

Another Pricey European Import?

An Economic Analysis of the Artist's Resale Right

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Abstract. The artist's resale right, also known as *droit de suite*, entitles a visual artist to some percentage of the resale price of his or her original work. In 2001 the European Union decided to require its member states to phase in the resale right. While the artist's resale right has only had a weak foothold in California, the United States may eventually feel some pressure to join its European counterparts in adopting the legislation on a national level. This paper seeks to find some economic justification for adopting a resale right, namely the possibility that it would encourage struggling artists at the outset of their careers to devote more labor hours to artistic production. However, empirical evidence indicates that this outcome is highly unlikely, and that moreover, the supposedly non-economic purposes intended for the artist's resale right may be not be served.

I. Introduction

The life of the artist is about misunderstood and under-appreciated genius, about rising in fame but forever struggling to scrape together enough money for a meal or simple material comforts for loved ones—so the story goes. One of the most moving accounts of the impoverished artist involves Jean Francois Millet (1814-1875), born of a French peasant family and made famous by his paintings of rural life. Money did not follow his fame,

* Honors thesis submitted in partial fulfillment of the requirements for Graduation with Distinction in Economics in Trinity College of Duke University. Professors Neil De Marchi and Alison Hagy, and peer reviewers Aparna Krishnaswamy, Shiyong Lee, Alice Luo, Mac Conforti, Jack Cheng and Roy Ben-Dor provided thorough and thoughtful critiques. Their aid and suggestions are greatly appreciated. The author will be attending Harvard Law School in the fall.

however, for in the same year that one of his paintings resold for an impressive sum of one million francs, poverty supposedly forced his granddaughter to sell flowers in the Parisian streets.¹

To address the seeming injustice of the artist's relationship to society, the French government has granted its visual artists not only copyright, but also the moral right (translated literally from the French term *droit moral*) and the resale right (*droit de suite*). The moral right originated in French case law in the 19th century and is a composite right referring to the right of attribution and the right of integrity, both of which are meant to protect the artist's personality.² The resale right is young compared to copyright and the moral right. France was first to adopt it in 1920, when the story of Millet's destitute family was still fresh in the French psyche, and other civil law countries eventually followed suit. Today, the resale right exists in more than 29 jurisdictions across the globe. The resale right entitles an artist to some percentage of the proceeds from every subsequent resale of his or her original work. It is enforceable when the resale involves the participation of some art market professional and when some minimum price level is met. The resale right is also inalienable in most jurisdictions, meaning that the artist may not transfer or sell the right as not like he or she is able to do with copyright. Whereas the moral right is meant to protect the artist's reputation, the resale right directly aims to serve the artists' pecuniary interests.

Among the jurisdictions that have the resale right is the state of California, but that is the only place in the United States that officially recognizes the right. Why has there not

¹ Stanford (2003) and others recount this story.

² Article 6bis of the *Berne Convention* protects attribution and integrity, stating the following: "Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation." — *Berne Convention for the Protection of Literary and Artistic Works*, September 9, 1886, art. 6bis, S. Treaty Doc. No. 27, 99th Cong., 2d Sess. 41 (1986).

been a resale right at the federal level? To the United States, which has until recently given visual artists only copyright protection, the moral right and resale right have seemed rather exotic. Both rights supposedly empower the artist by denying the purchaser's exclusive ownership of a work of art. This is antithetical to the Anglo-American free-market tradition of property rights, where the purchaser of an item, after freely negotiating the price, is the absolute owner.

In 1990, the United States finally decided to become a little more European in its treatment toward artists by implementing the Visual Artists' Rights Act, which granted visual artists the moral right. This move was rather surprising given the United States' traditional view of property. Even more surprising was the provision in the Visual Artists' Rights Act that called for the consideration of introducing a resale right at the federal level.³ However, the introduction of a resale right was never carried out.

Because the United States has a sizeable resale market for works of art and also because of the persistent notion of the starving artist, the resale right remains a contended issue. In fact, visual artists in the United States may have a reason to be hopeful for its implementation in the near future.⁴ Just three years ago, in 2001, the European Union decided on the harmonization of *droit de suite*. This means that even Britain, which has shared with the United States a market-driven view of property rights, will adopt a resale right by 2006. Furthermore, the EU has made it clear that it will encourage other countries to fall in line. At least one scholar has noted that the United States "has not taken the lead in

³The resale right already existed at the state level, but only in California. The Visual Artist's Rights Act, referring to the national level, stipulated that the Register of Copyrights must consult with the Chair of the National Endowment for the Arts in assessing the feasibility of "(A) a requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and (B) other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work."

⁴ There are also artists who fear the introduction of a resale right for reasons that will be made clear further into this thesis.

the case of resale royalties in much the same way it lagged in adopting moral rights” and that “it will probably acquiesce in resale royalties in order to remain in step with the other developed countries” (Damich, 1994).

In light of the possibility that the United States will feel pressure to implement the artist’s resale right, it is worthwhile to analyze such a decision from an economic standpoint. The resale right is, after all, not only a political issue, but also an economic one. An important question is the following: Can the government, through implementation of the artist’s resale right, increase the efficiency of the art markets, or would the resale right just be a misguided attempt at wealth redistribution? In some literature on the economics of artists, there is an argument that the artist’s “impoverished” state of being is an overly romanticized view of the artist and is therefore not a valid reason to support the resale right or any special handling of artists.⁵ I argue, however, that although artists in general are not literally impoverished, their relatively meager earnings from arts-related labor at least at the outset of their careers is indeed an important reason to *consider* the resale right from an economic perspective.⁶ My ultimate misgivings about the resale right come from the empirical analysis of this paper that sought to answer the following: Which American artists would a resale right in the U.S. have rewarded, and when and how much would the artists have been rewarded? In order to answer these questions, it was necessary to find out which artists have had their works resold at auction. Placing the answers to these questions in the context of the artist’s unique production model and financial situation is meaningful because economists might be able to support the resale right if it is the case that the group of visual artists who are struggling financially in this country would become more productive in terms

⁵ See as examples Price and Price (1971-72) and Filer (1986).

⁶ See empirical evidence for lower earnings from arts-related labor in Throsby (2003).

of innovative cultural output (i.e. output from more non-commercially-oriented arts labor hours) if they had the resale right.

Empirical evidence indicates that the resale right would not lead to this change in artistic production, however. The data for auctioned paintings by a sample of American artists suggest that few American artists would have benefited significantly from the resale right over the past 20 years. This is because only about a fifth of the artists in my sample had their paintings make it to auction, and of this fraction, over three quarters of the artists had no more than ten auction records. Taking resale prices of paintings into account, I found that among the artists who had auction records, 64% of them had total auction sale values not exceeding \$10,000. Of this percentage, almost half of the artists did not have their total auction sale values exceed \$1,000. A typical single-digit resale royalty would therefore reward most eligible artists very little and reward financially successful artists the most. Furthermore, the royalties generally would have come late in the artists' careers. The implication is that a resale right would have a negligible effect on the production decisions of most artists and therefore would not be economically desirable at least in this respect.

This paper is divided into several parts: **Part II** is a review of the literature on the artist's resale right. **Part III** discusses the theoretical framework and other background information for this paper, such as the reasons why the government should be concerned at all with the welfare of visual artists. Included is a discussion on the economic standing of artists in the United States now and historically, because a particular perception of the artist's economic position is fueling the support for a resale right. **Part IV** summarizes how the resale right works in the EU and also in California, which is the only state with a resale

right. **Part V** describes the data that will be used to help evaluate the desirability of a hypothetical resale right in the United States, keeping in mind as models the resale right schemes in the EU and California. **Part VI** explains the methodology for the empirical work and describes findings. **Part VII** concludes with policy implications based on the findings.

II. Literature

The resale right has been a topic of hot debate in academic literature, with disagreement revolving around whether the scheme would increase the welfare of artists and the efficiency of the art markets, or prove more costly than desirable.

Price and Price (1971-72) formulated an early objection to the resale right, years before the United States officially decided to consider its adoption in 1990. They contend that romantic nineteenth-century notions of the impoverished artists are probably invalid in the United States and that artists underestimate their bargaining power because they themselves have bought into the powerless artist stereotype. Furthermore, Price and Price base their objection to the resale right on the finding that during the period of 1963-66, only about 13 percent of auctioned art works belonged to living artists. Almost twice as many artists had died in less than fifty years before their works were sold at auction. These relatively late occurrences of resales show that *droit de suite* does not significantly increase the financial security of artists in general, provided turnover rates of artworks have not changed much.

When the EU was considering the harmonization of *droit de suite* across its member countries a couple years ago, objections were again raised and were mostly economic in

nature. Bogle and Ginsburgh (1998) reason that the resale right would not increase an artist's lifetime income because initial prices of artworks would fall to reflect whatever future gains are expected from the resale right. Furthermore, if artists must deal with a lower present income, they might give up the artistic profession, causing a decrease in the quantity of art produced. Another argument that Bogle and Ginsburgh make is that a resale right enforced through auction sales would discourage the use of auction houses and consequently inflict an information loss on society. Looking at paintings auctioned during 1993-1995 worldwide, Bogle and Ginsburgh find that most sales were of relatively inexpensive works. Roughly only 500 paintings per year were sold for over £100,000, and the New York art market captured the majority of these higher-end sales.

