



HOW TO KILL THE ART MARKET:

A CULTURAL INQUEST REGARDING EXPORT CONTROL LAW

Marat is dying. His eyelids droop. His head weighs heavily on his shoulder. His right arm slides to the ground. His body, as painted by Jacques-Louis David, is that of a healthy man, still young. His face is marked by suffering, but is also gentle and suffused by a growing peacefulness as the pangs of death loosen their grip. The scene inevitably calls to mind the unavoidable martyrdom during the nationalist movements in France in the XVIII century. Recent cultural heritage restriction laws in countries such as Germany, Italy, and México seem to be leading the art market into a massacre. Some dramatic changes within the art business have already been exposed and numerous institutions have manifested their disapproval. The purpose of this article is to determine whether the export control laws will strive into the artistic production's conservancy or lead to its abatement.



The Death of Marat by Jacques-Louis David

Art, trade and law have always been inextricably and sometimes uncomfortable linked. It is not uncommon for collecting institutions to acquire new collection material from overseas. Free trade has always been at the center of the world's growing prosperity, especially since the 1950's when the volume of merchandise trade risen about 20 times. A prime example of the benefits of free trade was the opening of Japan in 1858 under American pressure. This encounter created prolific cultural and financial results such as the *Japanisme* in Europe and the reciprocal imitation of western styles in Japan. A hundred years later, in 1960's, the dramatic growth of the Japanese economy resulted in one of the greatest boom in the art market history, particularly for the French Impressionist and modern art.¹

¹ Goodwin, James. *The International Art Markets: The Essential Guide for Collectors and Investors*. London: Kogan Page, 2009. Print. p. 4

Nevertheless, the legal² cultural heritage exchange has also caused terrible plunder while being protected under the juridical armor. One of the most noticeable ones is the never-endingly dispute between Great Britain and Egypt over the ownership of Egyptian artifacts removed in the late 19th century, now housed in the renowned British Museum. The moral and ethical arguments influence all items which hold a deep symbolism of the national identity and cultural heritage of Egypt, just like the Rosetta Stone, the Sphinx's beard, and the multitude of mummies that were exported on behalf of science. The international community is struggling to interpret ownership rights in modern day based on actions which took place prior to the existence of international law protecting these treasures.

As globalization continues to have an impact on cultures and national identities worldwide, disputes concerning an artwork's "allegiance" will become more recurrent and drastic. Some nations have developed legislation programs to prevent these situations to occur. But, they have already caused serious consequences in the art market. For example, under Italian law, any object designated as a "national treasure" cannot leave the country permanently—it can only be exported temporarily, for a maximum of 18 months. Moreover, under existing legislation, any artwork (own privately or institutionally) in Italy that was



Salvador Dalí's *Figura en una Taula*

created over 50 years ago by an artist who has died (Italian or non-Italian) requires a license for temporary or permanent export regardless of the work's market price. This was the tangle of red tape which ensnared private owner Elena Quarestani when she attempted to sell a portrait by Spanish surrealist Salvador Dalí. Not only did the Italian government block the sale by Christie's auction house but it also thwarted an attempted acquisition of the painting by the Dalí Foundation for £500,000. The government's justification was that the portrait, entitled "*Figura en una taula (Figure at a Table)*", is "very beautiful" and Italy couldn't afford to lose this national treasure.³

² This article intends only to inquiry on the lawful and juridical side of importing and exporting. Looting, war booty and illegal theft will not be considered for editorial purposes of this text.

³ Kirchgaessner, Stephanie. "The Reasoning Was Crazy – How Italy Blocked the Sale of a Dalí Painting." *The Guardian*. Guardian News and Media, 2015. Web. 28 Mar. 2016. <<http://www.theguardian.com/artanddesign/2015/dec/07/dali-painting-italy-elena-quarestani-figure-at-a-table>>.

