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Two men, presumably assistants, carefully place already purchased portraits into crates. One of the men spreads his arms wide around a framed piece as he removes it from its perch on a wall in a room filled floor to ceiling with oil paintings, arranged snugly together so as to cover the entire interior of the room – no wasted space. The other man gently places another portrait into a wooden crate, carefully handling only the frame so as not to disturb the valuable picture within. Across the room, men in powdered wigs showcase paintings to alabaster skinned ladies attired in elegant dresses while a store girl sells fine goods and other refined, presumably wealthy, customers peruse the merchandise. Such is the scene of one of French artist Jean-Antoine Watteau's remarkable painting, originally intended as a sign for his dealer's shop. The work, painted in 1720, is a clue that by the early 18th century, and likely earlier, art had clearly become a commodity, an object to be bought and sold, and Watteau's painting depicts it as a commodity associated with wealth and good taste (Siegel, 164).

Two hundred years later, in the early twentieth century, German economists began applying economic ideas to the valuation of art, ideas that didn't emerge in the United States until the 1960s, when cultural economics began developing on the notion of securing public support for the performing arts, which were struggling to make profits (Frey and Werner, 1). Economic theory has not only continued to develop strategies for public support of the arts, but also offers important insights into better understanding the interaction between art and commerce, an idea that can be described as the economics of art. Economics can define art in terms of profitability and, therefore, help determine the economic efficiency and social value of art and its power through market forces; furthermore, intellectual property law explains how economic forces promote the creation of art. This analysis will begin by describing the supply and demand sides of the art industry, investigating the value of art as an investment and defining two different kinds of ownership of art. Secondly, a demographic approach to art consumption can help determine how society values art. Finally, intellectual property law can provide a social framework to understanding the incentives to creating artworks.

In order to define the economics of art, "art" must first be classified, in a general sense. Art is any creative work of expression, and, for the purpose of this analysis is divided into three main categories: visual arts, which includes painting, sculpture, photography, and film; performance arts, which includes music and theater; and literature, which includes fiction, non-fiction, poetry and any other written creative work. Although there are differences in the way the economy affects these differing art forms, this analysis includes all three to create a unified economic theory of creative expression, or art.

Why apply economics to art? Economics focuses on decisions people make, decisions based on rationality. People reveal their preferences; they choose to buy and create art because they value it, because there is some utility in the existence of art in society. This creates a market, and, like any competitive market, supply and demand determine the price of art. Identifying the socially rational reasons for the desire to buy and sell is the basis of economic analysis that determines how society values art. Once the value is identified, art, one of the haziest of the humanities, may begin to be economically defined. Economics in the arts, and other non-traditional areas of economic intrusion, is useful because it “raises new issues, analyzes new aspects and brings new insights to problems” (Frey and Werner, 4). The arts, like any other desirable good, are subject to scarcity because “they do not constitute free goods which are available in abundance” (Frey and Werner, 6). So, what is the rationality behind supplying and demanding art?

Artists are willing to spend the time, energy, and materials, as well as more abstract costs such as inventiveness and originality to create artworks, as long as they get something in return. Esoterically, some artists claim to create *art for art’s sake*, an idea that implies art is created for the pure intention of creating something beautiful, whether it is useful or not. There are, of course, problems with this idealism. Artists, like anyone else, need to eat and sleep under a roof, and ignoring the market for their work is likely to put them and their art in the gutter, or make them pick a new career. Individual artists “systematically take into account the benefits and costs of alternative actions” (Frey and Werner, 11).

Secondly, *art for the sake of art* is economically inefficient, meaning that, without some societal benefit in exchange for the costs of creating the art, there is a net loss to society. This idea may also lead to inefficiency even if an art institute is bringing in revenue. For example, producers and performers strive for performance excellence, a standard that, while enjoyed by spectators, may be beyond the expectation that viewers have when they decide to pay to see a show, creating extra effort that is uncompensated, which becomes very much a part of determining whether or not to create government subsidy for art institutions.