Kirstein and Schmidtchen (2001) were also compelled to address the resale right in light of the EU's directive on *droit de suite*. Approaching the issue from a game theoretic perspective, they analyze three scenarios that show how a resale right might not make artists better off. Under their first scenario, if only the dealer's effort were relevant to promoting the value of a work of art, then one would expect a resale right to be a disincentive for the dealer's promotion. Since it is costly to become an expert in determining the value of a work of art (Biglaiser, 1993), buyers rely on the dealer's expertise in art. When dealers are discouraged from promoting an artist's work because of the resale right, one could expect that the work of art would fail to gain buyers' interest and appreciate in value as much as it would have without the resale right. Kirstein and Schmidtchen's (2001) second scenario is one in which only the artist's efforts are relevant to promoting his or her work. The artist would be in the best situation by forgoing dealers altogether. However, if Bogle and Ginsburgh (1998) are correct in arguing that the resale right causes initial prices paid to the

artist to fall to the detriment of the beginning artist, then a resale right in Kirstein and Schmidtchen's second scenario might compel some artists to collaborate with dealers because they believe dealers provide financial insurance. These artists would in essence be settling for an inefficient situation because dealers actually have no effect on the promotion of their works. The third scenario is where both the artist's and dealer's efforts matter in promoting the value of a work of art. Maybe a resale right is efficient in this case. Yet, this possibility for efficiency does not justify a statutory resale right when the artist and dealer could just as well negotiate a private royalty contract between themselves.

Soon after the EU decided on the harmonization of *droit de suite*, Australia's interest in having its own version was rekindled.⁷ Stanford (2003), who will be revisited in depth later in this paper, expresses misgivings with data showing that few contemporary artists saw their works sold in the Australian secondary market between 1973 and 1989. Most resales of artwork also resulted in unimpressive increases in value. Both bits of empirical evidence reinforce skepticism over the ability of the resale right to significantly improve the financial standing of artists in Australia.

Solow (1998), on the other hand, offers a more positive view of the resale right. He argues that a statutory resale right would make buyers believe that the artist would endeavor to increase the future value of his or her work. As a result, buyers would be willing to pay *higher* initial prices for works of art. The artist may try to increase the value of his work by either remaining productive and thereby increasing the appeal of his or her brand name, or by limiting the number of works he or she produces in the future to create artificial scarcity. The success of either scheme depends on whether an artist's future works are complements or substitutes for the earlier works.

⁷ As of yet, Australia has not introduced a resale right.

Hansmann and Santilli (2001) enter the debate with a more holistic view of the resale right. They acknowledge the qualms of the previous economists—that the resale right might reduce the initial prices of artworks, worsen the condition of young and struggling artists, and create disincentives for dealers to promote the value of artworks. At the same time, they argue that a resale right gives the artist an incentive to build a strong reputation, and the resulting payoff to an artist’s greater investment in his reputation might more than offset the drawbacks of a resale right. Whereas Bogle and Ginsburgh (1998) fear the possible abandonment of artistic careers due to lower initial prices for works of art, Hansmann and Santilli put forth the idea that a resale right might screen for strong talent. Only the more talented of artists would be confident enough to remain in the artistic profession.

The adoption of the resale right, or *droit de suite*, seems to be the trend across developed countries. There are a number of compelling and competing theories as to the economic impact of a resale right. More empirical evidence, particularly for the U.S., should further the debate. Given that the U.S. may feel increasing pressure to follow the European example, a worthwhile addition to the literature would be an analysis of how beneficial a resale right would be to artists in the United States and whether it is worth compromising a long-held market-driven view of property rights in the interest of both equity and efficiency.

III. Theoretical Framework

Forming the backdrop of this paper is work being done in cultural economics on the construction and analysis of economic models that account for the unique characteristics of the arts. Out of the theories about the peculiar nature of art, artists, and art markets emerges

the issue of whether they are special enough to be treated differently from other goods, producers and markets, and whether government intervention would increase overall wealth. The focus of this paper is the specific issue of whether a statutory resale right at the federal level, which might be seen as a form of special treatment, would increase efficiency in the US art market by addressing some of the unique problems faced by artists. The following subsections A, B and C go into more depth.

A. The world of visual art is peculiar enough to warrant special treatment

One might first ask why the United States should care at all about art and the efficiency of its art market. Why care if art, artists and art markets are any different from regular goods, producers and markets? Ralph Waldo Emerson wrote that “...if there be...a country...where the arts...are all imported, having no indigenous life...that country is...not civil, but barbarous....”⁸ Such words indicate that the answer to this question may extend beyond the realm of economics and the scope of this paper.

However, it might be argued from the standpoint of economics, in a contributory rather than definitive manner, that the government should care about the art world because art yields positive externalities. This means that in addition to benefiting its purchasers directly, it also benefits others indirectly. The owner of a work of art derives utility from ownership, but because an aesthetic visual experience carries value, whoever sees the art will also derive utility. Another way of thinking about this is that a work of art is not only a physical commodity but also an idea that has cultural value. Ownership of art is not necessarily required for consumption of the idea that the art expresses (unless the owner

⁸ Emerson’s words appeared the April 1862 issue of *Atlantic Monthly*. This quote was later used in a U.S. court opinion involving the artist’s moral right.

keeps a painting behind closed doors for his eyes only). In more technical terms, the marginal social benefit of art is thus higher than the market thinks and so the demand curve for art should be higher than it actually is. The optimal quantity of art consumed in society should thus be higher than the quantity that the market acting alone would dictate. In order to maximize the overall benefit that art confers on society, the government ought to encourage the production and consumption of art.

The next question to ask is why the government would want to help artists and encourage their production of creative output specifically with a resale right. The answer is based on the concerns for both equity and efficiency, which hinge on the view that artists face unique problems.

The poor artist

The Millet story is poignant, but is it a major exception to the rule? Much of the popular support for the resale rate rests on the notion that artists, as a matter of equity, deserve financial aid because they are in such an unfortunate economic position. The economic position of the average artist has actually changed significantly through time. Some ardent supporters of the resale right, who base their support on the supposed universality of Millet's story, might be surprised to learn that rich artists were not always a rarity. Reitlinger (1961) states that painters were among the wealthiest men in late eighteenth-century England, with most making a living through portrait painting and dealing in the trade for works of past masters. Reitlinger argues that the stereotypical image of the starving artist originated in the latter half of the nineteenth century in France:

“The ‘starving artist’ was a product and victim of the exclusive Paris Salon between the 1840s and the 1890s. He began with Meryon and ended with Van Gogh and in England was a rarity. In late eighteenth-century England, even a journeyman painter belonged to a prosperous class of tradesman. A fashionable portrait painter was a merchant prince, besieged by clients and dining with the great.”⁹

The Paris Salon, the annual exhibition of contemporary art overseen by the Royal Academy of Fine Arts, declared which artists were “in” and excluded works by many avant-garde artists, including the Impressionists, during the latter half of the nineteenth century. Due to rejection by the Academy and also weak demand in the English art market for French works in general, the French avant-garde received low prices for their artwork, which consequently gave birth to the popularized notion of the impoverished artist.

Whether the notion of the struggling artist is realistic today in the US is subject to disagreement. Filer (1986) concludes that the notion is unrealistic, basing his argument on 1980 US census data. According to Filer, the data “do not suggest a significant earnings penalty from choosing to become an artist even after correction for sample selection biases.” The penalty is about \$750 per year when all artists are compared with the general workforce. The average painter or sculptor makes another \$100 less than the general workforce. There are flaws in Filer’s comparison, however, such as his failing to control for the educational background of artists and other professionals. In his comparison, artists have attained a two more years of education than their counterparts. It should be the case that the income gap between artists and the general workforce is greater when educational attainment is held constant. Filer also notes that artists report fewer working hours than other laborers, and one

⁹ See Reitlinger (1961).

of his interpretations of this finding is that artists may have higher rates of compensation. Wassall and Alper (1992) disagree with this interpretation. The incomes of artists reported in the 1980 census came from both arts and non-arts labor. The hours worked, on the other hand, could represent hours devoted solely to artistic production. Contrary to receiving higher returns from artistic production, it is more realistic that artists must pad their returns from artistic production with income from their day jobs. Wassall and Alper (1992) conclude that “[Artists] do not choose to work less; their extensive multiple jobholding indicates that they work in other jobs to supplement artistic incomes deemed by them to be inadequate.”¹⁰

Visual artists on average do indeed suffer a significant earnings penalty that census figures do not reveal (Throsby, 1994). Starving artists are not observed because artists presumably hold multiple jobs when income from artistic production by itself would fail to meet a subsistence level. In light of the more believable argument that artists receive lower pay on average, the popular assumption behind support of the resale right—that artists are in a relatively weak economic position—makes sense. However, whether the resale right is the right mechanism to achieve the goal of helping struggling artists remains open to question.

