Ultimately, Tiger Brands, Premier Foods, Pioneer Foods and Foodcorp were found to have unlawfully fixed prices between 1994 and 2006. I am researching the bread cartel to understand how regulatory mechanisms operate as well as the kinds of challenges that regulatory mechanisms experience. I hope to draw lessons from this research for better ways to regulate cartels going forward.

**The Nature of Participation**

Voluntary participation: Participation is voluntary. If you choose not to participate, there will be no negative consequence for you. If you choose to participate, you may withdraw from the research at any stage without consequence. That said, I would be grateful for your participation in my research project.

The interview: I would like you to participate by taking part in one 60 to 90 minute semi-structured interview with me. I am interested in asking your opinion on the events of the bread cartel, the legal framework for regulating cartels and topics like social mobilisation in response to the cartel. Your interview data will be aggregated with all the interview data and the transcripts will be kept safely.

Costs of participation: For face-to-face interviews, I will travel to meet you at the location that is most convenient for you. For online interviews, the cost to you will be data. I offer to transfer sufficient data to you before the interview.

Minimal risk: This research is extremely unlikely to cause you any physical, social or legal harm. Should the interview cause you emotional discomfort, we can take a short break from the interview.

**Further queries**

- If you have questions, please contact me at [PTLVAR001@mvuct.ac.za](mailto:PTLVAR001@mvuct.ac.za) or 074 558 5850.
- If you have concerns about the research, its risks and benefits or about your rights as a research participant in this study, you may contact the Law Faculty Research Ethics Committee Administrator, Mrs Lamize Viljoen, at 021 650 3080 or at [lamize.viljoen@uct.ac.za](mailto:lamize.viljoen@uct.ac.za). Alternatively, you may write to the Law Faculty Research Ethics Committee Administrator, Room 6.29, Kramer Law Building, Law Faculty, UCT, Private Bag, Rondebosch 7701.

**THANK YOU**

## APPENDIX I

### INFORMATION SHEET (ORGANISATION REPRESENTATIVE)

#### INFORMATION SHEET FOR RESEARCH PROJECT ON THE BREAD CARTEL

**Introduction:** My name is Varsha Patel. I am a student at UCT registered for the LLM minor dissertation. My research is about cartels and how best to regulate cartels. I am studying this by doing a case study of the South African bread cartel.

**Background:** The bread cartel operated lawfully during Apartheid and continued operating unlawfully after 1994. In 2006, the Competition Commission received a complaint that bread producers were fixing the price of bread. Ultimately, Tiger Brands, Premier Foods, Pioneer Foods and Foodcorp were found to have unlawfully fixed prices between 1994 and 2006. I am researching the bread cartel to understand how regulatory mechanisms operate as well as the kinds of challenges that regulatory mechanisms experience. I hope to draw lessons from this research for better ways to regulate cartels going forward.

#### **The Nature of Participation**

Voluntary participation: Participation is voluntary. If your organisation chooses not to participate, there will be no negative consequence for your organisation. If your organisation chooses to participate, your organisation may still withdraw from the research at any stage without consequence. That said, I would be grateful for and appreciative of your organisation's participation in my research project.

Interview: I would like a representative of your organisation to participate in my research by taking part in a 60 to 90 minute semi-structured interview with me. I am interested in asking your representative questions on the events of the bread cartel, the legal framework regulating cartels and topics like social mobilisation in response to the cartel. The interview data will be aggregated with all the interview data and the transcripts will be kept safely.

Costs of participation: For face-to-face interviews, I will travel to meet your representative at the location that is most convenient for him or her. For online interviews, the cost to your organisation will be data. I offer to transfer sufficient data to your representative before the interview.

Minimal risk: This research is extremely unlikely to cause your organisation any social or legal harm. Should the interview cause your representative emotional discomfort, we can take a short break from the interview.

