Levelling the Score – The Role of Individual Perceptions of Justice in the Creation of Unethical Outcomes in Business

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Abstract

Rationalist models of ethical decision making assume that higher order conscious reasoning dominates the ethical decision making process however research shows that psychopaths have a similar capacity for ethical decision making to the rest of the population. In contrast research from the fields of social psychology, criminology and neurocognitive science shows that personal and contextual factors play a much larger role in the creation of unethical outcomes and that subconscious pattern matching processes are more prevalent than higher order conscious reasoning.

This paper presents a Causal Factor Model synthesized from inter-disciplinary research that illustrates the dynamic interplay between personal and contextual factors, perceptual blindness and moral neutralisations. The model has been tested using a multiple case study method involving interviews with people who have either been convicted of corporate crimes at a senior executive or board level, or who have been involved as a whistle-blower. Initial findings indicate that individual perceptions of justice regarding the subjective assessment of unfolding reality have a cumulative effect on the behaviour of individuals involved in creating unethical outcomes in business. When subjects perceived reality to be unfair or unjust they were more inclined to use moral neutralisations to justify acts that would objectively be considered to be in violation of their aspirational moral values. This perception and the invoked justifications then blinded them to the moral aspect of the issue at hand and allowed them to create unethical outcomes that they perceived to be just.

Keywords: ethics, moral intention, percetual bias, rationalisations, existentialism.

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1. Introduction

One of the paradoxes of our times is why well educated people in high paying responsible positions with reputations as good family and community members come to create bad outcomes such as fraud, bribery, insider trading and market manipulation that effect the wider community in extremely negative ways.

Since the late 1980s business schools have made a concerted efforts to improve education in business ethics and corporate social responsibility however there is little evidence to show these efforts have yielded the expected results (Desplaces, Melchar, Beauvais, & Bosco, 2007; Jazani & Ayoobzadeh, 2012; Jewe, 2008).

Numerous researchers have criticized the narrow band of existing theory and have called for the development of new theory to address this (Casali, 2010; Craft, 2013; Ghoshal, 2005; O'Fallon & Butterfield, 2005). This paper presents a causal factor model developed from synthesizing the existing research in the fields of business ethics, social psychology, criminology and neuro-cognitive science. This paper then presents the results of testing the model using a multiple case study methodology and then presents the evolved model and the implications for ethics education and training.

2. Perceptions, Bias and Rationalization

Rationalist models of moral reasoning have dominated the business ethics literature (Ferrell, 1989; T. M. Jones, 1991; Rest, 1979; Trevino, 1986). These models propose that moral judgement and knowledge is gained through a process of rational reflection and reasoning (**Kohlberg**, 1969; Piaget, 1965 (1932)). The rational and logical answer to why good people do bad things is that they are lacking in moral development – this may be a lack of character, bad values or greed (Heath, 2008). The solution to 'fix' good people that have done bad things is to re-educate them to think better (Burton, Johnston, & Wilson, 1991; Mintz, 1996; Rozuel, 2012).

Underpinning this approach to ethics is the assumption that the ethical decision making process is one dominated by higher order conscious reasoning. However, new research in the field of neuro-cognitive science (Reynolds, 2006) questions this assumption and suggests instead that the ethical decision making process is more often a process of sub-conscious pattern matching. Further research in the field of social psychology indicates that ethical decision making is influenced by perceptual bias (Tenbrunsel, Diekman, Wade-Benzoni, & Bazeman, 2007) leading people to reframe past experiences and believe they are more ethical than the majority of their peers. These self-serving biases then limit our ability to actually 'see' ethical dilemmas leaving people blind to the problem at hand (Banaji, Bazerman, & Chugh, 2003; Chugh & Bazerman, 2007).

Reynolds et al (2010) suggest that in this 'blind' state we predominantly make reflexive decisions based on implicit assumptions, our higher order reasoning functions not then engaged until after the event. In this way Haidt (2001) proposes that our higher order reasoning function acts more like a lawyer defending a client rather than like as scientist open to exploring the facts. The desire here of a 'good' honest person is to protect their 'self concept' (Mazar, Amir, & Ariely, 2008) – that

is, they wish to reframe past events to enable them to continue to see themselves as 'good' and to not have to reassess themselves as 'bad'.