The art market

A special problem that visual artists supposedly face is information asymmetry in the art market. Society as a whole might simply be too slow to recognize the artist’s genius. Thus, an artist’s creation likely enters the market at time when the lack of cultural sophistication accounts for a low demand. Because of the low demand for the artist’s work, the dealer or gallery owner would not expect to receive a high, “true” price for the artist’s

¹⁰ See Wassall & Alper (1992).

work and would therefore pay the artist a price that is too low. Another, more cynical theory is that the dealer or gallery owner would make a contractual agreement with the artist in which he or she becomes the sole buyer of the artist's works for some period of time, and because he or she would now be in a dominant monopsonist position, would pay the artist inefficiently low prices for works of art. It is actually quite common in reality for a new artist to agree to this kind of arrangement with a dealer because finding even one person interested in buying his or her work is difficult. There is apparently a lack of empirical evidence for the monopsony problem, however. In any case, monopsony or not, the idea is that the market finally understands the "true" value of an artist's work many years later, and the artwork is then resold at auction at a much higher price than the artist initially received. Supporters of the resale right point to the injustice of an artist's "subsidizing the public's education with his poverty" (Stanford, 2003).

The artist's supply function

From an economic perspective, the area in which artists differ the greatest from other producers is their supply function. A romanticized image of artists is that they derive utility only from the cultural value of their work resulting from a creative process and not from pecuniary gain. If the name Vincent Van Gogh is mentioned to the average person on the street, it will more likely evoke thoughts of a tortured genius who cut off his ear rather than the experienced salesperson in reality who was very watchful of the market for paintings.

One of the major projects of cultural economics has been to rationalize the production decisions of artists in a way that recognizes the unique nature of their profession. Throsby (2001) has done extensive work in this area, describing several models for the

creativity of artists. Admittedly, creativity matters to some degree in almost all professions, but it is of primary importance for artists. One model, known as the “pure creativity” model, coincides with the romantic view of the artist as someone who cares nothing for the economic value of his or her work. In other words, the artist’s sole objective is to maximize the cultural value of his or her output. The only constraints on the artist’s production are such things as the technical limits of the medium used and the properties of whatever reality the artist wants to represent. Money is not a factor. If, as in many cases, only a single artwork is to be produced, the only decision variables in this model are the amount of time to spend at various tasks. A certain amount of time at a particular task will yield some respective “units” of cultural value in the finished product. Because artists differ from one another in talent, the same amount of time spent on a similar task may yield different amounts of cultural value across artists. The implication of the pure creativity model is that the economic incentives provided by the resale right will have no effect on an artist’s production decisions.

It is more realistic to have a model of creativity that incorporates economic considerations because artists have basic needs like all other human beings and generally must earn money to live (Granted, there might be some special cases where artists receive unconditional financial support from loved ones or generous patrons.). In the extended models that Throsby proposes, the artist’s income is either a constraint or an explicit variable in the artist’s supply function. In the extended model that has income as a constraint, the artist’s sole objective is still to maximize the cultural value of his or her output, but now the artist’s decisions are bounded by some minimum level of income that covers the necessities of life and other unavoidable costs. A resale right might have an

effect on an artist's production decisions under this model. The model, however, could be made even more realistic. In reality, like most human beings, artists desire quantities of money above the subsistence level and therefore care a good deal about the economic value of their work. The economic value of a work of art could be its sale price or the present value of the revenue stream it generates. The economic value is a net value, resulting from the deduction of production costs covering such things as materials and workspace rent. A model more realistic than the previous two would account for the artist's interest in the economic value of his or her work above the subsistence level.

Throsby puts forth a model for creativity that relies on the joint maximization of both the economic value and cultural value of an artist's output. The artist's utility rests on a weighted combination of economic and cultural gains. How much utility that the artist derives from the cultural value and economic value produced will vary across individuals. A minimum level of income may remain in this model as a constraint.

Throsby models the artist's decision problem as

$$\max u = u[wv_c, (1-w)v_e] \quad 0 \leq w \leq 1$$

where

w = weight placed on cultural value produced

v_c = level of cultural value produced

v_e = level of economic value produced, which may come from the sale price of the work, the discounted value of a revenue stream from resale royalties, etc.

A particularly convenient aspect of this model is that it allows for multiple job-holding by the artist. The prevalence of multiple job-holding is a major difference between

artists and other professionals. The reality for most visual artists is that, for some period of their careers, the income generated from their artistic production is insufficient to satisfy a subsistence-level income constraint.¹¹ As a result of the low levels of income generated by artistic production, many artists devote time to some income-generating, non-arts activity. In Throsby's joint-maximization model,

$$v_c = v_c (L_{ax}, L_{ay})$$

$$v_e = v_e (L_{ax}, L_{ay}, L_n)$$

where

L_{ax} = arts labor time (hours) spent on commercially-oriented artistic work

L_{ay} = arts labor time (hours) spent on non-commercially-oriented artistic work

L_n = non-arts labor time (hours)

The following statements agree with intuition: Arts labor hours spent on non-commercially-oriented artistic work generally yield more cultural value than an equivalent amount of arts labor hours spent on commercially-oriented artistic work (e.g. tourist art, folk art). Non-arts labor hours generally yield more economic value than the same amount of arts labor hours. This must be the case if financially pressed artists are taking up non-arts jobs. Otherwise, it would make more sense for artists to devote all their time to artistic production. Commercially-oriented artistic work is expected to bring in more money to the typical artist than non-commercially-oriented work. In mathematical terms,

$$\partial v_c / \partial L_{ay} > \partial v_c / \partial L_{ax}$$

¹¹ One of the reasons for the insufficient income, argued by resale right advocates, is that copyright has not served visual artists nearly as well as other creators. Whereas copyright is appropriate for authors of books and composers who can create many copies of their original work, visual artists create single works or a very limited number of copies and therefore receive a negligible income from copyright.

$$\partial v_e / \partial L_n > \partial v_e / \partial L_{ax} > \partial v_e / \partial L_{ay}^{12}$$

As laborers/producers, artists face a time constraint like everyone else. Thus

$$L_{ax} + L_{ay} + L_n = H$$

where

H = the total number of hours that an artist is able to work for a given period. H allows for a certain fixed number of leisure hours.

This flexible model easily allows for situations where the artist maximizes only cultural value ($w = 1$) and where the artist maximizes income alone ($w = 0$). In the former case, we would expect the artist to spend all of his or her hours on arts labor devoted to non-commercially-oriented artistic production ($L_{ay} = H$). In the latter case, we would expect the artist to spend all of his or her hours on non-arts labor ($L_n = H$), effectively not being an artist for some period of time.

Of more relevance in this paper is the intermediary case where the artist cares about both cultural and economic gains from production ($0 < w < 1$). The artist will thus spread his or her available working time across L_{ax} , L_{ay} and L_n in proportions that vary with w and the particular functional form assumed for the artist's utility.

In light of Throsby's model of the artist's production in which cultural and economic value are jointly maximized, the theoretical argument for the resale right is that it would allow artists to spend less time doing non-arts work and more time doing arts related work, commercial or non-commercial. The resale right would potentially increase the payoff to arts labor time ($\partial v_e / \partial L_{ax}$ and $\partial v_e / \partial L_{ay}$ increase), allowing some artists to reduce L_n

¹² There is empirical evidence that non-arts labor is more lucrative than arts-labor and that artists nevertheless spend the majority of their working time on arts work. See Throsby and Hollister (2003).

and to have H be comprised more by L_{ax} and L_{ay} without reducing the economic value of their output. Even if the economic value of their output did not increase, the cultural value of their output would definitely increase according to the model, which translates to higher utility for the artist and also for society as a whole if art does indeed generate positive externalities.

B. Visual art, artists and art markets are not different enough for special treatment

Stanford (2003) makes several arguments against the resale right, and at the core of these arguments is the belief that art, artists and art markets should not be treated differently from regular goods, producers and markets in spite of their having some inarguably unique characteristics. The following paragraphs summarize how Stanford would respond to the concerns listed in the previous section. The empirical work of this paper seeks to further his arguments. In brief, Stanford denies the problem of information asymmetry and, while not necessarily disagreeing with Throsby's (2001) joint maximization production model for artists, argues that a resale right would not have the desired impact on artists' supply decisions.

The poor artist

Stanford (2003) does not deny that artists on average suffer an earnings penalty. However, he would consider the Millet story an exception in modern-day art markets; that is, financial prosperity does indeed follow fame.

An artist's work will increase in value only if he or she remains active in the art market, meaning that the artist continues to produce artwork and thereby builds a reputation.

An artist should not expect to suddenly arouse the public's appreciation for his or her work by producing a few works, keeping them all hidden from view, and then finally revealing them to the world late in his or her life. At the outset of an artist's career, when he or she does not yet have a reputation, the main problem is finding interested buyers. It is highly unlikely that the artist will be able to sell all of his or her works. Unsold work will be kept in the studio or in the dealer's backroom.¹³ If the artist's works are given high valuation in the secondary market and if (or precisely dependant on the fact that) the artist has remained productive, then the artist's unsold works should also rise in value. The artists will be able to command higher prices for his current artworks. The artist would thus stand to gain when his or her works are resold at higher prices in the secondary market.