This does not imply that an artist must sell-out in order to make a living, it only means that an artist must create art that can be held against a standard, a standard of what art consumers are willing to buy. Graphically, supply curves differ depending on the nature of the product. For example, the performing arts and literature operate on a standard upward sloping supply curve, with an optimal price per ticket or book. However, a painting is a unique piece of art, meaning there is only one piece (ignoring the market for posters or other such copies). The market for visual artwork is monopolistic, due to the uniqueness of a piece, which changes the supply into a vertical line. For an artist, “the number of works produced depends on the input cost of an additional unit (of equal quality and size) required; but it is also influenced by the future selling prices that the artists/gallery owners expect” (Frey and Werner, 85). Therefore, a price change by a gallery, acting in both its own and the artists interest, changes the entire market, as shown in the following graph:

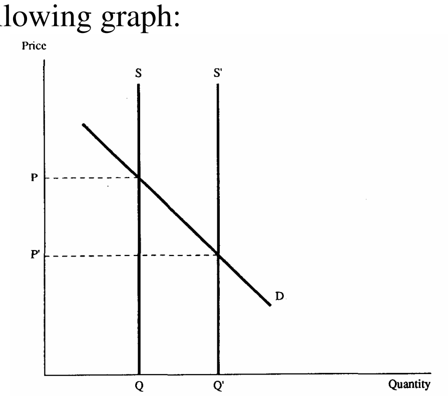

Figure 9.5. Price impact of supply increase by artist.

Figure 1. Price impact of supply increase by artist.

Source: The Economics of Art and Culture, 1993, pg. 154-159

Monopoly is not an efficient form of supply. However, certain pieces of art, such as paintings, can only exist in monopolistic form. Since the supplier has sunk costs into producing the piece, and people are willing to pay monopoly prices, there is a net gain, and the piece of art is efficient. Why would someone pay monopoly prices for art?

People are willing to pay money for theater tickets, or spend thousands of dollars on a painting, or go to the movie theater. Additionally, these art consumers also pay opportunity costs to enjoy art, such as the time it takes to watch a Puccini opera or *Titanic*. This willingness to pay creates demand for art, a demand based on consumer enjoyment and, as will become apparent, other valuations of art.

The demand for art is more important than supply for determining the value of art in society. Art, as defined above, is a very wide variety of products. Ticket sales for performing arts, movies and book prices are all similar to ordinary goods consumed daily as opposed to thousand dollar paintings, which sell to different consumers for much steeper, monopoly prices. Consumption is as varied as the products, because, although "almost everybody displays interest in the symbolic expressions conveyed by some creative good and services, but consumers differ in both the types of expression that attract them and the intensity of their attraction" (Caves, 185).

Who are these consumers? Demographic data, taken from Heilbrun and Gray, divided the American population into income brackets and measured what percentage of each income bracket attended classical musical concerts, nonmusical plays and museums. This analysis averages the percent attendance of each of these performance sectors to create visual representations of the demographics. The general trend of all the data indicates a positive correlation between income and arts participation:

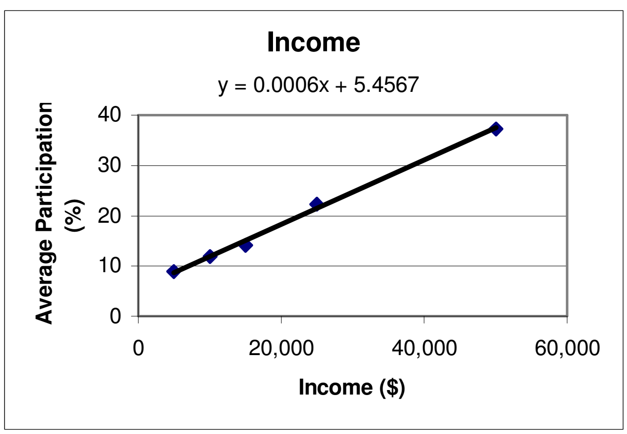

Figure 2. Average participation by income

Education also shows a positive correlation. Related, occupation makes an impact on participation:

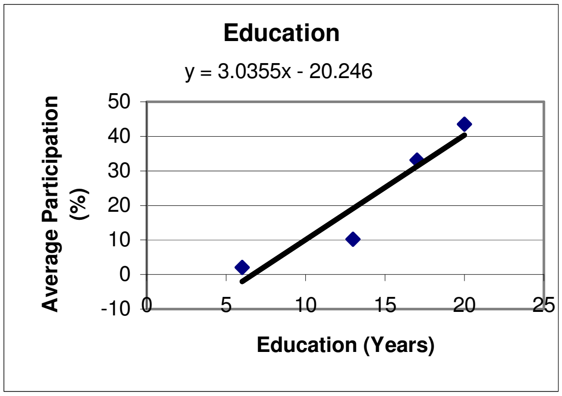

Figure 3: Average Participation by Education

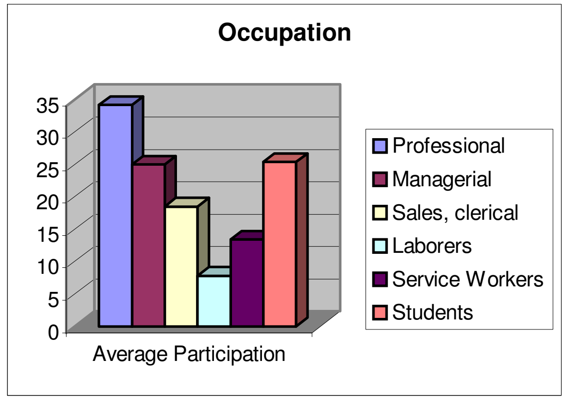

Figure 4: Average Participation by Occupation

These graphs make sense related to income. Higher income people can afford more years of education, which secures a higher income-earning job. The equations in the graphs can be used to calculate the amount of money someone is likely to spend on the arts, or participate, based on their income and years of education.

The data offers other interesting statistics, including age:

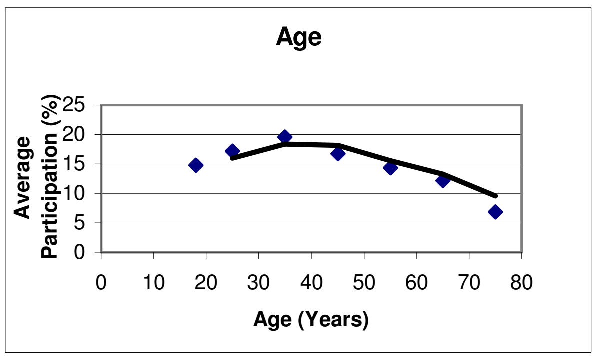

Figure 5. Average Participation by Age

The graph reveals that the performing arts participation peaks around the age of 35 and drops to the lowest after age 55 or so, which insinuates that ten-year-old children are more interested than their grandparents. In addition, women participate 3% more than men (Heilburn and Gray, 43).

Based on this data, the most likely American art consumer is a 35-year-old, highly educated woman in a professional career. How much does this woman spend on her art participation? In 1990, consumer spending on performing arts and motion pictures was 0.208% of disposable income, which was 4.77% of total income spent on recreational activities (Heilburn and Gray, 14). These numbers seem very small, and, indeed, that the arts sector was only 0.133 % of GDP, which, in 1990, was $5,513.8 billion (Heilbrun 1993, p. 9). It is likely figures have shrunk in the last 15 years, as they continually shrunk throughout the twentieth century as other options, such as spectator sports, became available. Therefore, it is apparent that examining the economics of art is not important because art drives the economy, but rather because art is affected by the economy.

Now that who is consuming art and how much they are spending is evident, factors of demand may help explain why consumers spend in the arts sector. First, and most obvious, people spend on the arts because they enjoy them, that is, they value seeing a film or a play, or reading a book, or going to a museum more than the price to do those things. "Some art seeks to criticize or shock its audience" (Siegel, 164), which may sell as a thrill to audiences. Furthermore, a consumer may choose to buy a piece to hang on the wall and impress visitors, to act as a status symbol, subtly displaying a person's wealth. Similarly, people will pay for the opera because it is prestigious to attend. These ideas give art "prestige value" (Frey and Werner, 19).

In addition to prestige value and entertainment value, art can also be a very lucrative investment. From 1975 to 1990, the annual rate of return on paintings was, on average, 19%, which was higher than AAA corporate bonds, gold, three year treasury notes and the Dow-Jones industrials (Frey and Werner, 165). Similarly, many investors put money in Broadway shows, or other such royalties. Of course, like any investment, art is risky, perhaps more so than other investments, which are protected by financial institutions, art is highly prone to theft and careless damage – it's fragile. However, this risk is important to promoting the growth of new artists:

The risk sharing policy introduces new and creative impulses into art. The expectation or hope that an unknown artist will later become recognized, and that his or her painting will rise in value, constitutes an important motive for investment in modern art, and therewith identifying and supporting painters and sculptors who are *not* recognized. (Frey and Werner, 17)

Investing in new artists is risky, but investing in a famous artist is less risky, if an investor has enough money to buy a multi-thousand piece, as well as cover the cost to protect against theft will be expensive.

Ownership of art, then, can be either purchased or created. First, an owner can be an investor, or the patron who bought a painting. Secondly, an owner can be the artist who created the work. Either way, art is property and needs protection, which leads to the importance the interactions between art and the law.