#### **Further queries**

- If you have questions, please email me at [PTLVAR001@myuct.ac.za](mailto:PTLVAR001@myuct.ac.za) or call/message me at 074 558 5850.
- If you have concerns about the research, its risks and benefits or about your rights as a research participant in this study, you may contact the Law Faculty Research Ethics Committee Administrator, Mrs Lamize Viljoen, at 021 650 3080 or at [lamize.viljoen@uct.ac.za](mailto:lamize.viljoen@uct.ac.za). Alternatively, you may write to the Law Faculty Research Ethics Committee Administrator, Room 6.29, Kramer Law Building, Law Faculty, UCT, Private Bag, Rondebosch 7701.

THANK YOU

## APPENDIX J

## CONSENT FORM (INDIVIDUAL)

## CONSENT FORM FOR RESEARCH PROJECT ON THE BREAD CARTEL

Please read the following information and indicate your response in the space provided:

Voluntary Participation: Do you consent to participate in this research project? Yes: \_\_\_ No: \_\_\_

Audio Recording: I would like to record the audio of the interview to ensure that data analysis is accurate. Please note that you may choose to opt out of the interview being recorded, in which case I will rely exclusively on my notes. Do you consent to the audio of the interview being recorded? Yes: \_\_\_ No: \_\_\_

Confidentiality: I can take steps to anonymise the interview data so that the data and written research findings are not linked to your name, occupation or place of employment. This means that the data and the dissertation will refer to you as *Informant 1 from the NGO sector* or *Informant 2 from the legal sector* (for example). The file that matches your personal information and data will be kept separately and securely. Would you like me to anonymise your personal information? Yes: \_\_\_ No: \_\_\_

Continued Voluntary Participation: Would you like me to email you a brief summary of the key findings of the minor dissertation once it is completed? Yes: \_\_\_ No: \_\_\_

Preservation of data: I would like to preserve the interview data on a secure cloud data storage system for 2 years after the project has been completed so that I can possibly re-use the data in future projects. The data will be archived anonymously. The consent forms will be kept separately and securely. Do you consent to the preservation and re-use of the interview data after the project is completed? Yes: \_\_\_ No: \_\_\_

Please write your name and sign below as confirmation of your informed consent to participate in this research project.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please remember that participation in this research project is voluntary and that you may withdraw from participation at any stage of the research process should you wish to do so. That said, I would like to express my appreciation and gratitude to you for participating in my research project.

THANK YOU

## APPENDIX K

## CONSENT FORM (ORGANISATION REPRESENTATIVE)

## CONSENT FORM FOR RESEARCH PROJECT ON THE BREAD CARTEL

Please read the following information and indicate your response in the space provided:

Representation: Do you confirm that you are authorised to represent \_\_\_\_\_ (fill in the name of the organisation). Yes: \_\_\_ No: \_\_\_

Participation: Do you consent to the organisation's participation in this research? Yes: \_\_\_ No: \_\_\_

Audio Recording: I would like to record the audio of the interview to ensure that data analysis is accurate. Please note that you may choose to opt out of the interview being recorded, in which case I will rely exclusively on my notes. Do you consent to the audio of the interview being recorded? Yes: \_\_\_ No: \_\_\_

Confidentiality: I can take steps to anonymise the interview data so that the data and written research findings are not linked to your organisation. This means that the data and the dissertation will refer to your organisation as being from the *NGO sector or legal sector* (for example). The file that matches your organisation's information to the data will be kept separately and securely. Would you like me to anonymise your organisation's information?

Yes: \_\_\_ No: \_\_\_

Continued Voluntary Participation: Would you, as a representative of your organisation, like me to email you a brief summary of the findings of the minor dissertation once it has been completed? Yes: \_\_\_ No: \_\_\_

Preservation of data: I would like to save the interview data on a secure cloud data storage system for 2 years after the project has been completed so that I can possibly re-use the data in future projects. The data will be archived anonymously. The consent forms will be kept separately and securely. Do you consent to the preservation and re-use of the interview data after the project is completed? Yes: \_\_\_ No: \_\_\_

Please complete the section below as confirmation of your informed consent on behalf of your organisation to participate in this research project.

Representative: \_\_\_\_\_ Organisation: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please remember that participation in this research project is voluntary and that your organisation may withdraw from participation at any stage of the research process. That said, I would like to express my appreciation and gratitude to you for participating in my research project.

THANK YOU