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Art market analysis: A market in need of supervision

The best way to protect the trade is to safeguard scholarship

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Robert Motherwell in his studio—a 1953 work attributed to the artist has been deemed fake

The most striking thing about the art market—especially as it has grown from the small, passionate community of the early 1990s to a $50bn industry today—is that it largely functions along self-regulating lines. Prices, authenticity, standards and practices are all arrived at among the art world itself, without much reference or recourse to government—it feels like a libertarian's dream of a free and unfettered market. But, the recent scandal engulfing the 165-year-old Knoedler Gallery, with the authenticity of works attributed to US painters including Robert Motherwell and Jackson Pollock coming under scrutiny (The Art Newspaper, January 2012, pp4,5), suggests that more adult supervision is required.

"Over the years, we have hoped that there would be some sort of investigation" into the circulation of allegedly fake works, said Richard Grant, the executive director of the Diebenkorn Foundation in an interview with the New York Times last December. A federal investigation has now been launched into the alleged forgeries, but questions over market regulation have dogged the industry for years. William Cohan, a New York Times writer, published a scathing attack on the trade in August 2010. "The art market is utterly unregulated. There are few rules, other than the basic ones of commerce and ethics. There is no Federal Reserve Board or Securities and Exchange Commission," he wrote, referring to issues surrounding bronzes cast from rediscovered plaster moulds that were sold as genuine works by Degas (The Art Newspaper, May 2010, p7).

Cohan's proposed solution was not to create an agency to govern the art market but to shoehorn the trade under the newly created Consumer Financial Protection Bureau. However, Cohan made no effort to show how the oversight might work.

Indeed, there would be practical problems with art market regulation: works of art are not fungible, and value is impossible to calculate against any independent measure. Moreover, it is not the lack of laws that bedevils the art market but a see-no-evil, ask-no-questions attitude among many in the trade. It is worth bearing in mind that aggressive attributions, fudged provenance and too-good-to-be-true discoveries are nothing new. For more than 25 years, beginning in 1912, the American art historian Bernard Berenson helped the English art dealer Joseph Duveen to sell masterpieces to US plutocrats, famously embellishing attribution on occasion to justify the price.

Middlemen

Since then, however, the market has grown exponentially, which means that there are more people involved. For example, in the recent case brought against Knoedler and its former director Ann Freedman by the London-based collector Pierre Lagrange last December over an allegedly fake $17m Pollock, the number of intermediaries only added to the confusion. At least four individual entities stood between the seller and buyer: the dealers Jaime Frankfurt and Timothy Taylor acted as unwitting agents and liaised with Knoedler gallery and its then director, Freedman, on Lagrange's behalf. The gallery and Freedman in turn dealt with Long Island art dealer Glafira Rosales, who was herself allegedly representing the mysterious Mexican seller.

Responsibility
While intermediaries are not necessarily a sign of trouble, the chain of people involved in the Lagrange case seems to have created a diffusion of responsibility. The situation is not atypical. “There used to be clear pipelines that art would go into, but now there is a complex matrix,” says David Houston, the director of the curatorial department at the Crystal Bridges Museum. The institution has made no secret of its desire to buy a major Pollock, but is navigating busy waters. “We see a lot more middlemen in the market today than we did ten years ago—people who are part-adviser, part-dealer and part-picker,” he says.

Nevertheless, many in the trade say that Pollock’s massive prices (notably Mural, 1943, which is owned by the University of Iowa Museum of Art and is valued at $140m), and the fact that his output was limited, mean that the whereabouts of his works are relatively well known. Any buyer seriously looking for a work at the highest price level should “know exactly which works are out there, who owns them and whether they’re ready to part with them”, says the art adviser Todd Levin of the Levin Art Group.

Middleman or no, Lagrange’s confidence in the authenticity of the $17m Pollock was no doubt enhanced by Knoedler’s role in the deal. The gallery’s ties to the New York School painters, including the recently deceased Helen Frankenthaler, and its long-established reputation lent authority to its opinions. The gallery’s sudden decision to close on 30 November shocked many in the trade. There is a parallel with the events of the banking crisis in 2008 when long-standing firms like Bear Stearns and Lehman Brothers collapsed. “This may have warned people that even a solid source like a 165-year-old gallery can go out of business,” says the art dealer Richard Feigen, who opened his first gallery more than 50 years ago, selling works ranging from Old Masters to surrealists and contemporary artists. He recently demonstrated the importance of professional integrity when he stood behind the sale of a putative Max Ernst painting that turned out be one of the 62 acknowledged forgeries produced by the Wolfgang Beltracchi ring in Germany, a scam that was exposed last year (The Art Newspaper, December 2011, p55). When the fraud was revealed, Feigen immediately reimbursed his client, and was in turn paid back by the seller.

New York bills of sale require a warranty of authenticity for a work of art (though this expires four years from the date of sale and may not be extended), which should be sufficient oversight of the market. Galleries and auction houses with plenty of financial reserves are able to stand behind works they sell, and so are essential in ensuring the viability of the current art market. Without them, the system cannot function—which may be one reason that the auction houses have been able to expand their private sales dramatically through the credit crisis and that brand galleries including Gagosian, Pace, David Zwirner and Hauser & Wirth increasingly dominate the commercial scene.

Scholarship

The other key pillar of the self-regulating market is the scholarship that produces reliable catalogues raisonnés. But, the field appears increasingly under threat. The troubling retreat of scholars in the case of a group of Francis Bacon drawings (The Art Newspaper, December 2011, pp1, 8) indicated that experts, fearful of costly lawsuits, are shying away from taking a public stance on what is, or is not, a legitimate work.

Scholars simply cannot keep up with the speed of online pricing databases, skewing the balance between an artist’s critical reception and their market value. Worse, catalogues raisonnés can be fallible: Yoshitomo Nara recently declared two works in his own catalogue, a project he vetted himself, to be fakes.

Nevertheless, such publications remain vital. While Asher Edelman, a pugnacious art dealer and former Wall Street trader, says he knows about some genuine Pollock paintings that are not officially recognised, he would not touch them. “It has to be in the catalogue raisonné,” he says.

Ultimately, the best way to protect the art market—and address the issue of regulation—is to safeguard scholarship: this underpins an artists’ value, provides proof of provenance and lubricates an expanding market. As the art business continues to globalise, its growth depends upon making scholarship reliable and accessible. Because, in the end, the experts are the only candidates who can provide the adult supervision the market desperately craves.

The writer is the publisher of Art Market Monitor