

## **Cicero and the Ethics of Honest Business Dealings by Randy Richards**

When Cicero's son was old enough to leave home to go away to school, Cicero sent him to Athens. Unfortunately, as is often the case with kids away at school, reports reached Cicero that his son was not, shall we say, achieving his full academic potential. Rather than studying, it appears that the young Marcus had given himself over to drinking and carousing. Cicero, in response to these reports, wrote his son a long letter that has come to be known as *On Duties*. This work has exercised wide-ranging influence on ethicists and moral thinkers from the early Church Fathers until the 20th century. Whether it had any influence on its original audience has, sadly, gone unreported.

*On Duties* (All quotes in this paper are taken from Cicero: Selected Works, Penguin Classics, Harmondsworth, England, 1971) is a manual on morally correct behavior. Cicero's discussion of honest business dealings is particularly interesting and, as far as I can tell, not discussed or covered in most of the current business ethics literature. This omission is unfortunate. The work, even though it is over 2,000 years old, is surprisingly fresh. The examples that Cicero provides to illustrate his points are ones that we can immediately recognize and understand. The purposes of this paper are to call attention to Cicero's discussion and to provide a short critique of his position.

Ethics is primarily concerned with what we ought to do. Cicero focuses upon this very practical question of what we ought to do when what is right and what is advantageous or profitable conflict with each other. Now Cicero makes it quite clear that a clash between what is right and what is advantageous is only apparently a conflict. He writes:

Let us regard this as settled: what is morally wrong can never be advantageous, even when it enables you to make some gain that you believe to be to your advantage. The mere act of believing that some wrongful course of action constitutes an advantage is pernicious. (P.177)

Cicero follows the idea that he inherited from the ancient Greek philosophers, and that the early Christian thinkers also found compatible to their way of thinking, that to do wrong damages our character and person. When we gain some material advantage from wrongdoing, we are mistaken if we believe that we have really gained an overall advantage. For to gain materially and, in the act of that gaining, to damage our character is to suffer a more serious overall loss. Thus, on his view, advantage and doing the right thing can never conflict because in doing the right thing we strengthen our character, the most valuable thing we have. Conversely, in doing wrong, we damage our character.

Cicero also makes it clear that personal advantage gained at the expense of others affords us no real advantage either. He understands that our personal good cannot be advanced if what we do harms others. According to Cicero, we live in a social environment that requires mutual cooperation. We are all part of a civil society wherein we depend on each other. Actions undermining the social cohesion of our society harm us in the long run even though we may think that we are gaining in the short run. This insight leads him to consider the ethics of honest business dealings.

Cicero presents three "test cases" in business. He notes that these cases were first developed by the second century B.C. Stoic philosophers Diogenes of Babylon and Antipater of Tarsus. These cases are meant to check our understanding of what it means to be honest. Cicero starts from the premise that we want to be honest but that it may not always be obvious what an honest person should do in certain business situations. Now Cicero was very much a man of the world. He knew first hand that not everyone is honest. That, however, is morally an easy matter to address. Dishonesty is wrong. Dishonest people deserve our contempt and censure, perhaps even punishment. Cicero believes that the more difficult moral problem, supposing that we are honest, is what ought we to do when confronted with a situation where there is an opportunity for personal advantage (more money) if we refrain from saying or doing something. Here's the first test case.

### Case One: A Famine at Rhodes

Suppose that there is a food-shortage and famine at Rhodes, and the price of corn is extremely high. An honest man has brought the Rhodians a large stock of corn from Alexandria. He is aware that a number of other traders are on their way from Alexandria -- he has seen their ships making for Rhodes, with substantial cargoes of grain. Ought he to tell the Rhodians this? Or is he to say nothing and sell his stock at the best price he can get? I am assuming he is an enlightened, honest person. I am asking you to consider the deliberations and self-searchings of the sort of man who would not keep the Rhodians in ignorance if he thought this would be dishonest but who is not certain that dishonesty would be involved. (P.178)

By not telling the Rhodians, the seller will obviously get more money for his grain. If the Rhodians know that more grain is enroute, then the knowledge of that increase in the supply will likely drive down the price of the grain that the merchant can get. Is it honest to profit by withholding this knowledge from his customers?