Such authoritarian and subjective responses are not limited to the Italian government. In February 2016, UK has imposed an export ban on a 1928-29 sculpture by Alberto Giacometti—a Swiss artist. “This Giacometti sculpture is not only a stunning example of his work but it also heavily influenced some [of] our greatest artists,” culture minister Ed Vaizey said in a statement published on the UK government's website. “It is important that *Femme* is kept in the country so we can better understand and enjoy this pivotal period in modern British art.”⁴ The announcement by the Reviewing Committee on the Export of Art and Cultural Objects, was entitled “UK risks losing £2m modern art sculpture,” and stated “Culture Minister Ed Vaizey has placed a temporary export bar on *Femme* by Alberto Giacometti to try to save the plaster sculpture for the nation.”⁵ This kind of possessive nationalism does not withstand serious scrutiny. Giacometti was, as the report acknowledges, “known as one of the most important and sought after sculptors of the last century.”⁶ That is not a British, or even a Swiss, qualification. In fact, it is a piece of moveable personal property that is being blocked nonobjectively. If you read between the lines, the fair market value for the artwork in question should be appraised, at least, over £12m. The seller declared such an undervalued price -with the intention to avoid attracting much attention from customs clearance, or elude high taxation revenues- has now lost million of pounds, since the UK government will easily pay the official declared price of £2m for the sculpture. After all, the UK government is also an active player of the art market.



Femme by Alberto Giacometti

Most recently, in March 30th, 2016, The Art Newspaper presented an article exposing an export bar that was placed on a £15m Veronese drawing by the England government based on the same dogmatic and subjective regulation. The preparatory drawing for *Venice Triumphant* (approx. 1581) has been considered by UK culture minister, Ed Vaizey, as “a remarkable insight into how Varonese created one of his most famous works”.⁷

⁴ Vaizey, Ed, MP. “UK Risks Losing £2m Modern Art Sculpture.” - *Press Releases. Department for Culture, Media & Sport*, 25 Feb. 2016. Web. 28 Mar. 2016. <<https://www.gov.uk/government/news/uk-risks-losing-2m-modern-art-sculpture--2>>.

⁵ *Ibidem*.

⁶ *Ibidem*.

⁷ Bailey, Martin. "UK Places Export Bar on £15m Veronese Drawing." *The Art Newspaper*. 30 Mar. 2016. Web. 30 Mar. 2016. <<http://theartnewspaper.com/news/news/uk-places-export-bar-on-15m-veronese-drawing-/>>.

These governmental restrictions have also affected some masterpieces' availability for aesthetic appreciation. One of the most famous cases has been Gerard Richter's decision to withdraw his artworks from German museums after the proposal of the German Cultural Heritage Protection Law. "The first draft of this legislation proposed that all objects of national importance older than 50 years and valued at €150,000 or more, must require an export license by the German government to leave German soil. A subsequent draft revision amended the value threshold, raising it from €150,000 to €300,000 and increasing the object's age from 50 to 70 years. Additionally, the revision states that works of living artists may qualify as objects of national importance only with the artist's permission."⁸ Richter called the government's plans "an infringement of freedom", and declared, "Nobody has the right to tell me what to do with my pictures."⁹ The legislation sparked outrage throughout the art world. Some art market experts condemned the act, and have warned that the German art and auction trade will be severely disadvantaged in the face of international competition. Furthermore, according to legal experts, this bill imposes a disguised restriction on the free movement of goods between EU Member States, breaching EU law, namely TFEU Article 36.¹⁰

Such circumstances diminish the market and inflates art's sales price. For example, according to *TEFAF 2014*, the Italian restriction laws have barred the country from joining the international art market and driven both art buyers and vendors, away from Italy and revealed that Italy's share accounted for just 1% of the global art market and registered 0% growth.¹¹



Lucio Fontana's \$24.7 Million Egg Painting

⁸ Weber, Elizabeth. "WYWH: You've Been Served." *Center for Art Law*. 25 Feb. 2016. Web. 28 Mar. 2016. <<http://itsartlaw.com/2016/02/25/wywh-youve-been-served-gerhard-richter-painting-and-german-cultural-heritage-protection-law/>>.