Also, before an artist can have resales in the secondary market, the artist must have already enjoyed some success in the art world. Apart from sheer luck, success can mean being praised by prominent art critics, having a work bought by a museum or shown at a celebrated venue, or possibly winning an award. These highlights in an artist's career translate into higher prices that the artist can obtain from dealers and gallery owners in the primary market. The amount that the dealer pays the artist rises with the dealer's expectations of the actual sale price that the painting can command. Velthuis (2002) found that dealers in the Amsterdam and New York contemporary art markets for paintings make their pricing decisions according to "pricing scripts," or rules of thumb. The governing rule is that the setting of a price is path dependent, meaning that the current price is based on the past price. If the artist has no pricing history, then the dealer generally assigns his or her artwork a relatively low price that is comparable to the price of works of the same genre.

¹³ One of the payment options between artist and dealer is that the dealer pays the artist a percentage of the actual sale prices of his or her paintings. The artist thus has a claim to the unsold paintings in the dealer's backroom.

The size of the work, the technique used and the artist's reputation are important factors in the dealer's pricing decision. In accordance with Stanford's (2003) argument, one of the major rules of thumb that dealers follow is to increase prices—both charged for the painting and paid to the artist—when the artist gains additional recognition, be it through exhibiting at a museum, winning an award, or getting other forms of praise from the art world.

Clearly, recognition and success in the world of art do not come to every artist. Rosen's (1981) theory on the phenomenon of superstars applies to visual artists. Small differences in talent translate to big differences in earnings. A few artists get the bulk of fame and the money that follows. The works of only a small proportion of artists would be expected to reach the secondary market and presumably an even smaller part of that group would have the resale right apply if there is a certain required selling price.

The art market: Information asymmetry and an unsophisticated market account for an "untrue" price that an artist receives for his or her work.

Stanford (2003) rejects the popularized notion, and one of the major premises for the resale right, that the initial price paid for an artwork is nothing like the "true" value that is realized many years later by society. Prices paid for works of art in the primary market embody the artist's and buyer's/dealer's expectations for future price rises. A work of art is an investment, among many other things. A dealer or gallery owner who buys the works of a new artist is in essence investing in that artist's career and is taking a risk. Just as a stock is priced in a way that captures its expected future gain in value and also level of risk, the initial price of an artwork also embodies these elements. To carry this stock/artwork analogy further, one might consider the publicized tense encounter between the artist Robert

Rauschenberg and dealer Robert Scull in 1973. Scull had just resold Rauschenberg's painting *Thaw* for \$85,000 whereas in 1958 he had bought it from artist for only \$900. Bolch et al. (1988) note that the rate of return on *Thaw* was slightly less than that which would have been earned over the same period (1958-1973) by a purchaser of an IBM stock.

The artist's supply function

Stanford's (2003) arguments are consistent with Throsby's (2001) joint maximization model for creativity, but suggest that a resale right would not have the desired effect on an average artist's decisions. Stanford's rejection of the idea that artists remain poor in spite of higher resale prices realized in the secondary market, in the context of Throsby's model, leads to the argument that the resale right would not benefit those artists who must hold non-arts jobs (artists for whom v_e still depends in part on L_n). The resale right would primarily benefit those artists, a relatively small proportion of all artists, who have already achieved the point in their careers where they are devoting all of their available working time to arts labor ($L_n = 0$; $L_{ax} + L_{ay} = H$). My paper extends this argument to artists in the United States.

C. The trouble with rewarding the already successful artists

One might wonder what is wrong with having the resale right benefit only financially successful artists who are capable of devoting all their time to arts labor. A possible answer is that resale right will simply accentuate the wealth gap between struggling and established artists. The psychological impact of lower relative wealth could lead to a negative wealth effect for beginning artists, who would react by allocating more time to non-arts related

labor or more time to commercially-oriented, less innovative art. This in turn would decrease the supply of art or the amount of cultural value produced. There is a body of research that convincingly argues for the insertion of relative wealth in individuals' utility functions (Cole, Mailath, & Postlewaite, 1995).

Another possible answer is the logical extension of Stanford's (2003) argument that prices paid for works of art in the primary market reflect the artist's and buyer's/dealer's expectations for future price rises. Tampering with a market will have repercussions, and the art markets are no exception. Just as anticipated price rises are embodied in initial prices for works of art, so will anticipated payments to the artist via the resale right. Because money might go to the artist in the future, then in theory, some amount will be deducted from the initial price paid to the artist. This could make some artists worse off; though artists might be considered daring for entering their profession in the first place, they are nevertheless considered by economists to be risk-averse. The consequence of a resale right is that artists might have their income shifted to the future (that is, if their works ever make it to the secondary market). They might have a lesser income at the beginning of their career, when that income brings a higher utility relative to later in their career. The empirical investigation of this paper unfortunately will not be able to show whether artists face lower initial prices for their works of art in the presence of the resale right because pricing information in the primary market is lacking.

IV. How the resale right works

In the EU, *droit de suite* allows for a sliding scale of resale royalties. For resale prices below 3,000 Euros, member states have the option of not imposing a royalty.¹⁴

Resale price of artwork (Euros)	royalty rate
1-2,999	no royalty, or royalty up to 4%
3,000-50,000	4%
50,001- 200,000	3%
200,001-350,000	1%
350,001-500,000	0.5%
500,001 and up	0.25%

The maximum royalty that can be paid to an artist is €12,500. The resale right is inalienable and only enforceable when the resale involves the participation of some art market professional. This means that it applies to resales at auction houses or by dealers and gallery owners. Dealers and gallery owners may escape payment if the resale of a work takes place within three years of its initial purchase from the artist.¹⁵

In California, a flat five percent resale royalty is to be paid to the artist if the resale price exceeds \$1,000 *and* if capital gain has occurred. The resale right is inalienable, with

¹⁴ Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art.

¹⁵ The EU recognizes the promotional role of dealers and therefore allows a three-year window for a resale without activation of the resale right. If the dealer sells the work at auction after three years for a higher price, the rationale for applying the resale right is that the appreciation of the painting has a lot to do with the Stanford's (2003) arguments—that is, the artist's hard work is the main reason for the capital gain rather than the dealer's work.

the exception that the artist may waive the right only if he or she contracts with the buyer for a resale royalty that is higher than five percent.

V. Data

The source for obtaining my sample of visual artists in the United States is the biennial serial *Who's Who in American Art*.¹⁶ The most recent directory, for 2003 and 2004, lists thousands of representatives of the art world, who are divided according to various professional classifications. The subset of 2,718 painters who work with oil and acrylic paints, the largest subset of painters, is used for the purposes of this paper. This subset was chosen not only for its relative size, but also because paintings have been especially popular in various art markets. In a recent study of the Canadian art market, for example, more than half of sold works of art were paintings.¹⁷ Even when the British art market was suffering from the economic recession of the early 1990s, paintings remained readily saleable.¹⁸ There is no reason to believe that the status of paintings would be different in the US art market. If there were any subgroup of visual artists that could be used to support a resale right, in other words, it would be painters. If it can be shown that a resale right will not achieve desirable economic effects on painters, then it is unlikely that the resale right will be justifiable with any other group of visual artists.

What I need in addition to the names of artists are the auction records and resale prices for paintings by each artist, if they exist. These data come from *Artprice.com* and *Artnet.com*, two up-to-date, extensive online databases that contain prices realized at auction

¹⁶ The directory also includes some Canadian and Mexican artists, but these artists form a relatively small proportion of the sample and some of them reside in the United States. They have not been picked out of the sample. Mexico has had the artist's resale right since 2003 and Canada has been considering its introduction.

¹⁷ See Canadian Heritage Arts Policy Branch (2003).

¹⁸ See Stallabrass (1999, p. 161).

sales worldwide from 1985 to the present. Although the two databases may have slight discrepancies here and there, there should not be major differences. *Artprice.com* is more convenient in terms of gathering data on the number of auction records an artist has had. *Artnet.com* is better for obtaining prices of artworks sold at auction. For the artists with auction records in *Artprice.com*, I search for them in *Artnet.com* to obtain the prices of his or her work at auction and also time and location of the sale.

The main shortcoming of the data is that prices are only available for auction sales from 1985 onward. There is no reason to think that absolutely no artist in my group had any sales prior to this date. However, a strong resale market for contemporary art in North America did not emerge until the 1970s and really became evident only in the 1980s, so the fact that two premier online databases for art auctions start with 1985 data is neither random nor coincidental. It would be reasonable to assume that aside from the superstars among the artists, very few if any living artists in my group had sales prior to 1985.

Another shortcoming of the data from *Artnet.com* or any price database is that it does not include prices of artwork in the primary market. We do not know what initial prices dealers, gallery owners, and collectors paid to the artist. For this reason, calculating capital gain on the first auction sale is impossible, and determining which artists would benefit from a resale right contingent upon capital gain would also be impossible. Fortunately, the EU *droit de suite*, which is assumed to be a model for a potential resale right in the US, does not stipulate capital gain as being necessary for the artist to obtain payment. Instead, the only condition necessary for enforcement of the resale right is that a minimum resale price be met. The EU model simply assumes that a capital gain has occurred, which is reasonable

because dealers and other sellers generally put up art in auctions with the intention of profiting.