Cicero asks us to weigh the merits of two opposing points of view on what the honest person should do. One the one hand, it could be argued that the merchant should reveal all of the facts. In Cicero's words, "the purchaser must be as fully informed as the seller." On the other hand, it could be argued that so long as the seller is not breaking the law in concealing defects about his goods and provided he is telling no falsehoods, then he is not required to reveal the information to the Rhodians. Cicero says that someone advancing this view could argue:

Concealing is one thing, but not revealing is another. If I do not reveal to you, at this moment, what the goods are like--or the nature of the Highest Good--I am not concealing that information (which would certainly be more useful to you than the knowledge that wheat prices were down). I am not obliged to tell you everything that would be useful for you to know.

The counter-argument, according to Cicero, is that even as a merchant or business person:

You ought to work for your fellow men and serve the interests of mankind. These are the conditions under which you were born, these are the principles which you are in duty bound to follow and obey--you must identify your interests with the interests of the community, and theirs with yours. How, then, can you conceal from your fellow men that abundant supplies and benefits are due to reach them shortly? (P.178)

Notice that Cicero holds that neither side is saying that this action, however wrong, can be performed merely because it is personally advantageous. He presents us with a case where "One side is claiming that the action is advantageous without being wrong, while the other urges that it is wrong, and should therefore not be committed." (P.179)

### Case Two: Selling a defective house

Before giving his answer to the "tell - not tell" question, Cicero presents us with a second case:

Or suppose that an honest man wants to sell a house because of certain defects of which he alone is aware. The building is supposed to be quite healthy, but is in fact unsanitary, and he is aware that it is; or the place is badly built and is falling down, but nobody knows this except the owner. Suppose he does not disclose these facts to purchasers, and sells the house for much more than he expected. Has he behaved unfairly and dishonestly? (P.179)

Now it seems obvious in this second case that the seller has acted unfairly and dishonestly. Today we would say he withheld material facts about the condition of the house that would affect the purchasing price. Cicero concurs in this judgment:

Holding things back does not always amount to concealment; but it does when you want people, for your own profit, to be kept in the dark about something that you know and would be useful for them to know. Anyone can see the sort of concealment that this amounts to - and the sort of person who practices it. He is the reverse of open, straightforward, fair and honest: he is a shifty, deep, artful, treacherous, malevolent, underhanded, sly, habitual rogue. Surely one does not derive advantage from earning all of those names and many more besides. (P.180)

Cicero argues that this sort of concealment is clearly wrong even though the seller did not actually tell a lie. The seller did not actively do or say anything to mislead the buyer. He does provide us with another real estate example where a shrewd dealer takes steps to actively deceive a buyer. The story is worth repeating for three reasons. First, it shows the difference between passive concealment and active deception. Second, we can see that a seller scheming to deceive buyers is a very old business practice. When one bemoans how unethical people are today and that things used to be better in the "old days", this is a useful story to call to mind. Third, it is a very amusing story. Here it is:

A Roman gentleman called Gaius Canius, quite a witty and cultured man, once went to Syracuse, not on business but on holiday; we owe him the story that follows. He often spoke of buying a little estate where he could invite his friends and enjoy himself without intrusion. When his intentions became known, a Syracusan banker called Pythius disclosed his own possession of just such a property; this was not for sale, he said, but Canius could treat the place as his own if he wanted to. Pythius forthwith asked him to dinner there on the following day, and Canius accepted

Now Pythius, being a banker, had people of all classes ready to oblige him. So he sent for some fisherman, and requesting them to do their next day's fishing in front of his grounds; and issued them full instructions. Canius arrived to dinner punctually, and Pythius gave him a sumptuous entertainment. Before their gaze there was a fleet of fishing-boats; each fisherman brought his catch, which he then deposited at Pythius's feet. 'Tell me, Pythius, said Canius, 'what does this mean? - all these fish and all these boats?' 'It is quite natural', Pythius replied. 'All the fish and all the water in Syracuse are at this very spot; without this place of mine, the men could do nothing.'

Canius became excited and pressed Pythius to sell him the property. Pythius showed reluctance at first; but finally - to cut the story short - he gave in. Canius was rich and he wanted the estate, and he paid what Pythius asked - and bought all its furnishings as well. Pythius cinched the deal and entered the terms in his books.