⁹ Neuendorf, Henry. "Gerhard Richter Could Withdraw Museum Loans - Artnet News." *Artnet News*. 15 July 2015. Web. 28 Mar. 2016. <<https://news.artnet.com/art-world/gerhard-richter-threatens-art-withdrawal-german-museums-316827>>.

¹⁰ O'Donnell, Nicholas. "Backwards, Not Forwards: German Cultural Ministry Submits Revised Cultural Heritage Protection Law." *Backwards, Not Forwards: German Cultural Ministry Submits Revised Cultural Heritage Protection Law*. 21 Sept. 2015. Web. 28 Mar. 2016. <<http://blog.sandw.com/artlawreport/2015/09/21/backwards-not-forwards-german-cultural-ministry-submits-revised-cultural-heritage-protection-law/>>.

¹¹ Rivetti, Ermanno. "Are Italy's Export Laws about to Change?" *The Art Newspaper*. 25 Sept. 2015. Web. 28 Mar. 2016. <<http://theartnewspaper.com/market/are-italy-s-export-laws-about-to-change/>>.

Furthermore, the limited offer due to the restricted export permits is creating an art market bubble for Italian art. *Art Price's Market Report 2015* has identified that one of the major trends of the Western market was the strong revaluation of Post-war Italian artists such as Lucio Fontana, Enrico Castellani, Pier Paolo Calzolari, Alighiero Boetti, Paolo Scheggi, and Alberto Burri due to the new legislative considerations. The primary catalyst underlying the recent inflation on Italian artists from the second half of the 20th Century derives from a reform in this country's cultural heritage legislation. The law, which aims to counter the leakage of wealth outside the country, has recently prompted a rush on Post-War Italian art as buyers anticipate a much more restricted market in the near future. This government limitation has in fact prompted a race against time and prices have been rising with increasing urgency. As a result, Sotheby's and Christie's *Italian Sales* (submitted on October 15th and 16th, 2015) generated unprecedented interest, with each sale produced more than \$62 million and impressive auction records.¹²

The restricted Mexican artists suffer from the contrary effect to the Italian body of work presented on the previous example. In fact, the Italian art's international recognition actually helped to maintain –and inflate– their artworks. Nevertheless, the national patrimony legislation of Mexico for certain artists had caused that the international art market, collectors and tourism remain unaware of the outstanding artworks produced in this country. In order to protect the country's cultural heritage, Mexican presidents have issued a number of decrees over the last decades, designating all the works of Frida Kahlo, José Clemente Orozco, Diego Rivera, José María Velasco, and Gerardo Murillo Coronado (known as “Dr. Atl”) as “historical monuments.” If the Mexican government eliminates this exporting restriction, some remarkable and prolific artists such as José María Velasco, “Dr. Atl”, or Orozco (which remain in relatively anonymity at the international market), would certainly gain the recognition they deserve. This effect would traduce in bigger selling prices and auction prices that would attract the high-end cultural tourism and will open new



José María Velasco's *Puente de Metlac*

platforms for collecting. For example, José María Velasco's masterpieces have nothing to envy to Camille Pissarro's, Alfred Sisley's or Armand Guillaumin's artworks. Velasco's prolific body of work is already held in the most important exhibition spaces such as Mexico's National Museum of Art and the José María Velasco “Pinacoteca”. Therefore, if the private market from this artist would be allowed to export freely, the appetite for this artist would increase considerably and would produce the international recognition it deserves.

¹² "The Art Market in 2015." *Art Price*. Ed. Thierry Ehrmann. 2016. Web. http://imgpublic.artprice.com/pdf/rama2016_en.pdf.



The difficulty in exporting these art pieces has forced collectors to keep their artworks privately and rarely show them at international venues. These restrictions have caused that some art owners are also becoming wary of the governmental regulations in such an extent that they decline to lend their work to museums fearing that they could be subject to ban. For example, much of the vibrant work Frida Kahlo has left behind is difficult to come by, even in light of her recent popularity. Museums are trying to keep up with her fans and several recent and upcoming exhibitions boast Kahlo's name — usually alongside Rivera's (also restricted) — but to provide more substance often rely on letters, sketches and other artifacts. Sadly, “Look How Many Works By Frida Kahlo We Were Able To Get” could be the title of most Kahlo-inspired exhibitions.

