

Reversing the Silk Road: The Rapid Rise of the Art Market in Asia and Its Implications

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The great ancient trade route between the East and the West—popularly known as the Silk Road—was central to the exchange of luxury and cultural goods for many centuries. The Silk Road carried Eastern items like spices, silks, and works of art from Asia and the Middle East to waiting wealthy European buyers. In modern times, new classes of ultra-rich Asians have “reversed” the Silk Road of antiquity, eagerly purchasing luxury items, art, and antiquities from Europe. In so doing, they have catapulted new markets—Hong Kong, Singapore, Dubai, among others—into the forefront of the art world. And without doubt, the rapid rise of new markets has brought with it a bevy of legal issues including inflated art prices, the propagation of forgeries, and elaborate money-laundering schemes using art.

Rise of Asian Markets

In 1990, Japan was the top art buying nation in Asia and the world’s largest importer of art with a 30% share of global imports by value—a market share greater than either the United Kingdom or the United States.¹ Scholars refer to Japan’s financial dominance from 1986 to 1992 as the “bubble period,” and during that time, many of the world’s most highly valued paintings were bought by Japanese investors.²

At a 1987 auction in London, a mystery buyer paid nearly US\$40 million for Vincent van Gogh’s *Sunflowers*. The buyer was eventually revealed as the Japanese insurance company Yasuda Fire and Marine Insurance, which purchased the famous painting as a 100th birthday present to itself.³ In 1990, Japanese buyers purchased more than US\$4 billion in art, including half the Impressionist art put up for sale, including works by Van Gogh and Renoir.⁴

With the benefit of hindsight, the accelerated appreciation of land and a superheated Japanese economy stimulated investor demands for both Japanese



Vincent van Gogh's *Sunflowers*, 1888
Part of the permanent collection of the Sompo Japan Nipponkoa Museum of Art

stocks and international art during the bubble period.⁵ When the crash came in late 1991, art sales worldwide slumped by 65%.⁶

While Japanese businesses may have started the art buying trend in Asia, there was only one Asian billionaire by 2006, and wealthy individuals are a driver of fine art sales.⁷ At that time, China accounted for only 2% of global art imports, and India accounted for only 3%, casting doubts on the region’s ability to grow its markets.⁸ China slowly surpassed India as its middle class grew and accumulated wealth while India’s wealth stayed primarily with the country’s top income earners only.⁹ Indeed, China’s burgeoning middle class and upper

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class catapulted China's buying power in art markets from 2% to 9% by 2016.¹⁰

UBS and PricewaterhouseCoopers analyzed the data of 1,550 billionaires worldwide in 2016 and found that, for the first time, there were more billionaires in Asia than in the United States. The number of Chinese billionaires rose by 25% to 637, compared with 537 U.S. billionaires and only 342 European billionaires.¹¹ In 2017, Asia accounted for 32% of the world's wealth, which has fueled stronger buying power in both the regional and the global art markets.¹² Not only are Asian economies the fastest growing in the world, but they also are expected to continue their extraordinary growth over the next ten years at twice the rate of the European Union and other Western nations.¹³ If current tastes and recent purchases are any indication, then the global art market expects Asians to continue buying phenomenal amounts

of international "blue chip" artwork, contemporary art, and classical Chinese master works.

Appealing to an Asian Palate

In 2017, when Leonardo da Vinci's *Salvator Mundi* broke records by selling for US\$450.3 million, the art world assumed the buyer was Chinese. In fact, the purchaser was Middle Eastern, buying the work for display at the Louvre Abu Dhabi. But given the multiple Asian buyers feverishly bidding for the masterpiece and the preference of the Chinese for old and modern masters, it was entirely reasonable to presume a Chinese buyer. According to Art Market 2018, a study by Art Basel and UBS, China is the world's second largest consumer of art (after the United

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Leonardo da Vinci's *Salvator Mundi*
Courtesy of Christie's Images Ltd. 2017

States), accounting for 21% of the total worldwide sales amounting to US\$63.7 billion.¹⁴

According to Georgina Adam, author of *Big Bucks: The Explosion of the Art Market in the Twenty-First Century*, buying art used to be a niche trade in the United States