Sykes and Matza (1957) worked with delinquent youth and proposed that rather than having anti-social values, the delinquents instead held the same values as mainstream society but used a range of justifications for deviance that were valued by the delinquent but not by wider society. Sykes and Matza (1957) propose that there are five "techniques of neutralisation":

1. The denial of responsibility
   The key here is that the individual sees his or her action as 'unintentional' and that they are therefore not responsible due to forces beyond their control. For example, poor upbringing, unloving parents or 'just following orders'. 'It's not my fault' is the catchcry.
2. The denial of injury
   The distinction here is that the act is seen as wrong but not immoral. 'It's not hurting anyone' is the common justification. An example could be the act of creating graffiti.
3. The denial of the victim
   Denial neutralises the rights of the victim so that in some way the circumstances justified the act and hence the perpetrator may even be cast as the 'avenger'. The story of Robin Hood robbing the rich to give to the poor is the classic example where the justification is "they deserved it".
4. The condemnation of the condemners
   Claims of unfairness and hypocrisy are key here with motives being questioned. Police are corrupt, teachers unfair, parents take out their issues on their kids. The wrongfulness of the act is repressed. 'You think I'm bad but you should see them' would be the cry.
5. The appeal to higher loyalties
   Societal norms are rejected owing to higher loyalties, for example to family, gang members, etc. The extreme example of this would be bikie gangs or street gangs and their 'codes'. 'Live by the code of brotherhood' would be an example.

To these five neutralisations, Heath (2008) adds two more:

6. Everyone else is doing it
   The key here is that the perpetrator claims they have no choice. This is particularly prevalent in competitive situations, such as doping in elite sport, where the justification would be 'everyone else was doing it so I had no choice other than to follow suit'.
7. Claim to entitlement
   Entitlement is a justification based on rights or karma: 'I did this so therefore I deserve that'. An example might be 'I have worked back for the last five days straight so I deserve to use the company credit card to buy myself and my family dinner'.

Neutralisation Theory (Sykes & Matza, 1957) supports the notion that 'good people' use rationalisations to absolve themselves of internal moral conflict. The critical aspect of neutralisation theory, according to Sykes and Matza, is the element of self-deception it introduces and the opportunity to do 'bad' things without damaging one's self-image. Heath (2008, p.604) in discussing neutralisation theory states:

"… this theory puts considerable emphasis upon the way individuals think about their actions…
Rather than sustaining an independent system of values and moral principles, different from those of the mainstream, the function of the subculture is to create a social context in which certain types of excuses are given a sympathetic hearing, or perhaps even encouraged."

Heath's view supports the notion that the key elements in unethical behaviour are social context, self-deception and one's interpretation of reality. When the context becomes competitive and outcome orientated, it follows that neutralisations would become more prevalent due to this overwhelming focus on outcomes. Heath (2007, 2008) proposes that business might constitute a peculiarly criminogenic environment on account of: the large impersonal nature of big business; the detachment from consequences; hostility to government and regulation; and the isolating nature of the business sub-culture.

3. Synthesizing a Causal Factor Model

The inter-disciplinary research from the fields of social psychology, neurocognitive science and criminology can be synthesized into a causal factor model shown below in Figure 1. Research from social psychology informs the model by showing how personal, situational and contextual factors can influence behavioral intentions (Ajzen, 1985; Tenbrunsel, 1998; Zimbardo, 2007). Perceptual bias and blindness then determines whether or not the person actually 'sees' the ethical dilemma (Chugh & Bazerman, 2007). Neurocognitive research then shows how we make decisions in this 'blind' state using either higher order reasoning or sub-conscious pattern matching (Reynolds, 2006). A post decision trigger event then causes the engagement of justifications which can either be based on moral values or may be moral neutralisations (Heath, 2008; Sykes & Matza, 1957). The decision made then feeds back into contextual factors.