On the following day Canius invited his friends to the house, and arrived early. As far as boats were concerned he saw not so much as a single thole-pin. He inquired from his next-door neighbor if there was a fisherman's holiday that accounted for their invisibility. "I don't know of any," was the answer, "But nobody does fish here; so yesterday I couldn't think what had happened." (Pp.180-181)

Both the real estate examples seem clear enough. The buyer was deceived by the seller regarding the facts about the item he was purchasing. In the latter story, the deceptions were actual lies told about the property. In the former case, the deceptions were accomplished through a knowing silence about the poor condition of the house. The real worth of the house is determined in part by its physical condition and the buyer is entitled to know the facts of that condition. Cicero calls both examples unethical. It's hard to see where one would disagree with his judgment in these cases.

Let's return to the famine at Rhodes case because, despite what Cicero says, this case is not as easy to decide as the other two. Cicero's own position is that the merchant should tell the Rhodians that other ships are on the way. But why the merchant should tell the Rhodians, Cicero does not make clear. The explicit reason he gives as to why the merchant should tell does not even apply in the case. He says it is an established principle

" . . . that good faith requires any defect known to the seller to be notified to the purchaser." (my emphasis) He concludes, " . . . then our grain-merchant and the seller of the unsanitary house acted wrongly when they concealed the facts." (p.183) But this conclusion is valid only in the house example. In the Rhodian famine example, the grain was not defective in any way at all. The example was not that the grain was of a lower quality that the merchant concealed from the buyers. [1] The information that was not revealed was not information about the condition of the grain being sold but about other grain on the way which may or may not be available at a latter date. The merchant has not revealed information about the supply of grain. Note that the merchant has not manipulated the supply of grain for his own advantage. Nor has he taken any active steps to hide the information from the Rhodians. He has not, for example, paid off others to keep them from telling the Rhodians. He has just not told what he knows about the supply. Why does Cicero think that this is dishonest?

Let's try to advance the best case we can for Cicero's position. Elsewhere, Cicero writes that ". . . no decent person engaged in buying and selling can ever resort to invention or concealment for his own profit." (p.181) He says this in explicit connection to examples regarding defects in the products related to instances of criminal fraud. The general notion here seems related to Cicero's earlier statement that "the purchaser must be as fully informed as the seller." If the seller knows something that the buyer does not, then Cicero appears to be arguing that honesty requires that a seller is morally obliged to tell the buyer everything that she knows. Recall that he also said above that not revealing information could be concealment ". . . when you want people, for your own profit to be kept in the dark about something that you know would be useful for them to know." The usefulness refers to the sales transaction and Cicero is implying that if the buyer would find the information helpful in making the buyer's decision then the seller, if she is going to be called "honest", is obliged to provide that information.

Cicero's position on this points at the conditions for an ethical free market exchange. Ideally (and hypothetically), the free market supposes that buyers and sellers have equal, full and complete knowledge of what they are buying and selling. They are then making the transaction completely free of force or fraud. To a large degree, this condition of open knowledge defines a free market. Within this free market transaction, either party, knowing what she is exchanging for what, is at liberty to accept or reject the terms of the exchange. This voluntary nature of the transaction is what justifies the special nature of the market place and the "invisible hand" mechanism that sets what a "fair price" is.

Of course, the ideal free market does not exist anywhere, has never existed anywhere. However, the ideal is useful to us because it exposes what factors are important in an ethical sale or exchange. Just how far from the ideal one may stray and still be considered ethical is not an exact matter. However, the general direction on this point is clear enough: the more complete the knowledge of both buyers and sellers about the sales transaction, the more nearly the exchange resembles the ideal and the more likely we can say that the sale was honest and ethical. At the other end of the spectrum are those sales where important and significant information is either kept from the buyer (as in the unsanitary house example) or the buyer is given completely false and misleading information (as in the "fishing estate" example). In these cases, the sale is dishonest and unethical.

How does this help us with the famine at Rhodes problem? Surely the merchant possesses information the Rhodians would find useful. Possession of that information would have an effect on their market behavior - namely, they would likely hold out for a lower price because they know more grain is on the way. In the absence of that knowledge, they would likely pay more for the grain at hand. This seems to support Cicero's position. On the other hand, I think we can still question if it is the merchant's ethical obligation to provide them with that information. We can agree that the information would be useful to the buyers. We can even agree that the information would help make the market operate more efficiently without agreeing that it is the merchant's responsibility to provide the information. Say for instance, that you go into an appliance store to buy a new stove. The owner of the store shows you several models and carefully and completely advises you of their various features, advantages and disadvantages. You settle on a particular model whose features; advantages, disadvantages and price meet your needs. You tell the owner that you wish to buy this particular model. Now the owner knows, but you do not, that this exact same model is on sale for less money just down the street at her competitor's store. Is it dishonest of the owner not to share that information with you? Is it her or your responsibility to make sure you are informed on the availability and price of stoves? Isn't her sole responsibility here to offer stoves for sale and to inform you, fairly, openly and completely, about those stoves, their features and their price? If after that you wish to do business with her then fine. If not, you are free to walk.

