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Strategic ambiguity and leaders' responsibility beyond maximising profits

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Abstract

Australia has the world‟s highest number of documented cases of mesothemilia, a lung cancer caused by asbestos, and the building products manufacturer, James Hardie (Australia) has been accused for causing over half of these cases (Hills, 2005). The Australian Securities and Investment Commission (ASIC) sued several executives of James Hardie for misleading stakeholders on asbestos victim compensation, and failing to act with care and diligence (ASIC, 2009). In a landmark decision in Australian corporate governance, the New South Wales Supreme Court held in April 2009 that James Hardie‟s chairwoman, nine directors and executives violated the law by approving and issuing misleading public statements about the financial 2 adequacy of a foundation set up to compensate Hardie‟s asbestosis victims (John, 2009). Other executives were also held liable for breaching their duty to act with care and diligence. The ASIC chairman encouraged corporate boards to carefully consider the court‟s decision, and “assess what improvements they can make to their decision making processes, the way they convey decisions to the market and in the way they conduct investor briefings….” (ASIC, 2009).

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Strategic Ambiguity and Leaders' Responsibility

Beyond Maximising Profits

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THE PURPOSE OF THE PAPER

Australia has the world's highest number of documented cases of mesothemilia, a lung cancer caused by asbestos, and the building products manufacturer, James Hardie (Australia) has been accused for causing over half of these cases (Hills, 2005). The Australian Securities and Investment Commission (ASIC) sued several executives of James Hardie for misleading stakeholders on asbestos victim compensation, and failing to act with care and diligence (ASIC, 2009). In a landmark decision in Australian corporate governance, the New South Wales Supreme Court held in April 2009 that James Hardie's chairwoman, nine directors and executives violated the law by approving and issuing misleading public statements about the financial adequacy of a foundation set up to compensate Hardie's asbestosis victims (John, 2009). Other executives were also held liable for breaching their duty to act with care and diligence. The ASIC chairman encouraged corporate boards to carefully consider the court's decision, and "assess what improvements they can make to their decision making processes, the way they convey decisions to the market and in the way they conduct investor briefings…." (ASIC, 2009).

The recent financial crisis and corporate scandals have further magnified the importance of responsible leadership to build and sustain businesses serving multiple stakeholders (Maak, 2007; Maak and Pless, 2006). By analyzing the James Hardie asbestos compensation case in Australia, we examine the role of strategic ambiguity (SA) on leaders' extended responsibility beyond profit maximization. SA reflects the deliberate or intentional use of ambiguity or vagueness in strategic processes. SA can be used by organizations to typically emphasize an interpretation where the executive and organizational behavior is viewed more favorably (Ulmer and Sellnow, 1997). The paper reveals how James Hardie leaders, against mounting community and stakeholder pressure, took cover behind their purported primary obligation of maximizing shareholder returns through a campaign that was strategically ambiguous. While Hardie leaders engaged in minimum social responsibility standards, the use of strategic ambiguity appears to have helped the company to avoid engaging in virtuous action extending beyond maximizing profits.