With all our love for Frida Kahlo, why does her work seem so elusive? The reason lies on the limited offer (around 130 paintings are considered to be finished), along with the fact that Mexican patrimony laws prohibit much of her work from leaving that nation. As a distinguished historical figure, Kahlo's works are designated as “artistic monuments“ by Mexico's National Institution of Fine Arts (INBA), and held in private collections. They may only be exported from the country temporarily, and cultural non-profits must request permission from the INBA to allow specific works to travel internationally. Other for-profits must also post a bond to ensure safe return. This law forces collectors to may not be so generous. Madonna, for instance, repeatedly rejected requests to lend a Kahlo for exhibition purposes.¹³

Resuming to this article's main theme, the art market for the Mexican restricted artists has been severely damaged in the public sector. If we consider auction houses as an indicator, people want to see a lot more of Frida Kahlo but they are distrustful and skeptical in their buying. This effect produces a high BI-rate which dramatically contrast with the auction records set for Kahlo's major paintings. Such as 2006 Sotheby's auction for the artwork *Roots*, which sold for 5.6 million USD. Estimates are difficult to assess, but Axel Stein, Sotheby's head of Latin American art told HuffPost about an unsold piece, *La Venadita*, which in 1985, carried an estimated value of \$175,000 to \$200,000. “The other day someone called the office and asked about that painting, if I knew where it was,” Stein said. “Because he was happy to pay \$7

¹³ For further information about this report, please refer to Munro, Cait. "Madonna Refused to Loan DIA Kahlo Painting." *Artnet News*. 16 Mar. 2015. Web. 28 Mar. 2016. <<https://news.artnet.com/art-world/madonna-kahlo-dia-277894>>.

million.”¹⁴ Examples like this can look very attractive for an art investment; nevertheless, the high risks involved in acquiring an artwork from this artist are substantial.

In addition, the tight export law does have an effect of creating two markets: one outside Mexico and one within. The same painting that might sell for \$500,000 in Mexico could easily double that outside because of international demand. The scarcity of major paintings available in the international market has spawned an incredible number of fakes. Mary-Anne Martin, a New York art dealer said to Artnet: “I’m sure I see between 50 and 100 fakes every year. I keep track of them in a folder. Some of them are very funny and others are dreadful.”¹⁵ An investment this caliber cannot be taken lightly. The high falsify risk and the erratic selling results for the Mexican banned artist, have resulted into a serious risk of Kahlo’s market extinction. Therefore, thoughtful collectors are very cautious and just few of them take their chances in getting one of Kahlo’s artworks through public marketplace.



La Venadita by Frida Kahlo

Just like Marat, the art market is becoming a victim amongst the nationalist desire of preservation and guardianship. The strict cultural heritage regulations placed on the export market in some countries are suffocating the growth of their own domestic market and considerable diminish one of the best advantages of art investing: liquidity. Artemundi’s experience considers that whatever the system in place, the more restrictive the export control and the more conditions attached to it, the harder work of art will be to sell overseas, and this places a limit on the potential buyers and ultimately on the value of the investment, unfolding negative aesthetic and intellectual consequences.

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¹⁴ Boboltz, Sara. "Why You May Not Have Ever Seen An Original Frida Kahlo In Real Life." *HuffPost*. 16 July 2015. Web. 28 Mar. 2016. <http://www.huffingtonpost.com/entry/frida-kahlo-art-real-life_us_559ed80be4b01c2162a62e8c>.

¹⁵ Kinsella, Eileen. "Frida Kahlo Auction Market." *Artnet News*. 25 May 2015. Web. 28 Mar. 2016. <<https://news.artnet.com/market/frida-kahlo-market-scarcity-284667>>.



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