Besides the main objective of gathering auction price data, it is also worthwhile to look at the artists' biographies for their date of birth and the last date of "study" (i.e. college degree, graduate degree, end of apprenticeship, etc.) *before* the earliest listed exhibition date as a proxy for the beginning of an artist's career. Both pieces of information were provided by the entrants of *Who's Who in American Art* and may be interesting in terms of Stanford's (2003) argument that an artist must have experienced some "success" before having his or her works go to auction. An artist who is born earlier will likely have more exhibitions, commissions and awards. If Stanford is correct, then we should expect artists who have auction records to be disproportionately older. Knowing the earliest recorded exhibition for each artist tells us roughly when the artist's artistic career began. If Stanford is correct, we should also see relatively earlier first exhibition dates for artists with auction records.

VI. Empirical Specification

Among the group of painters from *Who's Who in American Art*, I examine the subgroup of artists who work primarily with oil and acrylic paints (the largest of the subgroups) and find out how many artists have had their works resold at US auctions and EU auctions for prices that meet potential selling price requirements. The total value of auction sales for each of the artists is also calculated. Such an empirical analysis will indicate how many painters would have been rewarded by a resale right and by how much during the last 20 years. These figures will give us a rough idea of how American artists would be affected if the US adopted a resale right in the near future. My hypothesis is that

only a small proportion of artists would have been rewarded significantly by the resale right and that furthermore, these artists would not have been up-and-coming artists but would have instead been the already established artists. It is possible that the figures on auction records and sales will be overstatements—fewer works of art might go to auction if a resale right were introduced—but this only strengthens the anti-resale right position (see Bogle and Ginsburgh, 1998).

According to the 2001 directive of the European Parliament and the Council of the EU, “enjoyment of the resale right should be restricted to Community nationals as well as to foreign authors whose countries afford such protection to authors who are nationals of Member States.” It is possible that the US would honor the resale right of EU nationals whose works are sold at US auctions. For this reason, this section will consider sales of artworks by American artists in EU auctions in addition to sales in US auctions.

While it is true that the artists in the EU are entitled to resale royalties not only through auction sales but through any kind of resale involving an art market professional provided certain price requirements are met, this empirical analysis will only consider auction sales in measuring the extent to which the resale right pays US artists because 1) auction price data are the only kind available; 2) the resale right is most easily enforced at auctions; and 3) Congress has in the past—shortly following the Visual Artist’s Rights Act of 1990—actually considered only levying resale royalties on auction sales.¹⁹

In order to determine how many artists would have been rewarded by a resale right, it might be more realistic to set a minimum price requirement in order for the resale right to

¹⁹ *Droit de Suite. The Artist’s Resale Royalty*, 1992 Register of Copyrights.

apply. As outlined in **section IV**, the EU requires that its member countries not set a minimum price that exceeds 3,000 Euros. That is to say, the resale royalty definitely comes into effect at 3,000 Euros and individual countries may choose not to have a minimum price at all. This empirical section will look at how many artists are entitled to receive payment from the resale right under the following scenarios:

- The selling price at a US or EU auction must exceed \$1,000 (California has this requirement).
- The selling price at a US or EU auction must exceed \$4,000 (roughly equivalent to requiring a minimum price of 3,000 Euros).

Does an increase in the minimum required price drastically lower the number of artists receiving resale royalties? It would be reasonable to expect that the number of artists benefiting from a resale right decreases as the resale price requirement increases.

I tallied for each artist in my group the number of auction sales that fall within certain price ranges for all prices not exceeding \$10,000. This made it easy to see how many artists would be rewarded by a resale right under different selling price requirements. An artist's total value in the secondary market is thus an approximate rather than an exact value. For instance, all works sold for some value between \$3,001 and \$4000 will each take the value \$3,500 in the calculation of the artist's total value in the auction market. Because most prices fall in the price ranges below \$10,000 and because the ranges are not very wide, the sum of the midpoint estimates for prices is not too different from the sum of the actual prices.

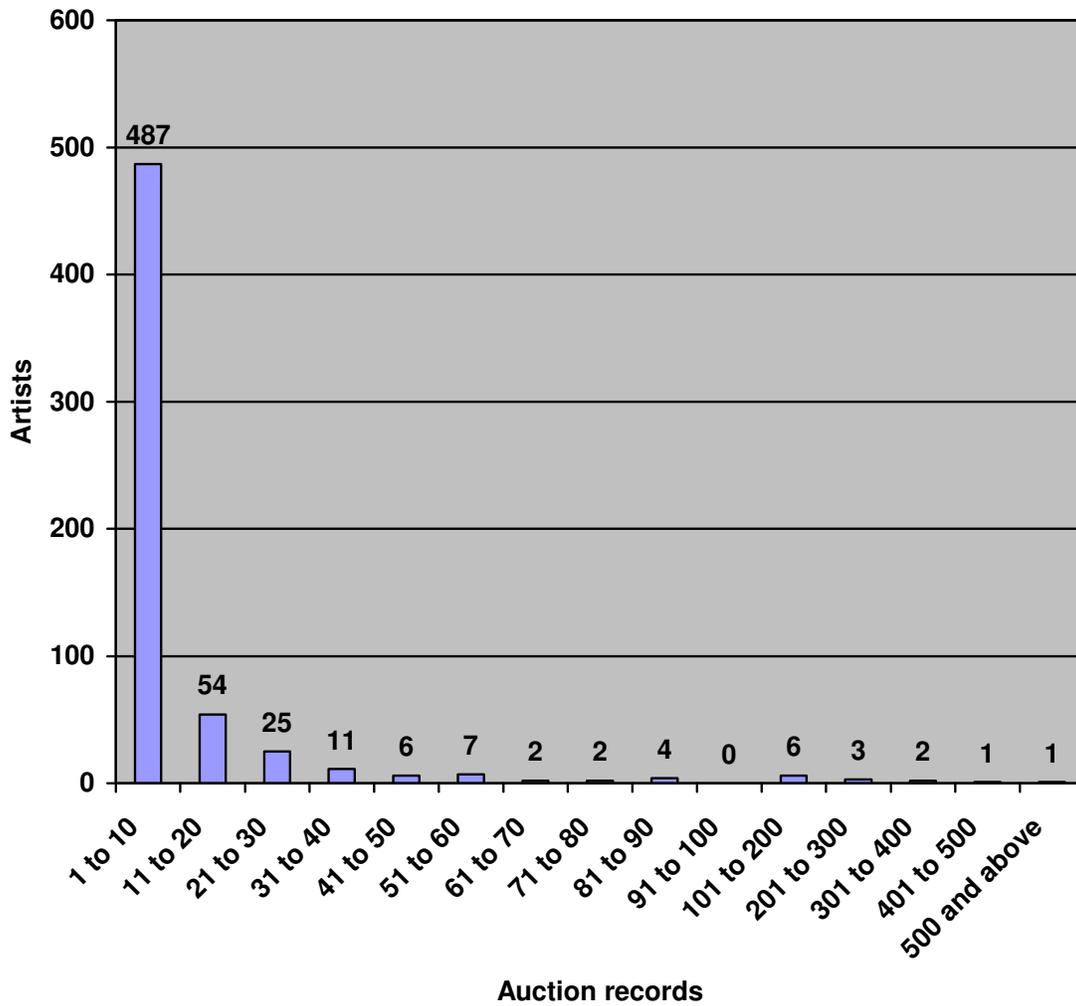
For prices above \$10,000, I recorded the actual prices because relatively few paintings fetch these higher prices. To continue tallying prices within small ranges would not make much sense because there would be nearly as many ranges as prices. Simply to enlarge the ranges as the prices increase, on the other hand, would yield increasingly less accurate estimates. The calculation of the total value of auction sales over the past 20 years for any artist, including these actual prices above \$10,000, will of course still be an approximation. The most important finding of this paper centers on the distribution of painters' total auction sale values and the consequent distribution of resale royalties received by artists, so these approximate values are sufficient. Since the data span a period of about 20 years (1985 to early 2005), the estimation of the total value of auction sales for each artist takes into account inflation. The total values are in terms of today's dollars for easy comparison.²⁰

Completion of the first step of this empirical analysis, finding out which artists have had auction records through *Artprice.com*, yields the results that between a fifth and a quarter of artists (611 out of 2,718 artists) have had their works go to auction. This fact seems to be a reasonable, though not very strong, argument in favor of the resale right. One look at the distribution of artists for various levels of auction records, however, makes it clear that few artists would benefit significantly from resale royalties. The majority of artists have so few auction records that income from resale royalties would be insignificant.

²⁰ To account for inflation, data for auction prices were recorded in four spreadsheets, each covering a period of five years (i.e. 1985-89, 1990-94, 1995-99, and the slight exception of 2000-early 2005, which is a little over five years). In each spreadsheet, the total value of auction sales for the respective five-year period was calculated for each artist. These values were then treated as 1987, 1992, 1997 or 2002-dollar values and were all converted to 2005-dollar values using the U.S. Department of Labor's Bureau of Labor Statistics inflation calculator. Creating 20 different spreadsheets for each of the years of auction data would have yielded more accurate estimates of total auction values, but would have taken significantly more time without contributing much to the overall argument of this paper.