THEORETICAL BACKGROUND

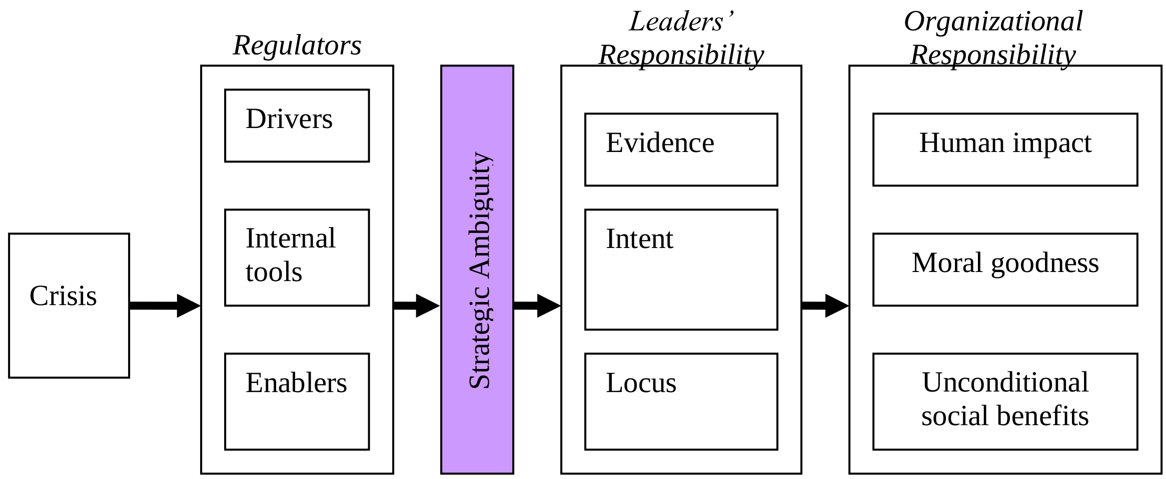
Using Våland and Heide's (2005) regulators of organizational crisis, Ulmer and Sellnow's (1997, 2000) ethic of significant choice, and Bright, Cameron and Caza's (2006) organizational virtuousness, we propose a Strategic Virtuousness Model as a framework for analyzing leader and organizational responsibility in SA associated corporate action.

Regulators of organizational crisis

The response to an organizational crisis can be determined by several factors. According to Våland and Heide (2005), the response to a crisis passes through three "regulators", which influence the significance of the episode. We extend their model and present the Strategic Virtuousness model as illustrated in Figure 1.

Drivers lead to increased emphasis on the crisis, increased awareness among stakeholders, and public media interest. More integration/higher interdependencies between companies are some examples (Våland and Heide, 2005). *Internal Tools* refer to the firm's own rules, processes and structures that safeguard a "responsible" company. Measurements, auditing and reporting are tools to strengthen internal efforts to comply with the company's policies and thereby build trust with external stakeholders.

Figure 1: The Strategic Virtuousness Model



The strength of the internal tools is also influenced by organizational consistency. *Enablers* are generally designed to support, measure and assist in implementation, and enhance accountability for corporate performance. Våland and Heide (2005) point out that the effectiveness of the enablers is also influenced by the level of consistency.

Thus the *drivers*, *internal tools* and *enablers* constitute regulators, which may reduce or amplify the effects of the company's response to a crisis. In some situations, the impact of the event may nearly diminish because public media show no interest in the episode or the company has the necessary tools to defuse the situation. In other circumstances, the incident may cause a significant uproar because it is illegal or in conflict with internal rules of conduct and ends up as headline news (Våland and Heide, 2005). In these instances, SA is used by organizations to manage stakeholder perceptions of organizational and leader responsibility.

The ethic of significant choice

In general, SA can be employed in four roles (Eisenberg, 2007; Eisenberg and Goodall, 1977). First, the use of SA allows for diversity of views or interpretations, and promotes inclusiveness and unity in its diversity. Second, SA can be used to preserve privileged positions by shielding individuals from scrutiny or the revelation of sensitive or confidential details, while providing a general overview or picture. Third, is its deniability. Vagueness in communication has the potential and flexibility to develop future options by testing reactions to new ideas and minimizing conflicts. Finally, SA facilitates organizational change by allowing interpretive room for leaders to change behavior and course of action for the future.

By employing SA, leaders have opportunity to emphasize an interpretation where the organization is viewed most favorably, and minimize the importance of ethics (Eisenberg and Goodall, 1997). The deniability attribute of SA can be used by leaders to avoid blame and responsibility or to preserve those who misuse their position and power. However, Paul and Strbiak (1997) contend that "strategic ambiguity itself does not minimize the importance of ethics. Rather, intentional unethical use and the naivete of communicators serve to minimize the ethical use of strategic ambiguity in organizations" (p.156). SA can be, therefore, utilized both in an ethical or unethical manner. Its application depends on the ethical sensitivity of the individual utilizing it.