DEDUCED CAUSAL FACTOR MODEL OF UNETHICAL OUTCOMES
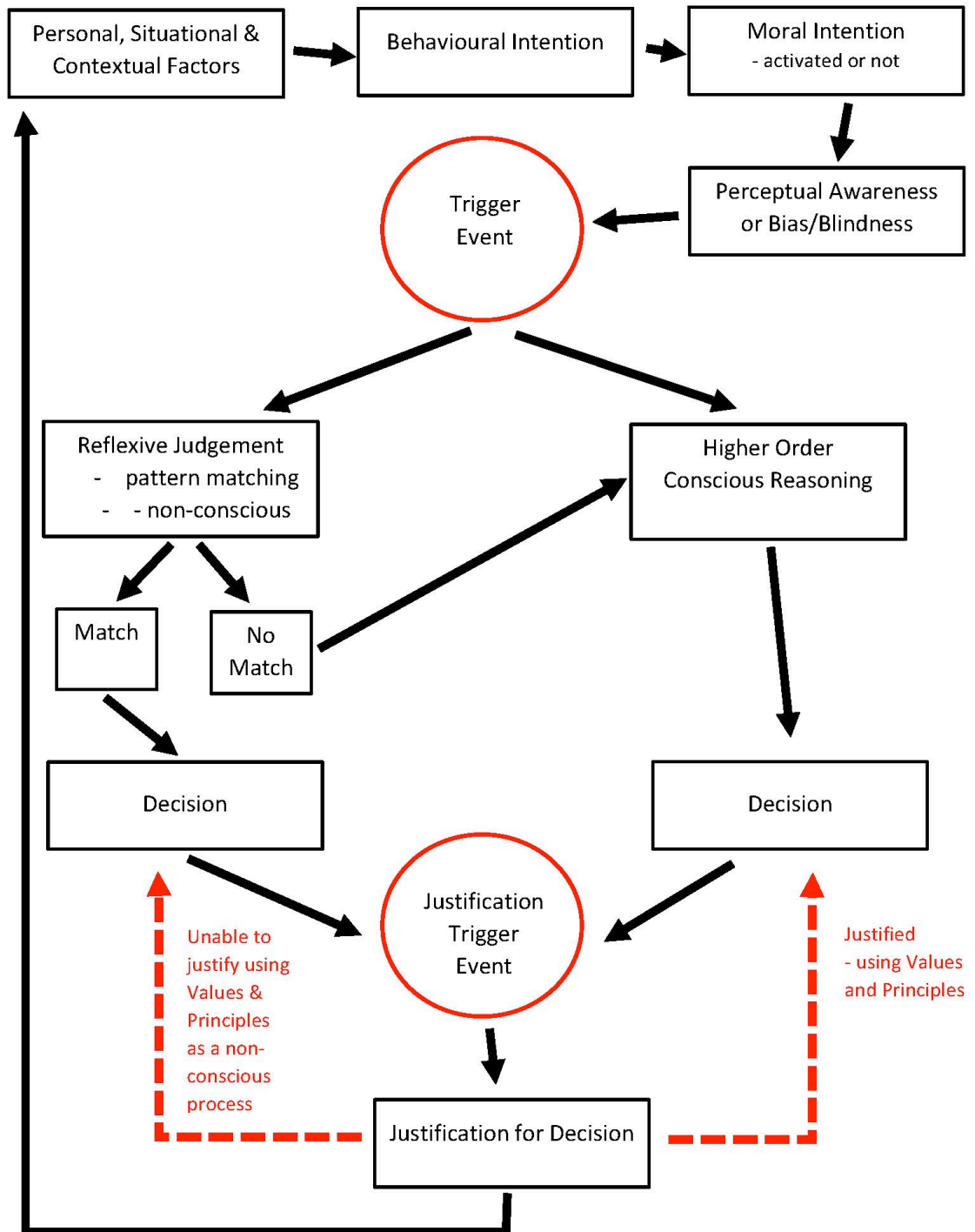## A.C.Ping 2014

Figure 1 – Deduced Causal Factor Model of Unethical Outcomes

4. Testing the Model

The epistemology of this research is subjective and falls within the social constructivism paradigm. The philosophical base for this paradigm is hermeneutics and phenomenology, which proposes that reality is socially constructed and the world does not present itself objectively to the observer but is rather known through human experience, which is mediated by language (Eriksson & Kovalainen, 2008). Given this research paradigm, the research methodology is a mix of deduction to develop a theoretical construct, and induction to test validity using reflexive phenomenology.

There is significant industry and academic research which suggests that the leverage point for reducing unethical outcomes in business is at the Board and senior executive levels. The epistemology of this research also indicates that the most useful and valid way of actually testing the theoretical construct is by interviewing people who have actually been convicted of corporate crimes or who have had first-hand experience with such an event.