Certainly, providing supply or cost information would be both useful to the buyer and make the market more efficient but that does not mean that the appliance merchant has a moral obligation to do so. As a seller, you have only the negative duty not to interfere with either the supply or the free flow of market information. You have no positive duty to increase either the supply of goods nor the quantity of information about the supply.

This analysis of the exchange between the buyer and the seller is subject to some important limiting conditions. First of all, it assumes that the buyer and the seller are not in some kind of "special relationship" beyond this simple exchange. Additionally, it assumes that the seller does not have access to arcane, specialized, expert or technical information that it would be impossible or practically impossible for the buyer to obtain. The best example of this is the doctor - patient relationship. This relationship extends beyond that of a seller and a buyer, even though the relationship is partially one of money exchange. The

doctor possesses expert knowledge that the patient needs to make a decision on buying services. Unfortunately, the patient is in no position to evaluate the quality of that information. He must trust completely the doctor's advice in making his decision. Under these conditions, the doctor has a heightened responsibility to provide the patient with as much information as the patient requires and present it in a way that the patient can understand and make an "informed decision." These same constraints apply in the case of lawyers and any fiduciary agents. In these cases, Cicero's demand that the buyer is entitled to any information that he finds "useful" would apply.

But these special conditions do not apply to the grain merchant at Rhodes. He is engaged in a buyer-seller type of relationship. He does possess information that would be useful to the buyers but it is not because he has special training or expertise. It is simply because he came across this information. Had any of the Rhodians been where he was, they, too, would have the information. One might press the point that the Rhodians were not in fact there and, therefore, have no easy way to gain this knowledge. Pursuing this line of argument, one could object that the reason why doctors and other experts have a higher standard of disclosure is that patients and clients have no easy access to information they need to make an informed decision. The Rhodians are in the same position to the merchant, therefore, as patients to doctors.

This objection misses the point of the higher standards of professional disclosure. The ethical requirement for higher standards of disclosures by doctors (and other experts) is based not on the "ease" with which the information can be obtained. The more essential consideration is depth of expert knowledge rather than its availability of the knowledge. For all the medical facts are easily available to all patients in libraries, bookstores and other relatively inexpensive and accessible sources. The problem for patients is that they lack the depth of knowledge and experience to give meaning to the medical facts. In the case of the Rhodians, it is not that they lack the capacity to understand or measure the consequences of the facts. They simply do not have the facts, but why that alone is not enough to impose a positive moral requirement on the seller or anyone else to inform them. I'm not convinced that the seller has a positive duty to provide the buyer with all of the information that the buyer may find useful. For one thing, that information itself may cost the seller something in order to get it and to insist that the seller must provide it to the buyer for free is unfair to the seller.

Perhaps we would be more inclined to agree with Cicero if we found ourselves in the position of the Rhodians. As a Rhodian, I definitely would want to know if more grain was on the way. I would find such information "useful". But I'm not sure that I would feel "cheated" by the merchant or judge him "dishonest" if I found out later that he knew about the extra grain but failed to tell me about it. On the other hand, had the merchant sold me inferior, damaged or unusable grain, then there is no doubt that I would feel cheated and believe that the merchant was dishonest.

Perhaps, the most that Cicero can claim in the Rhodes famine case is that, while we would hesitate to call such a merchant dishonest or unethical, we may not admire him much either given the surrounding circumstances of the case. I think we would be inclined to say of a merchant who told us of the coming of the other grain ships that he was a person of "higher character" without claiming that those who would not tell are unethical. Telling in this instance appears to be above and beyond the demands of ethics but not beyond the demands of our admiration.

End Notes:

1. One might argue that the "defect" should be thought as a "defect" in the buyer's knowledge and not in the product being sold. Hence, the transaction is unethical because of defective knowledge of the buyer that the seller is obliged to "fix". In response, I'd point out that this clearly not what Cicero has in mind. He is explicitly talking about defects in the product. Beyond that, I believe that my ensuing arguments answer that possible objection as well.