Why Each One Should Eat His Own Turtles: Equality in Uncertainty

Taste of turtle – Where are the new customers? –Sharia and asymmetry

You who caught the turtles better eat them (*Ipsi testudines edite, qui cepistis)* goes the ancient adage.[i]

Its origin is as follows. It was said that a group of fishermen caught a large number of turtles. After cooking them, they found out at the communal meal that these sea animals were much less edible that they thought: not many people were willing to eat them. Mercury happened to be passing by –Mercury was the most multitasking, sort of put-together god, as he was the boss of commerce, abundance, messengers, the underworld, as well as the patron of thieves and brigands and, not surprisingly, luck. The group invited him to join them and offered him the turtles to eat. Detecting that he was only invited to relieve them of the unwanted food, he forced them all to eat turtles, thus establishing the principle that you need to eat what you feed others.

A Customer is Born Every Day

I have learned a lesson from my own naive experiences,

> *Beware of the person who gives advice, telling you that a certain action on your part is "good for you" while it is also good for him, while the harm to you doesn't directly affect him.*

The asymmetry is when the said advice applies to you but not to him –either because he is selling you something or getting you to marry his daughter or hire his son-in-law.

Years ago I received a letter from a lecture agent. His letter was clear: it had about ten questions of the type "do you have the time to field requests?", "can you handle the organization of the trip", with the gist that a lecture agent would make my life better and allow me the pursuit of knowledge or whatever else I was about (a deeper understanding of gardening, stamp collections, or Lebanese wine) while the burden of the gritty falls on someone else. And it wasn't any lecture agent: only he could do all these things; he reads books and can get in the mind of intellectuals (at the time I didn't feel insulted by being called an intellectual). As is typical with people who volunteer unsolicited advice, I smelled a rat: at no phase in the discussion did he refrain from directly apprising me or hinting that it was "good for me".

As a sucker, while I didn't buy into the argument, I ended up doing business with him, letting him handle a booking in the foreign country where he was based. Things went fine until, six years later I received a letter from the tax authorities of that country. I immediately contacted him to wonder if similar U.S. citizens he had hired incurred such tax conflict, or if he had heard of similar situations. His reply was immediate and curt: "I am not your tax attorney" –volunteering no information as to whether other U.S. customers who hired him because it was "good for them" encountered such a problem.

Indeed, in the dozen or so cases I can pull from memory, it always turns out that what is presented as good for you is not really good for you but certainly good for the other party. As a trader, you learn to identify and deal with upright people, those who inform you that they have something to sell, by explaining that the transaction arises for their own benefit, with such question as "do you have *an axe*?" (meaning an inquiry whether you have a certain interest). Avoid at all costs those who call you to tout a certain product disguised with advice –trying to dump inventory on you. In fact the story of the turtle is a constant in the history of transactions between mortals.

I worked once for a classic U.S. investment bank of the prestigious variety, called "white shoe" because the partners were members of hard-to-join golf clubs where they played the game wearing white footwear. As with all such firms, an image of ethics and professionalism was cultivated. But the job of the salespeople (actually, salesmen) on days when they wore black shoes was to "unload" inventory with which traders were "stuffed", that is, securities they had in plethora in their books and needed to get rid of them to lower their risk. Selling to other traders was out of the question as professional traders, typically non golfers, would smell excess inventory and cause the price to drop. We traders paid the sales force with (percentage) "points", a variable compensation that increased with our eagerness to part with securities. Salesmen took clients out to dinner, bought them expensive wine (often, ostensibly the highest on the menu), and got a huge return on the thousands of dollars of restaurant bills by unloading these unwanted stuff on them. One expert salesman candidly explained to me: "If I buy the client, working for the finance department of a municipality, who buys his suits at some department store in New Jersey, a bottle of $2,000 wine, I own him for the next few months. I can get at least $100,000 profits out of him. Nothing in the *mahket* gives you such return". Given that the customer worked managing some public employee pension fund, is the general taxpayer that in fact was paying more than $100,000 for a $2,000 bottle of wine.

Salesmen hawked how a given security will be perfect for the client's portfolio, how they were certain it would rise in price and how the client would suffer great regret if he missed "such an opportunity", that type of discourse. Salespeople were experts in the art of psychological manipulation, making the client trade, often against his own interest, while being happy about it and loving them and their company. One of the top salesman of the firm, a man of huge charisma who came to work in a chauffeured Rolls Royce, was once asked whether customers didn't get upset when they got the short end of the stick. "A customer is born every day" was his answer.

THE PRICE OF CORN IN RHODES

So, "giving advice" as a sales pitch is fundamentally unethical –selling cannot be deemed advice. We can safely settle on that. You can give advice, you can sell (by advertising the quality of the product) and the two need to be kept separate.