Potential participants were identified using media reports and the annual reports of the Australian Securities and Investment Commission (ASIC). The ASIC reports detail key convictions of corporate criminals and this information was distilled to identify people who had been acting at the Board and senior executive levels when convicted. The aim in selecting potential cases was to try and find cases that dealt with the key issues identified in Industry reports (Ernst & Young, 2013; KPMG, 2005, 2013). For example; bribery and facilitation payments, insider trading, fraud and managing conflicts of interest. Cases were chosen using replication logic – in this case where the participants fit the subjective criteria of 'good people doing bad things'. Sampling was then done for sameness and for difference – the sameness being the nature of the crime, for example fraud. The difference being the circumstances – for example mortgage fraud versus corporate insider fraud. To gain a different perspective on events, one of the participants selected was a whistle blower and another an internal investigator who became a whistle blower.

The six cases chosen to test the model were:
1. A non-executive director of an Australian company jailed for 2 ½ years after pleading guilty to four criminal charges including; Disseminating information knowing it was false in the material particular and which was likely to induce the purchase by other persons of shares; one count of being intentionally dishonest and failing to discharge his duties as a director in good faith and in the best interests of that company; one count of obtaining money by false or misleading statements.
2. The Managing Director of a US mortgage broking company jailed for 2 years after pleading guilty to bank fraud, in excess of US$100 million and tax evasion – falsifying tax records.
3. The whistle blower in an Australian case involving a semi-government company found guilty of foreign bribery (Malaysia, Vietnam, and Indonesia) and the falsifying of documents.
4. The co-founder and director of an Australian margin lending company which collapsed resulting in ASIC alleging that the directors were intentionally dishonest and failed to exercise their powers and discharge their duties in good faith in the best interests of the company. It was further alleged that the

directors dishonestly used their position as directors with the intention of directly or indirectly gaining an advantage for themselves or for someone else. Charges were also made with regard to false recording of securities. Two of the directors pleaded guilty and were sentenced to 2 years and 1 year in jail respectively. The director who was interviewed pleaded not guilty and was found not guilty by the courts.

5. The Chairman of an Australian timber company who pleaded guilty to insider trading on the basis that he 'ought' to have known the information in his possession was price sensitive. He was fined $50,000 and given no jail term.

6. The internal investigator and whistle blower of a 12 year internal fraud at an Australian construction company totalling over $20m. The protagonist pleaded guilty to all charges and was sentenced to 15 years jail with a non-parole period of 6 years.

Semi structured interviews were then conducted (sample questions detailed in Appendix 1). As a starting point these interviews explored the variables identified in the theoretical construct that is – personal, situational and contextual factors, moral intention, perceptual bias and moral neutralisations. The aim, as per Eisenhardt's (1989) advice, was to not be fixed as to how these variables were related but to allow the participants to reflect on the phenomena they had experienced. Triangulation was then applied using data collected from media reports, corporate communications and court reports.

The interviews were transcribed and coded using the initial categories of meaning as determined by the causal factor model deduced from existing inter-disciplinary theory.

5. Levelling the Score – the Ultimate Justification

After the initial coding of data and development of units of meaning, these unit categories were then refined and the patterns and relationships between the categories explored (Maykut & Morehouse, 1994). Once the categories of meaning had been refined the data was then analysed for patterns of sameness and difference. Using the constant comparison method a further category of meaning revealed itself as 'A sense of moral obligation'.

In each of the six cases this was present as follows:
• Case #1
  "I had a number of promises from DL [the Managing Director] in an ongoing sense."
  "I had my people in the company…"
• Case #2
  "I think that there was no doubt a fear that I was going to let my dad down."
• Case #3
  "You are the company secretary; you are the conduit between management and the Board; you tell us what is going on".
• Case #4
  "FG [one of the other directors] felt obliged in some way, and for what reason, I don't know, but obliged in some way to ensure this particular client did not suffer…."

- Case #5
  "I felt obligated to go on and look after the people… I didn't have money in my mind. I never even considered, never even thought about it."
- Case #6
  "DC [the perpetrator of the fraud] was driven by a feeling of being "exploited" by his employer." (Psych. Report)

  "The thing with DC is that it all came down to the fact that he started at [the company] at the same time as the MD 30 years ago and now the MD is making millions and he is still getting paid about $200,000 for being a finance manager so he just thought he deserved it." (view of the whistle blower)

Investigation into the relationships between categories of meaning revealed several key points:
1. In each case study the key protagonist had a sense of moral obligation to a significant other or group of people.
2. The sense of moral obligation created a moral intent to uphold that obligation.
3. A trigger event then occurred which either violated or threatened to violate the moral obligation.
4. This event then triggered a justification to take action in order to balance the scales of justice.
5. Emboldened with a sense of 'self-righteousness' the protagonist then persisted down a path which often became a 'slippery slope'.