Japanese buyer Yusaku Maezawa poses with his purchase of Basquiat's *Untitled* (1982).
Photo from Instagram account yusaku2020

and Europe. Now, buying art has become part of the global luxury and fashion industry, and international celebrities compete for art by “brand name” artists.”¹⁵ Art need not be extremely old to be popular. For example, in 2015 the painting *Nu couché* (1917-18) by Amedeo Clemente Modigliani sold to Chinese billionaire Liu Yiqian for US\$170.4 million at Christie's. In 2017, Japanese billionaire Yusaku Maezawa bought a Jean-Michel Basquiat, *Untitled* (1982) for US\$110.5 million at Sotheby's, expanding the possible range of Asian taste for art.

But the classics remain popular. In 2017, Rebecca Wei, president of Christie's Asia successfully secured Vincent van Gogh's *Laboureur dans un Champ* (1889) at a Christie's auction for a Hong Kong-based collector. Ms. Wei also secured an 1884 Renoir portrait for US\$8.2 million and a 1970 Marc Chagall painting for \$1.6 million for the collector, who spent US\$91 million on three works of art in one night.



Van Gogh's 1889 *Laboureur dans un champ*
Source: Christie's

Ms. Wei states that successful Chinese entrepreneurs between the ages of 40 and 60 are generally attracted to artwork valued at US\$10 million and above.¹⁶ More specifically, Chinese collectors, and Asian collectors generally, are after the rare classics known as international “blue chip” art.

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Blue chip art is any art expected to reliably increase in economic value regardless of the general economic conditions.¹⁷ Art need not be old to be blue chip—works by Pablo Picasso, Andy Warhol, Mark Rothko, Tracey Amin, and Anish Kapoor are all examples of blue chip art. Even in an economic downturn, blue chip art will sell at top dollar because these pieces remain coveted and thus often sell at incredible prices at auction. Indeed, Postwar and Contemporary art is also reliable in the art market.

Postwar and Contemporary art refers loosely to works created after 1945. Last year, only twenty-five artists were responsible for half of all Postwar and Contemporary art auction sales.¹⁸ According to Artnet Analytics, a database for art prices for more than 12 million auction houses, through the 1980's, collectors concentrated on purchasing new and Contemporary art. Because of a lack of supply, however, when a piece of blue chip Contemporary art goes up for auction, the ultra-wealthy bidders drive up the price to win it. After the economic crisis of 2008, investors and collectors shifted to traditional masters with more reliable resale value.¹⁹ The shift can also be credited to rise of ultra-high net-worth individuals (a/k/a UHNWI's) from Asia, Eastern Europe, and the Gulf region and their preference for more classical art and well-known artists.

The Asian Market for Home-Grown Works

Another consequence of UHNWI's from Asia consuming art is the expansion of the Asian art market itself. According to Artnet and the China Association of Auctioneers, the market for Chinese art, antiques, and antiquities is growing steadily in Asia, with major auction houses shifting inventory to Hong Kong. In 2017, 78% of the works categorized as Asian art was sold in the Pan-Asian region—up from 66% in 2011.²⁰ The *China Daily* reported impressive sales like the purchase of landscapes by Qi for US\$171 million in December 2017. Asians are rapidly buying artwork by Qi Baishi, Xu Beihong, and Zhang Daqian. In fact, according to Artprice.com, a French database for art market information, in 2017, Zhang Daqian generated US\$31 million more in auction sales than Pablo Picasso.²¹ This primarily reflects the

appetite of Chinese buyers for Contemporary works in ink, and works that evoke the traditional culture of China.²²

When the painting *Family Life* by Vietnamese artist Le Pho sold for US\$1.2 million at auction in Sotheby's in 2017, the sale was the first Vietnamese painting ever to cross the million-dollar mark in the international market. This sale was generally considered to signal the maturity of Vietnamese art and the Vietnamese art market.



Le Pho's *Family Life*

Inflated Prices, Money Laundering, and Forgeries

With the rise of ultra-wealthy Asians acquiring art, with blue chip art in high demand, and with Chinese art in particular gaining worldwide prominence (in addition to setting trends and dictating taste), the Asian world is treating art like an asset. And like any international asset being bought, sold, and traded, there are classic legal issues, like inflated art prices, the mass proliferation of forgeries and fakes, and the opportunity for international money laundering.