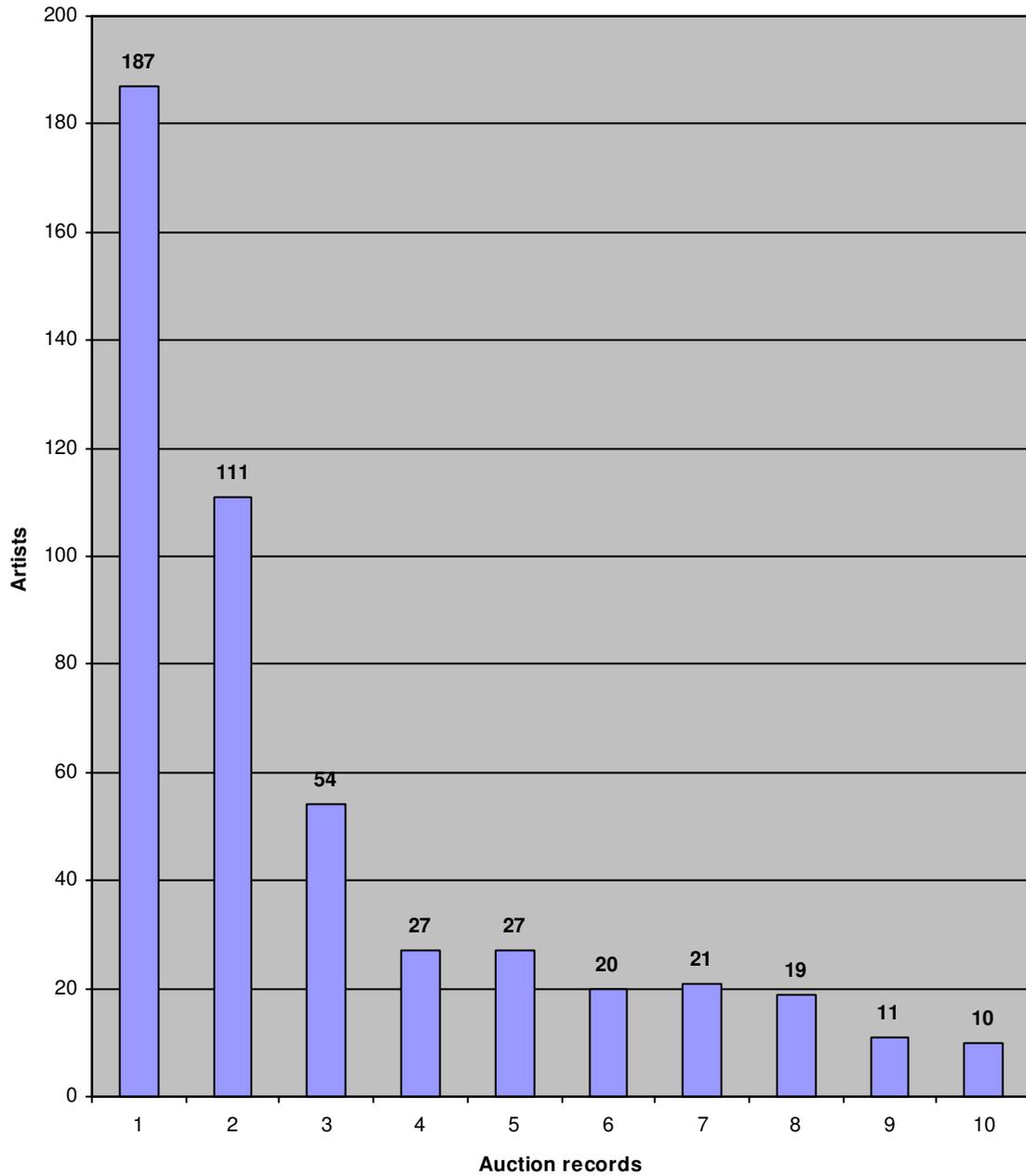
Almost 80% of the artists with auction records have no more than 10 records. About 30% of the artists have only one auction record. See **Charts A** and **B**.

Chart A: 611 out of 2718 painters with auction records for paintings



Source: *Artprice.com*

Chart B: 487 painters with at most 10 records for paintings



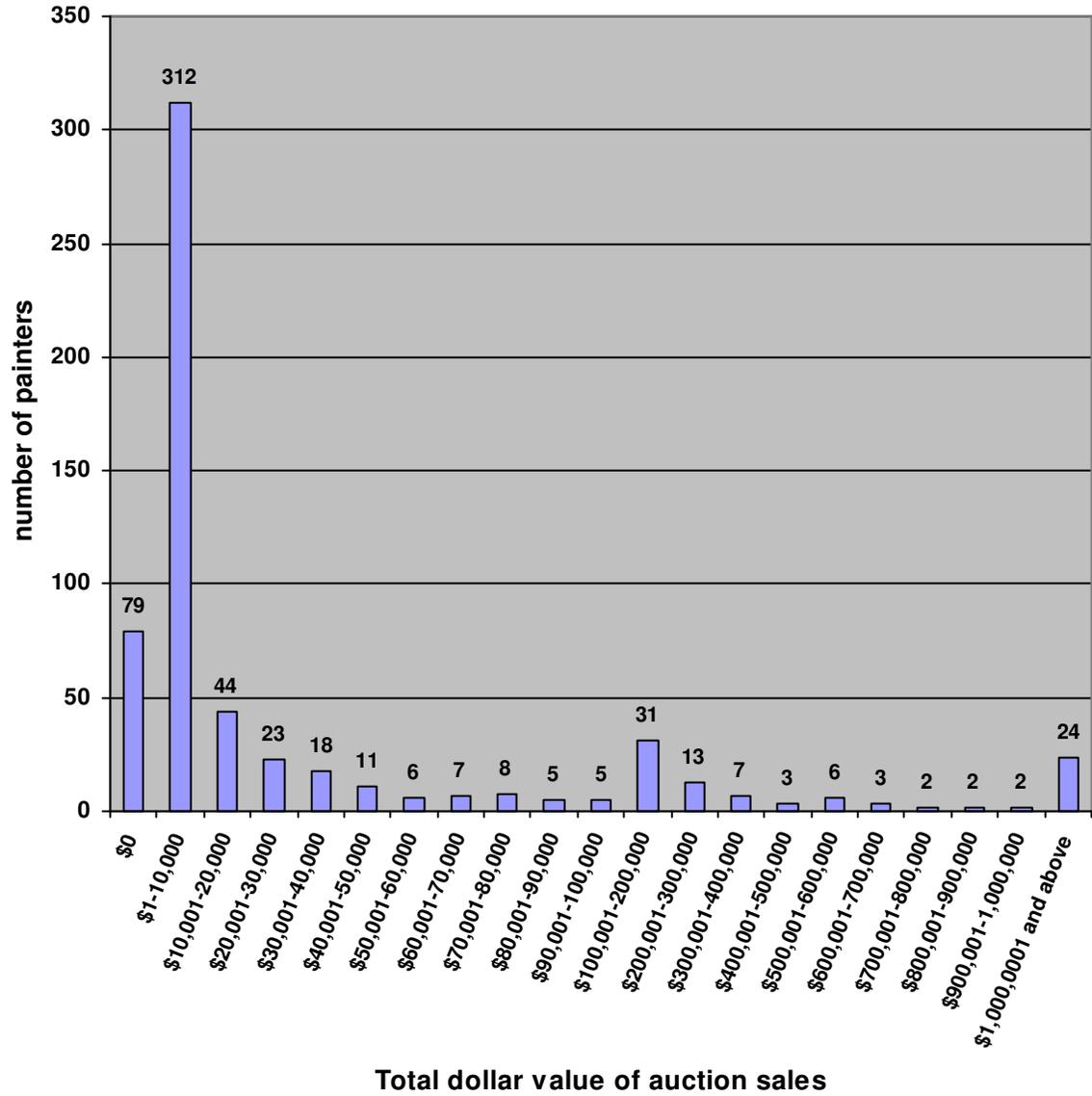
Source: *Artprice.com*

Data on prices for auction records confirm that few artists would receive much money from resale royalties. It is important to note that auction records are not the same as auction sales. Just because a work goes to auction does not mean that it gets sold.

Retrieving price data from *Artnet.com* revealed that most painters with auction records in *Artprice.com* end up with some unsold works. Of the 611 painters with auction records, 79 had no sales at all. The following **Charts C, D** and **E** show the distribution of artists across different levels of total auction sale values. A resale royalty of three percent would mean that over half of the artists who were successful or lucky enough to make it to auction and have sales (312 artists) would receive the equivalent of no more than \$300 today. If \$300 were discounted to 1985 dollars, then artists back then could expect to get about \$169.