What becomes evident in examining the raw data is that the sense of moral obligation is personal and the trigger event is also seen from a personal perspective and this in turn clouds the objective judgement of the protagonist such that they seem justified to take action to balance the scales of justice.

For example:
 "…he had lost me because he broke his word to me… I found the conversations at Board level insulting…He lost all respect. I lost all respect for him." (C#1)

 "I was well-known for this [looking after people] because people, they wanted to come and work for our company…then, when this pops up, we're basically like, hell no. No way. We're not going down by something like this after everything that we've done, which was a little … That's bad thinking. That's a little arrogant. You're thinking like, oh, we're so honourable that we can't make an error. You're going to end up getting your ass kicked if you think that way."(C#2)

 "…there was friction between the CEO and some of my peers and myself because he was saying one thing and doing another." (C#3)

"FG [one of the other directors] had said to the client … words to the effect that "he'd look after him". How you want to read that … Obviously, inherently it's subjective…But my speculation from seeing those is that, in essence, FG (I think) felt that, for whatever reason, that he owed him something. I don't know why he felt that. He felt that client, whether he was, I don't know, whether he was in awe of him, whether he was afraid of him or. What the emotion was, but it was an emotion that made FG think that he was in some ways … FG felt obliged in some way, and for

what reason, I don't know, but obliged in some way to ensure this particular client did not suffer."(C#4)

"I had come up in a very hard school of poor people as a youngster. I was sent away to a boarding school very young. It was my father sent me there. That was living with the upper end. Then when I went out to work, I had seen the poverty that was on the poor side of the life. It hurt me. I really put my effort into making sure that anytime I can improve someone's life or do something, give someone a job, I did it."(C#5)

"Then you go into panic mode ... Because I think whistle-blower behaves like people that have been through rape, and they always think that, you know, they're the one to blame... And you always think that you're wrong, because, again, you're the only one that picked it up."(C#6)

Triggered then to take action the intention is very outcome orientated:-
"You solve problems, you don't walk away from problems. I thought I could solve it with Ray and I thought he would work with me but it didn't happen. He actually fought me. That annoyed me… Then I was annoyed so then I punished him."(C#1)

"What was I going to do? That didn't even occur to me. All it was, was I need to fix what's the problem is today." (C#2)

"My initial concerns were purely financial. We were just paying an awful lot of money and as I said before we were incurring losses. That didn't gel." (C#3)

"If FG had taken the appropriate action, [the client] would have lost a lot of money." (C#4)

"We decided that we'd sell some shares in case something happened to me. My wife would have a house." (C#5)

The justifications used relate to the initial sense of moral obligation and are firmly aimed at achieving the intended outcome as 'the price you have to pay'.

"But I wouldn't have done it if he had kept his word to me. Once he broke his word to me it was over…I had my people in the company…" (C#1)

"Pay that loan off and just go on with life like that never happened. That was a lot more attractive, not to lose everything over having this fraud in our company. I thought I'll pay that off. I'm talking to myself … The right to do because what's going to happen if I don't? The buck stops with me. I need to pay that off and take responsibility and then we'll just go on." (C#2)

"…it has to be done. That's the way business is. That's the structure, that's the model. We have to have these agents. In my view there wasn't a solid answer given. The response to me was" just stop asking difficult questions". We are not interested in changing the model. We are not going to rock the boat." (C#3)

"I do believe that his motivation was, as I say, some sense of obligation to [the client]…Plenty of emotion, plenty of apologies but I've never been given an explanation why." (C#4)

The common theme that emerges at this point is the sense of belief that the protagonists have that they can 'fix it'.
"I had a similar problem at GTB [the family company that had been taken over] and I saved it…I have all this knowledge… I'm uniquely placed…" (C#1)

"I saw that as if I don't fix all that, if I don't fix it for other people, I'm certainly not going to be okay so I have to make sure … I need to take the most direct route… I'm now going down the path. Now it's going to be very difficult to turn around." (C#2)

"I was a believer… The model was fantastically good…. I felt obligated to go on and look after the people… I never had it [the money] because I never cashed it in. I left it in CT [the timber company] shares… I didn't have money in my mind. I never even considered, never even thought about it. I might think a bit harder today…. I didn't even sell. I only sold enough shares to pay the bank so my wife was free of the house and the debt that I had over the CT shares attached to the house… I believed that the pulp mill would have been built… I didn't think that [it wouldn't work] until after CT went into the receivership... What a fool I was. What a fool I was." C#5

What becomes evident from the case study data is that there is a significant ongoing dynamic relationship between the decisions that are made initially and the subsequent decisions made. Justifications may be made for the initial decision that empowers the protagonist to act in order to balance the scales of justice however the violation of other values, principles or laws causes a decay in the protagonist's personal circumstances which in turn effects their ability to make higher order decisions. There is also a significant decay in the personal relationship(s) that triggered the initial threat to the perceived sense of moral obligation.

