

The myth of the unregulated art market

- o Meaningless cliché
- o The British art market is highly regulated, at an EU and at a national level
- o BAMF research – February 2015 – 167 laws and regulations
- o But no oversight by industry regulator

Regulations are like suits



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CONSTANTINE | CANNON

3 types

- o Ready-made
- o Made-to-measure
 - o Tax
 - o Margin scheme, import VAT, conditional exemption, gifts/sales in lieu
 - o Intellectual property
 - o Copyright, resale right
 - o Export controls
 - o Anti-money laundering (HVD)
 - o Targeted statutes
 - o Dealing in Cultural Objects (Offences) Act 2003
 - o Immunity from seizure
 - o Bans on dealing in cultural property from Iraq and Syria
- o Bespoke

Bespoke

- The most sophisticated
 - Regulations designed for a given market or profession
 - Government-appointed agency in charge of monitoring compliance and enforcement – contrast with self-regulatory bodies
 - Banks, financial markets, insurance, telecommunications, professions
- Best suit but best regulation?



Does bespoke regulation work?

- o French *Conseil des Ventes* (2000) – Drouot scandal (2009)
- o Some problems facing regulators
 - o Lack of market knowledge
 - o Poor compliance monitoring
 - o Regulators cannot keep up with the pace of change
 - o Regulating a world-wide market at country level

Cost of regulation

- o Cost of regulation

- o It's high. In 2014-2015

- o General Medical Council spent £101 million

- o Solicitors Regulatory Authority spent £75 million

- o Prudential Regulation Authority spent £236 million

- o You pay for the privilege of being regulated – annual fee to regulator

- o Compliance cost

- o Hassle cost: delays, admin, record-keeping

- o Cost of regulation proportionally higher for smaller firms

Let's face it: there are issues

- o Issues that are art market specific
 - o Undisclosed conflicts of interest
 - o Lack of transparency
 - o Distortion of competition
 - o Insider dealing
- o Issues that are not art market specific
 - o Money laundering
 - o Tax evasion
 - o Corruption
 - o Fraud (especially on-line)

Options for improvement

- o Better enforcement of existing regulations
 - o Competition
 - o Criminal law
- o Criminalizing certain types of behaviour
 - o Secret commission
- o Introducing targeted measures
 - o Auction practices, e.g. third party guarantees
 - o Certain types of insider dealing