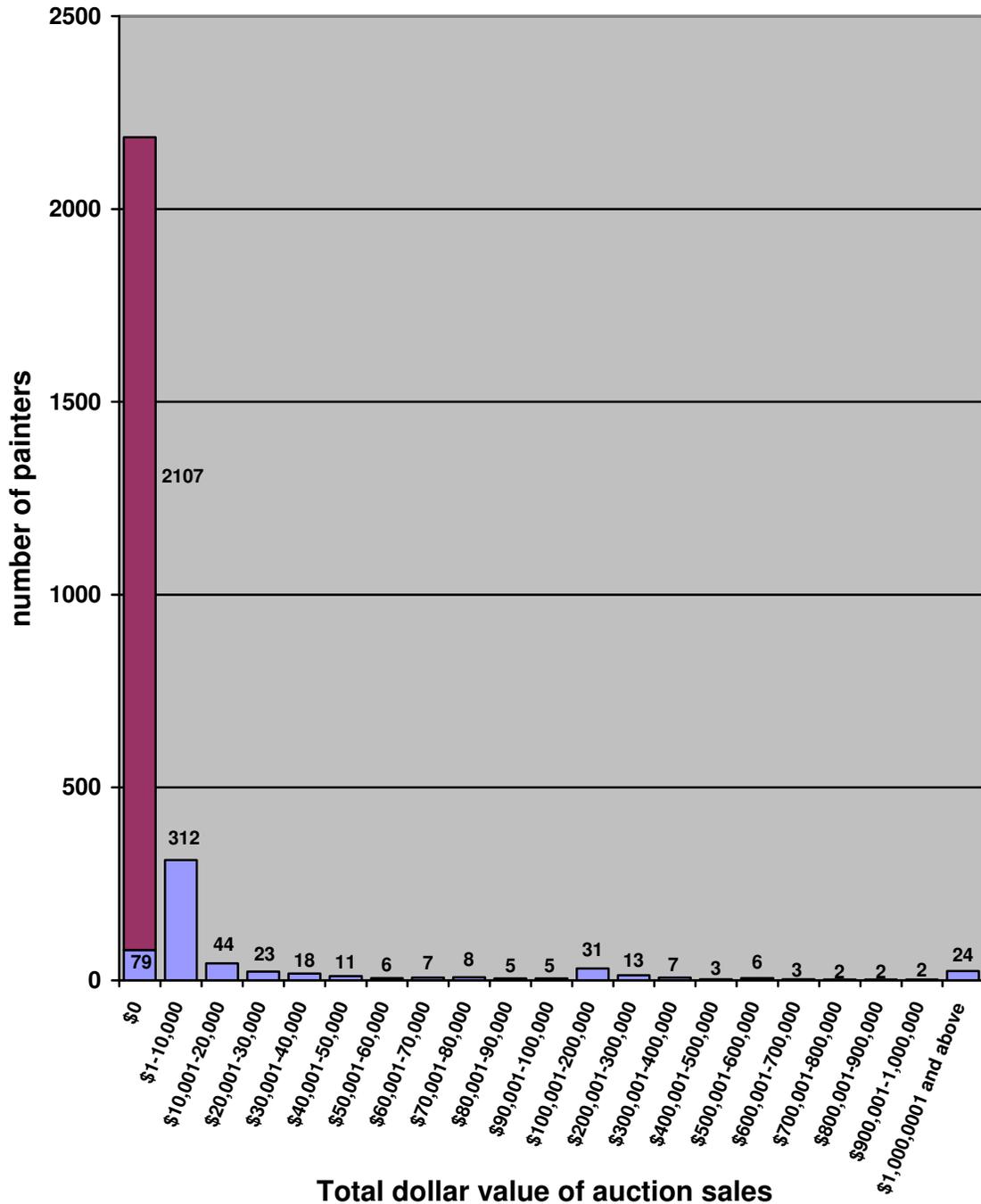
Discounted to the starting years of an artist's career, that amount in royalties would be a near negligible sum of money.

Chart C: distribution of the 611 artists with auction records across all ranges of total auction sale values



Source: *Artnet.com, Artprice.com*

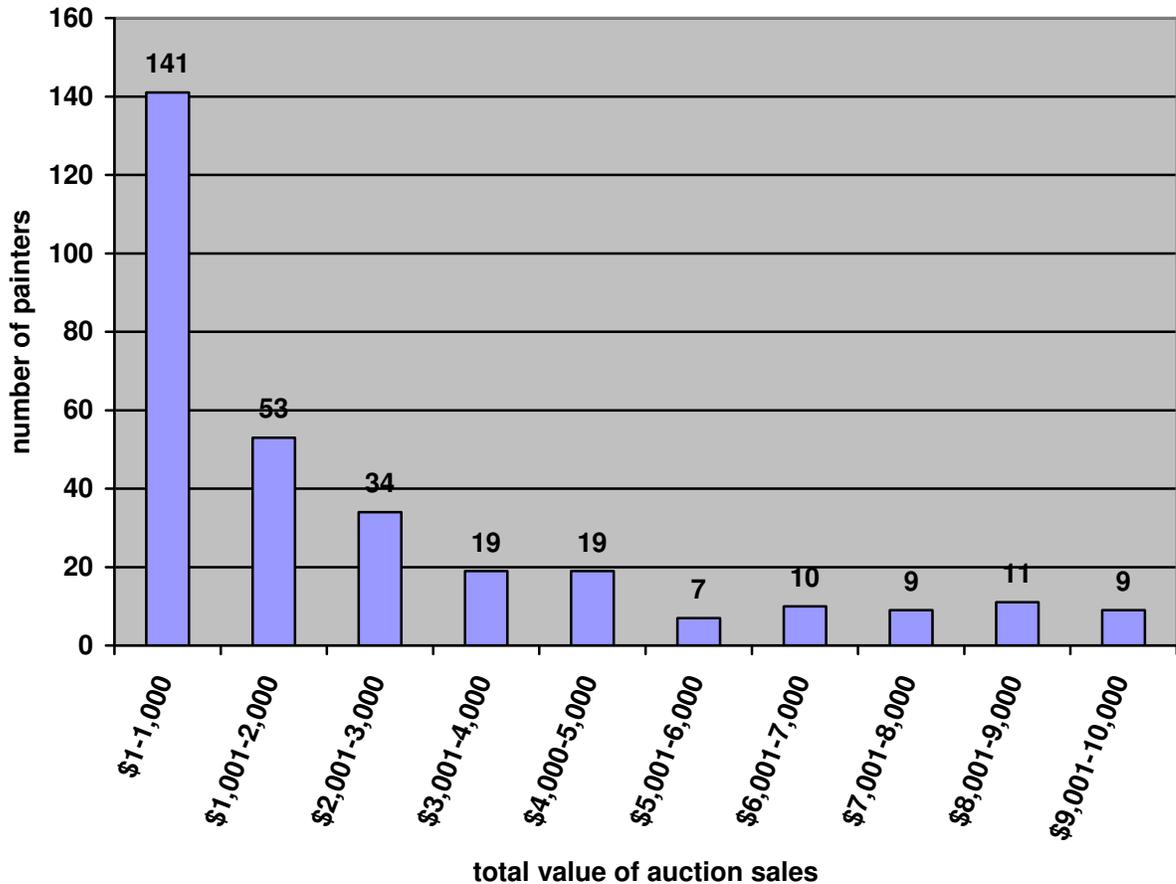
Chart D: distribution of all 2718 artists across all ranges of total auction sale values



- number of painters with no auction records according to Artprice.com, assumed here to have no sales either
- number of painters with auction records who have the respective auction values

Source: *Artnet.com, Artprice.com*

Chart E: distribution of painters across the lowest range of positive total auction sale values



Source: *Artnet.com*

Another interesting thing to note is that price levels are positively related to the number of auction records an artist has. That is, the 200 or so artists at the lower end of the scale for number of auction records generally have their works sold for less than \$2,000. The star artists with over 50 auction records are the ones who have the greatest number of works sold in the price ranges above \$10,000 and even well into the millions. What, then, would be the consequence of having a minimum resale price requirement? How much would the group of artists collecting royalties shrink? See **Chart F**. If it were the case that

the resale price of a painting had to exceed \$1,000 as it does in California in order for the creator to receive royalties, then almost half of the painters in my group would be ineligible for royalties during the entire period from 1985 to early 2005. Furthermore, the artists remaining eligible for royalties would most likely be the ones with the greater number of auction records, since price levels appear to rise with the number of auction records. As expected, the percentage of rewarded painters decreases if the minimum resale price had to be above \$4,000 (roughly equivalent to 3,000 Euros, the highest minimum price allowed for EU countries). Raising minimum price requirements would create an increasingly more exclusive group of rewarded artists who have already been rewarded by the market.