Once the categories of meaning had been refined the data was then analysed for patterns of sameness and difference. This then allowed for the creation of an 'Induced casual factor model' – see Figure 2. This model was then compared to the model deduced from exiting research and a synthesised model was then created – see Figure 3. The final synthesized model was then overlayed across the case studies to determine if it did actually explain how the unethical outcomes were created.

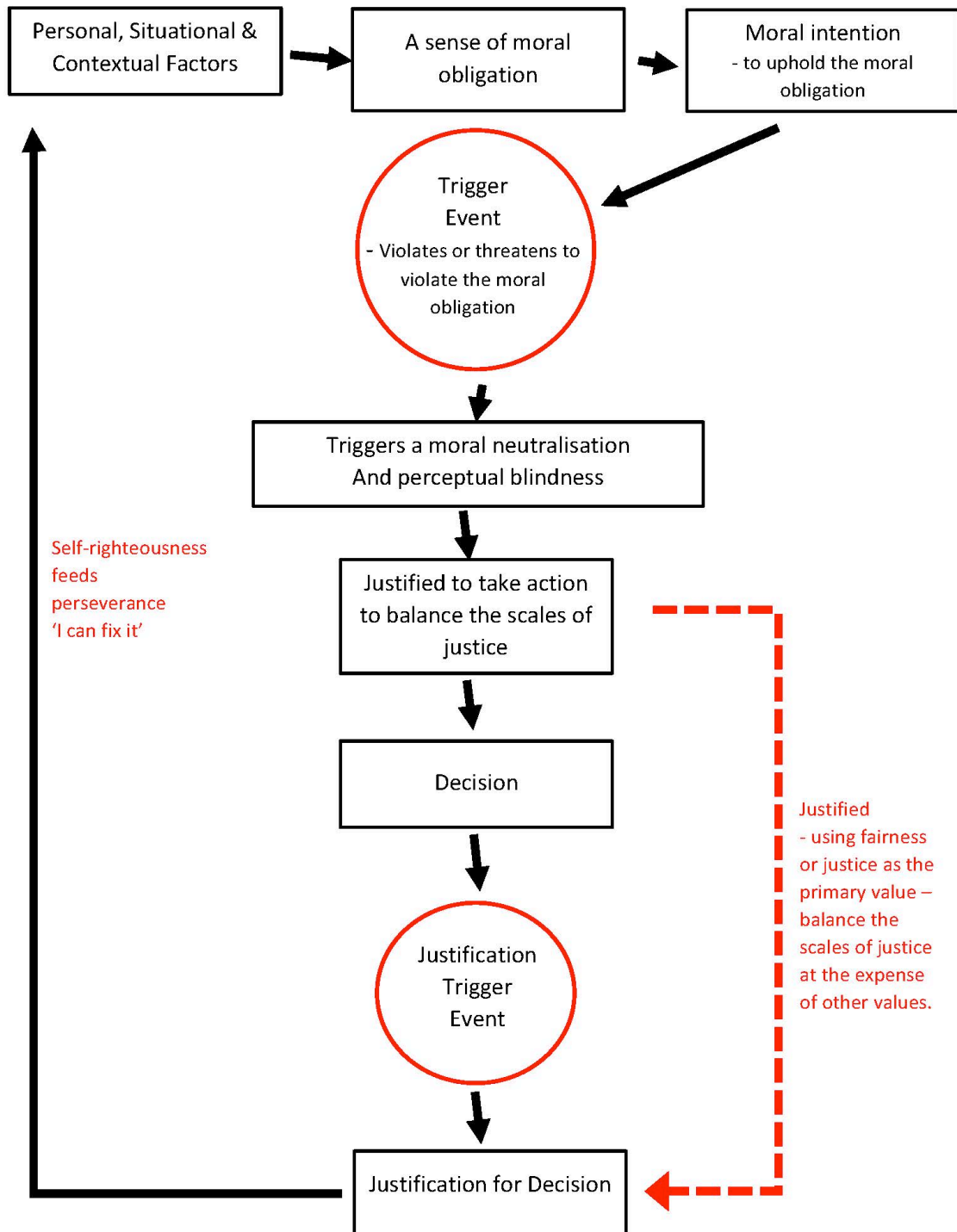# INDUCED CAUSAL FACTOR MODEL OF UNETHICAL OUTCOMES
A.C.Ping 2015

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┌────────────────────────┐      ┌──────────────────┐      ┌──────────────────┐
│ Personal, Situational &│ ───▶ │ A sense of moral │ ───▶ │ Moral intention  │
│   Contextual Factors   │      │    obligation    │      │ - to uphold the  │
│                        │      │                  │      │  moral obligation│
└────────────────────────┘      └──────────────────┘      └──────────────────┘
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Trigger
Event
- Violates or threatens to
violate the moral
obligation

Triggers a moral neutralisation
And perceptual blindness

Self-righteousness
feeds
perseverance
'I can fix it'

Justified to take action
to balance the scales of
justice

Decision

Justification
Trigger
Event

Justified
- using fairness
or justice as the
primary value –
balance the
scales of justice
at the expense
of other values.

Justification for Decision

Figure 2 – Induced Causal Factor Model of Unethical Outcomes

SYNTHESIZED CAUSAL FACTOR MODEL OF UNETHICAL OUTCOMES

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Personal, Situational & Contextual Factors → A sense of moral obligation → Moral intention - to uphold the moral obligation

Triggers a moral neutralisation And perceptual blindness

Trigger Event - Violates or threatens to violate the moral obligation

Self-righteousness feeds perseverance 'I can fix it'

Justified to take action to balance the scales of justice

Reflexive Judgement
- pattern matching
- - non-conscious

Higher Order Conscious Reasoning

Match

No Match

Decision

Decision

Justified - using fairness or justice as the primary value – balance the scales of justice at the expense of other values.