But there is an associated problem in the course of the transactions: how much should the seller reveal to the buyer?

The question "is it ethical to sell something to someone knowing the price will eventually drop" is an ancient one –but its solution is no less straightforward. The debate goes back to a disagreement between two stoic philosophers, Diogenes of Babylon and his student Antipater of Tarsus, who took the higher moral grounds on asymmetric information and seems to match current ethics endorsed by this author. Not a piece from both authors is extant, but we know quite a bit from secondary sources, or, in the case of Cicero, tertiary. The question was presented as follows, retailed by Cicero in *De Officiis*. Assume a man brought a large shipment of corn from Alexandria to Rhodes, at a time when corn was expensive in Rhodes because of shortage and famine. Suppose that he also knew that many boats had set sail from Alexandria on their way to Rhodes with similar merchandise. Does he have to inform the Rhodians? How can one act honorably or dishonorably in these circumstances?[ii]

We traders had a straightforward answer. We called this "stuffing" –selling quantities to people without informing them that there are large inventories waiting to be sold. An upright trader will not do that to other professional traders; it was a no-no. The penalty was ostracism. But it was sort of permissible to do it to the anonymous market and the faceless nontraders, or those we called the Swiss, or some sucker far away. There were people with whom we have a *relational* rapport, others with whom we had a *transactional* one. The two were separated by an ethical wall, much like the case with domestic animals that could not be harmed, but rules on cruelty were lifted when it came to cockroaches.

Diogenes held that the seller ought to disclose as much as civil law would allow. Antipater believed that everything ought to be disclosed –beyond the law –so that there was nothing that the seller knew that the buyer didn't know.

Clearly Antipater's position is more robust –robust being invariant to time, place, situation, and color of the eyes of the participants. Take for now that

> *The ethical is always more robust than the legal. Over time, it is the legal that should converge to the ethical, never the reverse.*

hence:

> *Laws come and go; the ethics stays.*

For the notion of "law" is ambiguous and highly jurisdiction dependent: in the U.S., civil law thanks to consumer advocates and similar movements, integrates such disclosures while other countries have different laws. This is particularly visible with securities laws, as there are "front running" regulations and those concerning insider information that make such disclosure mandatory in the U.S. , though it wasn't so for a long time in Europe.

Indeed much of the work of investment banks my days was to play on regulations, find loopholes in the laws. And, counterintuitively, the more regulations, the easier it was to make money.

Equality in Uncertainty

Which brings us to the notion of asymmetry, the core concept behind skin in the game. The question becomes: to what extent can people in a transaction have an informational differential between them? The ancient Mediterranean and, to some extent the modern world, seems to be converging to Antipater's position. While we have "buyer beware" (*caveat emptor*) in the Anglo-Saxon West, the idea is rather new, and never general, often mitigated by lemon laws. So to the question voiced by Cicero of a debate between the two ancient stoics, "*If a man knowingly offers for sale wine that is spoiling, ought he to tell his customers?"* , the world is getting closer to Diogenes position of transparency, not necessarily via regulations as much as thanks to tort laws, one's ability to sue for harm in the event the seller deceived him. Tort laws put some skin in the game back into the seller –which is why they are reviled, hated by corporations (Expand discussion of tort laws and Ralph Nader).

Sharia, in particular the law regulating Islamic transactions and finance, reflects the knowledge of its day. It is at the intersection of Greco-Roman law (as reflected in the School of Law of Berytus), Phoenician trading rules, Babylonian law, and Arab tribal commercial customs and, as such, it provides a repository of all ancient Mediterranean and Semitic lore. I view Sharia as a museum of the history of ideas on symmetry in transactions. Sharia establishes the concept of *gharar*, which is totally banned in any form of transaction. It is an extremely sophisticated term in decision theory that does not exist in English; it means both uncertainty and deception –my personal take is that it means something beyond informational asymmetry between agents. It means *inequality of uncertainty*. Simply, as the aim is for both parties in a transaction to have the same uncertainty facing random outcomes, an asymmetry becomes equivalent to theft. Or more robustly:

> *No person in a transaction should have certainty about the outcome while the other one has uncertainty.*

Gharar, like every legalistic term, will have its flaw; it remains weaker than the approach by Antipater. If one party has certainty, it is a violation of Sharia. But if there is a weak form of asymmetry, say someone has inside information which gives an edge in the markets, there is no gharar as there remains enough uncertainty for both parties, given that the price is in the future and only God knows the future. Selling a defective product (where there is certainty as to the defect) on the other hand is illegal. So the knowledge by the seller of corn in Rhodes in my first example does not fall under Gharar, while the second case, that of defective liquid, would.