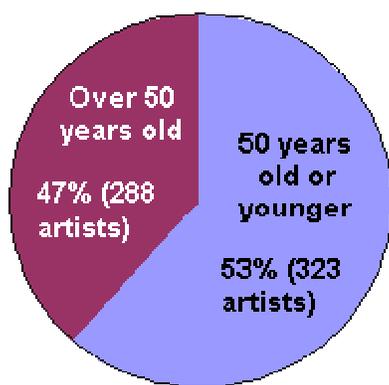
Chart F: Comparison of rewarded artists across resale price requirements

	How many artists would be rewarded out of the 611 artists with auction records?		
	1000 requirement	4000 requirement	decrease in number of rewarded artists
Entire period	352 (58%)	217 (36%)	135
2000-early 2005	239 (39%)	152 (25%)	87
1995-1999	212 (35%)	123 (20%)	89
1990-1994	230 (38%)	123 (20%)	107
1985-1989	99 (16%)	78 (13%)	21

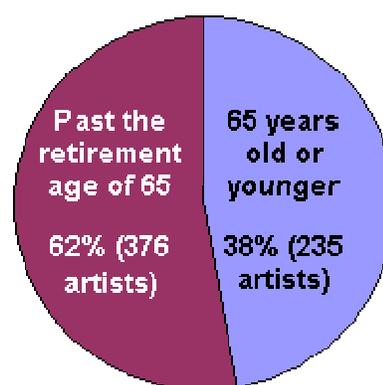
Finally, data figures on the ages of painters who have auction records show that almost half of them would have been at least 50 years old by 1985 (**Chart G**). Auction records are fewest in number during the period of 1985 to 1989. The total number of auction records for all painters in my group during this period is less than half of that during the period of 1990 to 1994. The total number of auction records continues to increase as we move forward in time, but it seems that this relatively strong resale market for paintings

during the later years of my study largely benefits older artists who are at or nearing the end of their careers. By today, over half of the painters with auction records are already over the retirement age of 65 (**Chart H**). Data on the last date of study before the first exhibit of painters, which is a proxy for the start of their careers, show that almost half of them would have been more than 20 years into their artistic careers by the time some of them began to have resales around 1985 (**Chart I**). The data suggest that Stanford (2003) is correct in arguing that artists do not simply have their works go to auction, but must first experience some success in the art world, whether it is in the form of exhibits, an awards, or commissions. All of these indicators of success take time to occur.

G: Age breakdown in 1985

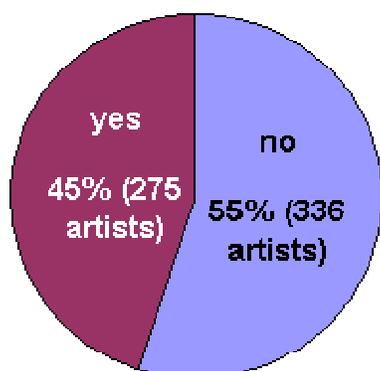


H: Age breakdown in 2005



I: More than 20 years into career by 1985?

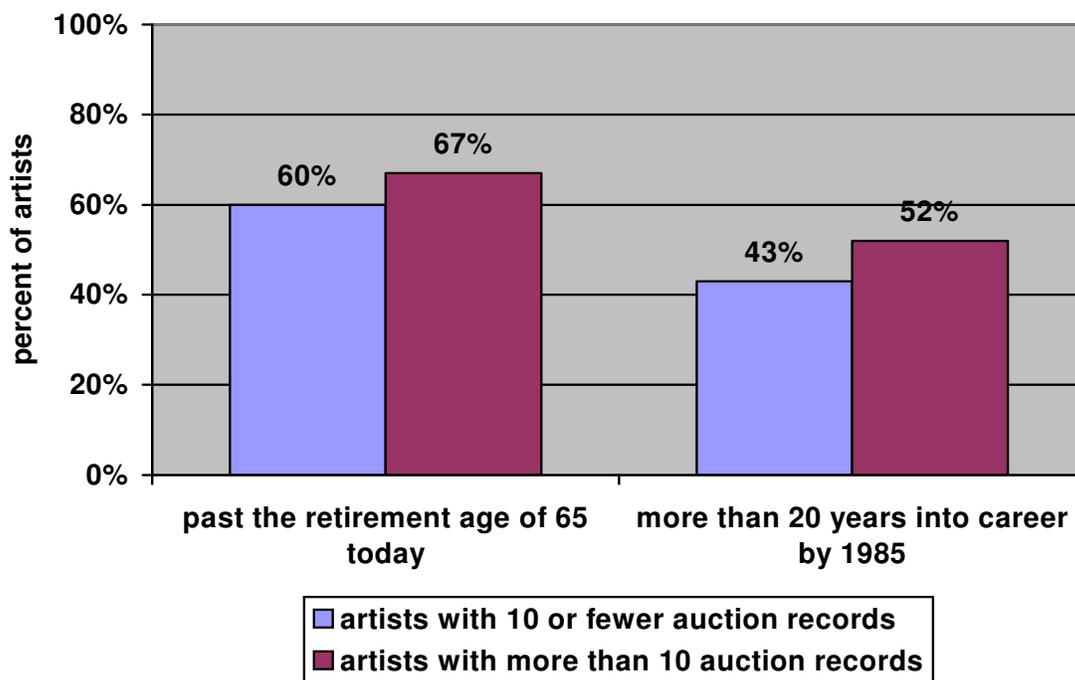
(The start of a career is determined by last date of study before a first exhibit.)



Source: *Who's Who in American Art, 2003/2004*

To what extent is it just a matter of time before an artist’s work is put up for auction? The data on artists’ ages/career length compared to data on artists’ number of auction records seem to indicate that time is certainly a factor, but is not the main factor, in determining whose works make it to auction. Painters with over 10 auction records are only a little older on average than those with 10 or fewer. The painters with over 10 auction records also began their artistic careers on average a little earlier than those with 10 or fewer records (**Chart J**). The small difference in average age and average length of artistic career cannot alone explain such vast differences in the number of auction records and the total value of auction sales across painters. The data seem to support the idea that in addition to lengthier artistic careers marked by exhibits, awards and commissions; luck, consumer preferences and stylistic/thematic trends in the art world are likely other big factors in determining who goes to auction.

Chart J: Auction records and the artists's age, length of career



Source: *Artprice.com, Who's Who in American Art, 2003/2004*

VII. Conclusion

Two main normative arguments stand behind popular support for an artist's resale right, which has recently been adopted by the EU and may soon be considered seriously by other jurisdictions. The first one is that artists should not remain poor when their works have become expensive, much like the Jean Francois Millet story details. The second idea is that artists are deserving of some financial insurance because of the unstable nature of their career path.

The artist's resale right has also found some, but not much, support from the literature of cultural economics, and this is that the artist's resale right might change the artist's behavior toward more efficiency in the art market. Specifically, one implication that may be drawn from the joint maximization production model for artists (Throsby, 2001) is that the discounted revenue stream from future resale royalties might encourage artists to spend more time on arts labor and consequently produce more art. This would correct the supposed shortage of art in a positive externality model for the art market. In order to evaluate the importance of this potential economic argument in favor of a resale right in the United States, where it already has a foothold in California, it would be necessary to know how many American artists would be rewarded by a resale right, by how much artists would be rewarded and also when artists would reap the benefits of a resale right in their careers. I sought to answer these questions by selecting a group of American painters and finding out which of them have had their paintings sold at auctions in the US and EU, where their resale royalties would be imposed, over the last 20 years.

My findings cast doubt on the potential economic support for an artist's resale right. Only a little over a fifth of my painters had their works go to auction and the vast majority of

these painters with auction records had no more than 10 records. Moreover, some of their paintings that went to auction did not actually get sold. Of the painters who had their works sold at auction at some point during the last 20 years, over half of them have total auction sale values not exceeding \$10,000 in today's dollars (roughly accounting for inflation). This means that among the elite group of painters who had their works sold at auction, most of them would not have been rewarded significantly by a single-digit resale royalty. As for *when* these painters would have been rewarded by a royalty in their careers and lifetimes, the answer is *late* for about half of them. By the start of my data collection period, almost half of the painters were over 20 years into their careers. The combination of the small chance that an artist will have multiple auction sales and the fact that these sales come years after the start of an artist's career means that any discounted revenue stream from a future resale royalty ought to be small enough that it will not have an impact on an artist's behavior at the outset of his or her career.

My findings also reduce the relevancy of the two popular arguments that artists should not remain poor even when their works have become expensive and that the resale right is needed because artists are deserving of some financial insurance. Pertaining to the first argument is the question of whether artists actually remain poor in spite of becoming popular. Among my group of painters are those who have had hundreds of their works sold. These are what we would call popular artists, and their works sometimes fetch very high prices. Since the valuation of these artists' current works rise along with the auction values of their older works, it seems highly unlikely that artists would not enjoy some part of the increased market value of their older works. Popularity and financial prosperity seem to go hand-in-hand. As for the argument that artists are deserving of some financial insurance,

this is based on the notion that artists are struggling financially. There are certainly many artists who must hold multiple jobs in order to survive. However, in light of the typically long period of time it takes for artists' works to make it to auction and to generate resale royalties, it seems that the resale right would not serve as financial insurance for the struggling artists, but would instead be a generally small sum of money that comes at a point in artists' careers when they do not need it or enjoy it as much as before. Furthermore, the largest amounts in resale royalties would go to a very small group of established, popular artists. If the U.S. faces pressure to adopt a resale right in order to keep up with other countries, it should weigh the facts against the politics before coming to a decision. Further research might be done in the area of evaluating other, economically sensible ways of encouraging artists to be more engaged in the production of art.

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