Unable to justify using Values & Principles as a non-conscious process

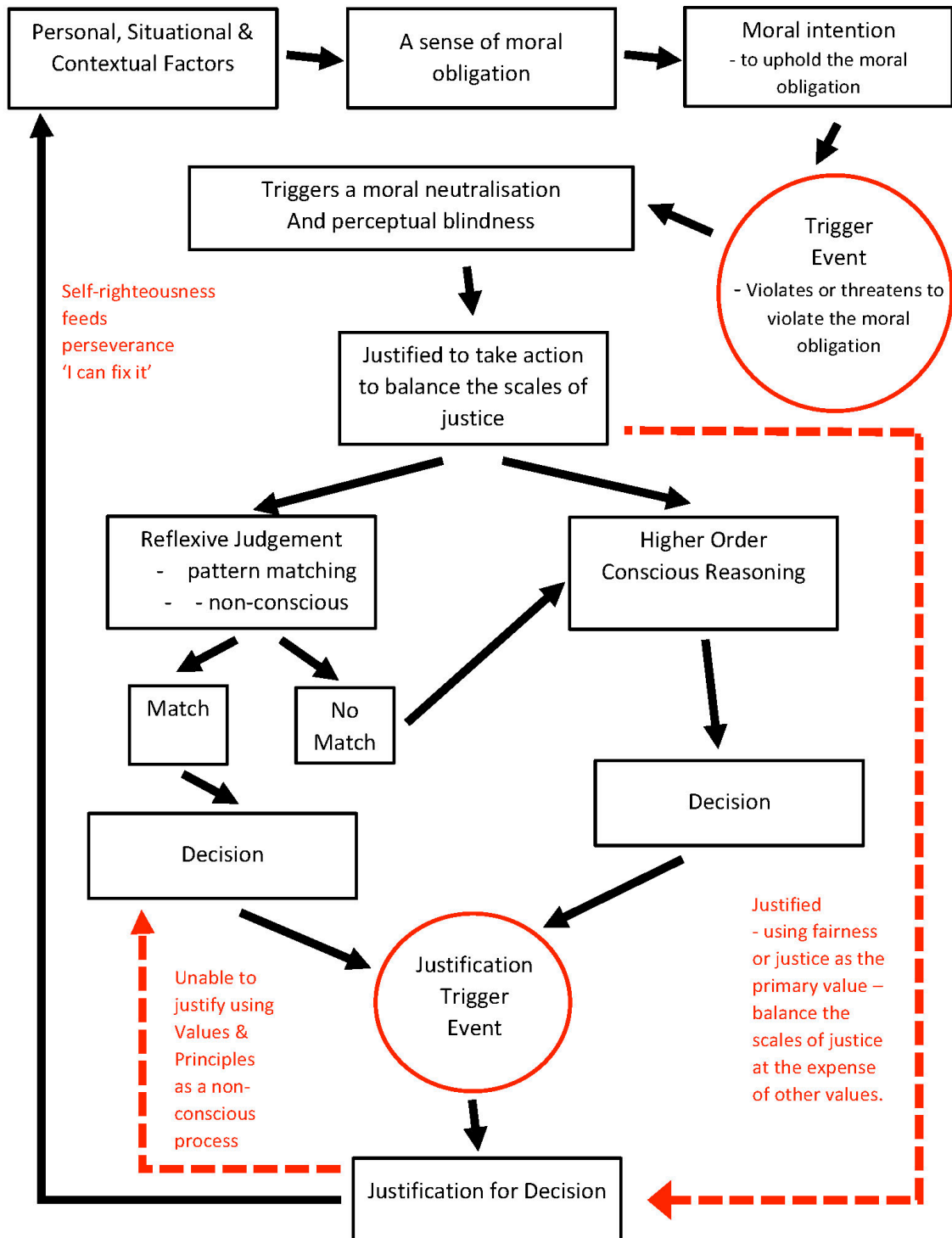Justification Trigger Event

Justification for Decision

Figure 3 – Synthesized Causal Factor Model of Unethical Outcomes

6. Conclusion and Implications

Although this case study analysis is limited in scope the initial testing of this synthesized causal factor model shows that it significantly explains the process of creating unethical outcomes. As Reynolds (2006) proposed, once an initial decision has been made using higher order reasoning the subsequent decisions follow a sub conscious reflexive pattern matching process. Furthermore this model supports the idea that a justification for a certain type of action is in the mind of the protagonist before the action is taken which was first proposed by Sykes and Matza (1957) in their theory of delinquency.

Of interest is the common concept of 'A sense of moral obligation'. In the case studies this related to a moral obligation made to 'my people', 'my father', 'the board' or 'my community'. However, it is possible to propose that a distinction between good people doing bad things without ill intent and bad people doing bad things with ill intent, could be captured by the difference between 'a sense of moral obligation' and 'a sense of entitlement'. Both of these subjective perceptions precede intention and action. A sense of moral obligation can trigger a flawed justification for action that neutralizes an intrinsic value such as honesty. For example, the sense that one should not let down one's father could trigger the justification of 'I'm doing it for him' hence providing the basis for violating the principle of honesty.

Recent research into the socially averse personality traits of Machiavellianism, narcissism and psychopathy (D. N. Jones & Paulhus, 2014) attempted to identify subscales for each trait. With regard to narcissism, Jones and Palhaus identified narcissism as a clash between grandiose identify and underlying