Based on the framework offered by Ulmer and Sellnow (1997, 2000), at the individual level, the ethicality of the leaders' use of SA can be determined according to three criteria. The first criterion is the *questions of evidence*. The nature and complexity of any material evidence, including their interpretations, often complicated by the use of rhetoric or metaphors, can be examined for its reasonableness, bias and equity of impact on relevant stakeholders. The *questions of intent* are often critical in determining whether any action is ethical or not. Applying SA with an intent to misinterpret, mislead and deceive raises issues of social legitimacy (Seeger, 1986), honourable intention and truth. The final criterion is the *questions of locus* of responsibility. Determining responsibility in a crisis for any organization can be ambiguous and difficult. Taking advantage of this to shift the cause and blame to other parties or stakeholders poses ethical issues. In this context, organizational virtuousness can be employed to determine the consequences of organizational action in crisis situations.

Organizational virtuousness

Virtuousness is the "pursuit of the highest aspirations in the human condition. It is characterized by human impact, moral goodness, and unconditional societal betterment" (Bright et al., 2006, p.249). *Human impact* is the effect firm activities have on improving the living conditions, well-being and the resilience of beneficiaries. The *moral goodness* is based on the conception of "character traits in people and organizations that are seen as desirable" (Bright, 2006, p.753). The last attribute, *unconditional societal benefit* is the "intention to create goods of first intent and to prudently use goods of second intent to instrumentally bring benefit to society" (ibid). Organizations demonstrating this attribute would initiate activities because it is the "right thing to do".

APPROACH

Using available secondary data on the James Hardie asbestos case in Australia, a single case study was developed to examine the role of SA in CSR and leaders' ethical decision making. The sources of data include media reports, James Hardie media releases and other publicly available documents such as inquiry reports.

CASE APPLICATION AND MAIN FINDINGS

In 2001, James Hardie announced that it has been sued by 2,000 people injured or killed by its asbestos products (James Hardie Industries Limited, 2001). The Medical Research and Compensation Foundation (MRCF) with assets of $293 million was launched to settle all future claims. In 2003, the company announced that the MRCF was underfunded (Hills, 2001; 2005). In April 2009, an Australian court held that the board directors knowingly misled its stakeholders when a media release said a new asbestos compensation trust was "fully funded" and "provided certainty" for asbestos disease claimants (John, 2009). In addition, they were held liable for breaching their duty to act with care and diligence.

Intense media scrutiny on James Hardie has been a major *driver* that has led to an increased emphasis on the crisis and increased awareness among stakeholders (Figure 1). Due to the action taken by Hardie victims, increased demands for transparency and growing expectations on victim compensation has affected almost every sphere of activity of the company (Mahar, 2009). Growing public media interest reinforced stakeholder awareness. More integration and higher interdependencies between these stakeholders, especially the State, Federal and corporate watch dogs such as ASIC have held Hardie accountable for the practices of their business partners throughout the value chain.

Internal Tools refer to the firm's own rules, processes and structures that safeguard a "responsible" company and its employees. Measurements, auditing and reporting are tools to strengthen internal efforts to comply with the company's policies and thereby build trust with external stakeholders. The strength of the internal tools is also influenced by organizational consistency. Thus when Hardie employees handle, interpret and understand the victim compensation saga very differently from other stakeholders such as the public and the Supreme Court, organizational consistency is low. With low consistency, the significance and the influencing power of internal tools are reduced.

Enablers are generally designed to support, measure, and assist in implementation and enhance accountability for corporate performance. It can be argued that whilst knowing the dangers of asbestos dust as far back as 1898, James Hardie continued to manufacture asbestos products until 1986, showing little regard for safety standards and duty of care especially towards employees and customers. Law, provisions and court decisions, entail rules against manipulation of competition and laws with the aim of improving the ethicality of executive action. Hardie continuing to manufacture asbestos until 1986 despite the first James Hardie death occurring in 1966 and its partner, CSR being forced to close down in 1966, shows a lack of duty of care.

In sum, the regulators consisting of the *drivers*, *internal tools* and *enablers* impacted adversely on the executives' and company's response to the asbestos crisis. With intense media coverage, the incident caused a significant uproar in Australia. In response, the company adopted a strategically ambiguous campaign to paint a positive picture on the issue. For example, in 2001, the Hardie CEO claimed that with starting assets of $293 million, the establishment of a fund to pay asbestos victims provides certainty for people with a legitimate claim against the company, and that this establishment has effectively resolved Hardie's asbestos liability. However, only after 2 years of making this claim, the $293 million allocation was proved to be grossly inadequate. A 2004 estimate of the compensation liability was $2.24 billion.