Weil describes the sequence perfectly: "a growing interest in art creates a market, the market churns up activity, activity leads to abuses and contention, and the law must be called upon to remedy the abuses and resolve the contention" (Weil, 193). Since art is property, or rather a bundle or rights attached to the commercial and private use of art, and, often, very valuable property, "it was money – or, rather, disputes over money – that first began to bring art into the embraces of the law" (Weil, 193). The sector of law most closely related to the arts is copyright law.

Copyright law establishes a "baseline for establishing what rights regarding duplicating and imitation intrinsically belong to the artist" (Caves, 281) as well as "providing both a way of deciding who gets to use what when and an incentive for creating things" (Friedman, 138). Since it protects expression rather than ideas, it does not limit creativity, but rather allows the crucial interaction between artists and society as they respond to ideas in society with artwork that offers commentary on societal ideals, which cannot be copyrighted.

Copyright also provides an economic incentive to create. The rights to a creative work can be very valuable, and can be created without monetary input. Judge Richard Posner addresses this issue:

A fundamental task of copyright law viewed economically is to determine the terms of this hypothetical contract, or in other words to strike the optimal balance between the effect of copyright protections in encouraging the creating of new works by reducing copying and its effect in discouraging the creation of new works by raising the cost of creating them. (Landes and Posner, 69)

Copyright is, essentially, legal granting of a temporary monopoly. The second a writer writes anything, it becomes copyrighted, and is protected for the writer's lifetime plus seventy years. This is a long amount of time to allow a monopoly. A recent article in the *Stanford Law Review* accused the length of the protection to be based in "concrete political considerations," which infringe on First Amendment Rights (Sprigman, 534). The premise of the argument is that society benefits greater if works are publicly available – basically a much less limited fair use policy. Copyright length may be inefficient if it limits the reach of a copyrighted work which is beneficial to society. Of course, the rights of the creator must be protected, but is it inefficient to grant a lifetime of copyright to an individual who then controls whether or not the work is used to benefit society?

Art, in all forms, is not necessary to sustain life, but "expresses a social, collective experience as well as the personal thoughts and feelings that make each of the artists unique" (Siegel, 168). It creates an element of a societies culture, and, therefore, should not be hidden away behind a copyright holder. Art, perhaps, holds more value for society than individuals. This is, of course, an impossible assumption to make, but an important concept to consider when defining how economic analysis benefits art.

Art is impossible to define, although it can be described in economic terms, which is as close as a quantitative, rather than qualitative, definition dare exists. Because "art is an abstract concept, similar to beauty, freedom or justice, and is not amenable to direct measurements, existing as it does in the eyes of the beholder…economists analyze the preferences of individuals with respect to the arts without judging what constitutes 'art'" (Frey and Werner, 6-7). However, economics uncovers the values that consumers and producers place on art, values such prestige, cultural, educational and value to future generations. "Ultimately, all art illuminates the ways in which contemporary society affects not only objects, but the people who belong to that society" (Siegel, 164), which is an important mirror for society to be able to cautiously look into, discovering truths that only artistic expression can tap. Economics offers suggestions to the arts in order to keep them thriving and in contact with the people of society, because, as useful and beneficial as art is, it is nothing without a beholder.

Bibliography

Caves, Richard E. Creative Industries: Contracts between Art and Commerce. London: Harvard University Press, 2000.

Frey, Bruno S. and Werner W. Pommerehne. Muses & Markets: Explorations in the Economics of Art. Basil Blackwell Ltd.: Oxford, 1989

Friedman, David D. Law's Order: What Economics has to do with the Law and Why It Matters. Princeton University Press, Princeton, NJ: 2000

Heilbrun, James, Charles M. Gray The Economics of Art and Culture: An American Perspective. New York: Cambridge University Press, 1993.

Landes, William M., Richard A. Posner. The Economic Structure of Intellectual Property. Cambridge: Harvard University Press, 2003.

Siegel, Katy. "Consuming Art" in Art 21: Art in the 21st Century. New York: H.N. Abrams, 2001.

Sprigman, Christopher. "Reform(alizing) Copyright" in *Stanford Law Review*. Vol. 57, No. 2, Nov. 2004: pgs. 534-539.

Weil, Stephen E. Beauty and the Beasts: on museums, art, the law, and the market. Washington, D.C.: Smithsonian Institute Press, 1983.