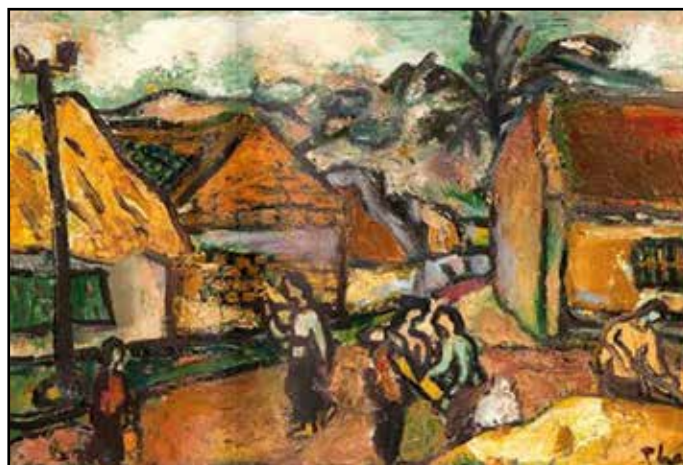
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While auction houses delight in a bidding war and hope to secure the highest possible sales prices, for observers and critics there are major concerns over art's "commodification" and value only in terms of dollars.²³ For example, in 2013, Christie's sold US\$691 million in Postwar and Contemporary art. Christie's also set the record for the most expensive work by a living artist, selling a Jeff Koons sculpture, *Balloon Dog*, for US\$58.4 million.²⁴ Every year since, however, Christie's and other major auction houses have continued to break their own records. The possible effect, according to the analysts, is that art is becoming more of an asset class or luxury brand, like equities or fashion and less about the actual art.²⁵ Whether that is a desirable or acceptable effect is an individual value judgment.

Artprice.com reports that the Contemporary art market is extremely sensitive to "prestige news," particularly if it involves major art dealers who are today the creators of artists' pricing powers.²⁶ The auction sector is highly concentrated by value, with the top five houses (Christie's, Sotheby's, Poly Auction, China Guardian, Heritage Auctions) accounting for around half of global market sales by value and the top ten accounting for over 60%.²⁷ The effect of inflation includes threats to the art market's consolidation around promoting the work of very few artists, and homogenizing tastes around successful artists and those selling their works. As the focus of publicity shifts to galleries and artists at the superstar level, the art market also appears increasingly out of reach for new buyers who feel they can only take part if they gain access to this top tier and its multimillion-dollar price structure.²⁸ In Asia, low average incomes mean that for many consumers and other emerging markets, purchases of luxury products including art are still out of their reach entirely, resulting in a relatively thin market of buyers.²⁹

The result is a burgeoning black market of copies, fakes, and forgeries.³⁰ Indeed, some of the biggest problems facing the art from Asia include: the lack of an orthodox and robust art system with curators, art consultants, wealthy domestic buyers, and art investment funds; the questionable ability of audiences and buyers to evaluate artwork; and fake, forged, and copied works.³¹

There is a strong cultural element regarding copying artwork as well. Specifically, copies are meant to pay tribute and may interpret the original. In Asia, copies may be equally valuable if they have a relationship to the original. Forgeries or fakes, on the other hand, are made to deceive buyers.³² For example, when there was a demand for artwork by Bùi Xuân Phái, a Vietnamese painter famous for the paintings of Hanoi Old Quarter, Asian buyers rushed to purchase his work regardless of whether the pieces they purchased were authentic or fake.