insecurity. Narcissistic grandiosity promotes a sense of entitlement (Bushman, Bonacci, van Dijk, & Baumeister, 2003) if that grandiosity is threatened. Jones and Palhaus (2011) concluded that ego identity goals drive narcissistic behaviour. Further research is needed to consider the relationship between a sense of entitlement and unethical outcomes in a corporate sitting where large egos are commonplace.

In conclusion, this is significant research with wide ranging implications both for training and education in ethics and also for the prevention of unethical outcomes in business. This research indicates that the creation of unethical outcome sis not isolated to the decision making process but rather is the results of a dynamic interplay between personal, situational and contextual factors. Further, the creation of unethical contexts does not occur quickly but rather results from an ongoing decay in the moral environment.

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Appendix 1 – Semi-Structured Interview Questions

Sample questions included:
1. What was your personal situation prior to the event? E.g. were you under extreme stress or duress?
2. What was the business context? E.g. good, bad, highly competitive?
3. In taking the action that you did what was your intention?
4. What were the factors you considered when you made the decision?
5. Which of these factors did you give priority to?
6. Who did you believe your decision would impact?
7. Which of these impacts were most important to you?
8. What process did you follow in making your decision?
9. What was your justification for making the decision you did?
10. At what point did you become aware of the moral aspects of the event as identified by ASIC and the prosecutor?
11. What caused you to become aware of the moral aspects of the event?
12. After becoming aware of the moral aspects of the event and the decision you made, what did you do?
13. Looking back now with the benefit of hindsight. What would you have done differently and why?