Moving onto the ethic of significant choice, *questions of evidence* in the James Hardie case are centered over the legal debates which occurred in the aftermath of the crisis. According to Ulmer and Sellnow (1997), these altercations usually pit the organisation's team of experts against those from legal or governmental agencies. For example, the legal debate that continued with the James Hardie case on the companies' ability to hide behind the corporate veil (Merritt et al, 2004).

Questions of intent emerge when the organization's social legitimacy is questioned. In other words, if the organization cannot prove that it intended to produce reliable products and services in a safe manner, it will likely lose whatever public support it once enjoyed. In the Hardie case, the company lost the public confidence due to continuing to manufacture a harmful product. With media reports and expert comments pouring out under headings such as "James Hardie: No Soul to be Damned and No Body to Be Kicked" (Dunn, 2005) and "A Billion-dollar Case of Poor Judgement" (Sexton, 2004), the Hardie executives continued with the usual rhetoric of painting a positive image on the crisis, often, further damaging its social legitimacy. Merely six months before the declaration of the compensation deal, Hardie was insisting it had no intention to pay, that the directors' primary obligations to their shareholders to generate profits prevented them from doing so, suggesting wilful disregard of public welfare by James Hardie.

Based on the application of Ulmer and Sellnow's (2000) ethic of significant choice model, there is sufficient evidence, intent and locus to hold Hardie leaders responsible for the crisis. However, at the organizational level, the Jackson (Queen's Counsel) inquiry found that the company had no legal obligation to pay compensation to its victims (Sexton, 2004). Despite these inadequate outcomes on organizational responsibility as per Australian corporate law, ethically, at an organizational level, organizational virtuousness can be used to assess the virtuousness in the James Hardie case.

In a crisis such as of the asbestos victims of James Hardie, which resulted in loss of life and livelihood and deterioration of wellbeing, the first attribute of organizational virtuousness, the place of *human impact* is relatively easier to assess. With James Hardie chairwoman's own admission and apology (*The Age*, 2004), there is little doubt that the asbestos operations of James Hardie had a significant adverse impact on its victims. Considering the role of the second attribute of organisational virtuousness, the *moral goodness* of James Hardie responses to the crisis, the key question is whether the company did "the right thing". Although no victim of James Hardie has gone without compensation yet (Sexton, 2004), questions of evidence, intent and locus show that the company was managed at the minimum level of corporate social responsibility, meeting only its required legal obligations. At no time the company went beyond its legal duty to engage in doing "the right thing" by the victims. One example is of the misleading release of public information on the compensation funding. The Supreme Court found that Hardie's chairwoman between 2004 and 2007 and nine directors and executives violated the law by "approving and issuing misleading public statements about the financial adequacy of the Foundation set up to compensate asbestosis victims" (John, 2009). The final attribute of organisational virtuousness is *unconditionality of social benefits*, which according to Bright (2006) is the "intention to create goods of first intent and to prudently use goods of second intent to instrumentally bring benefit to society" (p.753). Several examples illustrate that Hardie leaders were not interested in goods of first intent (a virtuous pursuit), but attempted to protect goods of second intent (company reputation) from any harm.

CONTRIBUTIONS

The recent financial crisis and other corporate scandals indicate that it takes responsible leadership and responsible leaders to build and sustain a business that is beneficial to multiple stakeholders (Maak, 2007, p. 329; Maak and Pless, 2006). On the contrary, in this exploratory application of the strategic virtuousness framework to the James Hardie asbestos compensation scandal, the findings suggest the leaders' irresponsible use of SA to typically emphasize a favorable interpretation of the company's operations at the expense of asbestos victims. Evidence show how, in the pursuit of maximizing profits, Hardie leaders ignored basic tenets of human decency and caring towards its asbestos victims. However, this case can be identified as one of the more extreme cases to examine the use of SA by business leaders. The application of the proposed strategic virtuousness model in less-extreme cases could reveal interesting and subtle tensions between variables such as questions of intent and moral goodness. Future researchers could examine the application of the model on a larger sample of business leaders drawn from several industry sectors and stakeholder perspectives.

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