Bùi Xuân Phái's *Nong Thon (Countryside)*

Moreover, in Vietnam, Vietnamese artists are not highly protected by legal documentation and practices, which results in the frequent violation of intellectual property rights and the artists' reliance on foreign dealers to make ends meet.³³ Amateur artists and professional forgers do not hesitate to copy and plagiarize artwork when auction houses keep selling the paintings. In struggling economies, investors are more interested in generating immediate income than in maintaining the enduring value of authentic artwork.³⁴

Art also makes for an attractive instrument to hide illicit assets, experts say, because the transactions are often private, prices are speculative, and an item can easily be smuggled to evade authorities who, even when they inspect the piece, frequently do not know its value. As Georgina Adam outlines in her book *Dark Side of the Boom: The Excess of the Art Market in the Twenty-First*

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Century, collectors and their agents have continually found creative ways to use their art holdings to defer paying taxes, including the establishment of private museums and foundations storing artworks in offshore freeports, where they can be exchanged without incurring customs duties or VAT, and loopholes in the tax code such as “like-kind” exchanges.³⁵

Two very prominent cases illustrating money laundering through art are the *Ferreira* and *Razak* cases. In 2007, U.S. federal investigators found someone attempting to smuggle a Jean-Michel Basquiat painting, titled *Hannibal*, through New York’s Kennedy Airport. The painting was appraised at US\$8 million, but the bill of lading listed the value as only US\$100. The painting was part of a 12,000-piece art collection purchased by Brazilian financier Edmar Cid Ferreira using embezzled funds from Banco Santos in Brazil.³⁶ Before his arrest, Ferreira and his wife smuggled more than US\$30 million of art out of Brazil.

Ferreira owned a Panamanian company called Broadening-Info Enterprises that purchased *Hannibal* for US\$1 million in 2004. Broadening-Info Enterprises then sold the painting for US\$5 million to a company owned by Ferreira’s wife. On its way to New York in 2007, however, with a listed value of only US\$100, U.S. customs documents were not required. When caught, Broadening-Info Enterprises claimed it had no intent to smuggle the painting, despite the gross inaccurate valuation of the piece.³⁷ Ferreira was sentenced in São Paulo to 21 years’ imprisonment for crimes against the national financial system and money laundering.

In the *Razak* case, according to the U.S. Department of Justice, Malaysian Prime Minister Najib Razak diverted more than US\$3 billion from the Malaysian sovereign wealth fund and used US\$1 billion of the siphoned funds to buy real estate in California as well as paintings by Basquiat, Rothko, and Van Gogh.³⁸ Razak oversaw 1Malaysia Development Berhad (1MDB), a government investment fund with the mission of encouraging economic development and investment in Malaysia. As early as 2015, however, allegations arose relating to the use of funds. Investigations revealed billions of

dollars were missing from the funds. With the help of the infamous Panama Papers, investigators focused on more than US\$700 million in deposits to Razak’s personal accounts using agencies, banks, and companies linked to 1MDB.

Through associates, Razak disguised the true nature of the funds. The primary individual responsible for laundering the embezzled funds was Jho Low. Jho Low is a financier who established offshore shell companies, mislabeled transactions as gifts, and purchased art and real estate to disguise the origins of the funds. The *Razak* case generated publicity because Low used some of the funds to produce the *Wolf of Wall Street* film.³⁹

When China implemented regulations to restrict the flow of capital out of the country, wealthy individuals turned to the art market to evade the restrictions.⁴⁰ Chinese laws prohibit individuals from moving more than US\$50,000 out of China in one calendar year; however, individuals can sell their art in another country at a higher price and retain the profits in the foreign currency. Wealthy individuals can also enlist the assistance of an associate who sells the work at an inflated price, retains a portion of the proceeds, and deposits the remaining amount in an offshore bank account. Either method makes the funds appear legitimate to the Chinese authorities, which, of course, is the ultimate intent of the transaction. The subjectivity of art in terms of how it acquires value, how it is appreciated, and how it moves between treasure and asset makes it extremely difficult to regulate.

While inflated art prices, forgeries, and money laundering have long been problems in the art world, the rapid rise of Asian art markets has amplified these issues and brought them to the legal forefront. Governments, banks, and auction houses must collaborate to offer better provenance and authentication resources as well as provide due diligence resources and transparency in their processes. For example, blockchain technology is being used in art to create safe and secure certificates for digital art.⁴¹ Auction houses are implementing more robust “Know Your Client” programs for due diligence purposes, and financial institutions are focusing on higher-risk jurisdictions for potential art-related crimes. They

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are also using higher scrutiny for “politically exposed persons.” Indeed, while opportunity to use art for criminal purposes is significant, these same legal issues present opportunities for innovative technology and international cooperation and collaboration.



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