

Laws of Unintended Consequences: The Effects of Cultural Patrimony on the Markets of Modern Mexican Artists

By Isabel Suárez

Introduction

When analyzing and understanding any art market, it is imperative to consider all of the factors that impact its success or failure. While the economic climate is often cited as a major influence on the art market, the effect of the legal system is often overlooked. Government policies can play an enormous role in determining the economic success of the art market at large, as well as that of a specialized market. Governments that create legislation allowing for open and fair trade stimulate all sectors of the economy, including the art market. Governments that implement restrictive legislation with regard to the sale of goods, namely art, shrink the market for works that fall under those regulations. The Mexican government is such an example. By creating extremely restrictive cultural patrimony laws, the Mexican government has stifled the growth in the international markets for its most important modern artists. While these laws are meant to protect items that define the country's national identity, they ultimately restrict all sales and loans. Artists whose markets have been affected by their inclusion in the cultural patrimony include, but are not limited to, Diego Rivera, Frida Kahlo, Jose Clemente Orozco, and Maria Izquierdo.

What Are Mexican Cultural Patrimony Laws?

In order to understand how Mexican cultural patrimony policy affects the market for artists such as Diego Rivera, one must first analyze the statutes in question. In 1972, President Luis Echeverria enacted a series of federal regulations dealing exclusively with the protection of monuments, museums, and works of art considered part of the Mexican cultural patrimony. The regulations stipulated that all works of art by Mexican artists, regardless of where they were produced, were eligible to become works of cultural patrimony.

If selected as part of the country's cultural patrimony, the entirety of the artist's work would be considered an "historical monument" and monitored by the National Institute of Fine Art (INBA).¹ Furthermore, works of foreign artists that had been produced on Mexican territory were also subject to consideration of patrimony. In addition, the regulation prohibited the "permanent exportation" or sale of any work, whether in a public or private collection, that formed part of the Mexican cultural patrimony. These regulations also provided specific details on the special permission required when exhibiting a work of cultural patrimony outside Mexico, as well as the requirement that all collectors register their works with the National

Institute of Fine Arts, and follow certain restoration standards.²

The Case of Maria Izquierdo

In conjunction with the analysis of the regulations passed under President Echeverria in 1972, it is imperative to also consider the various decrees issued by other Mexican presidents, which affect the oeuvre of many artists. These decrees are instrumental in understanding how the government justifies making the work of an artist part of the cultural patrimony. The decree issued in 2002 regarding the work of modern artist Maria Izquierdo is especially interesting, in that it provides a list detailing why her work should form part of the cultural patrimony. The summary of the decree argues that Mexican art of the 20th century is recognized globally as one of the most important developments in modern art. Therefore, it states, Maria Izquierdo, who received much international acclaim as a modern Mexican artist, played a crucial role in the development of 20th century modern art. Finally the decree argues that her artwork is the incarnation of Mexican identity, and forms a crucial part of Mexican history.³

When the government issued the aforementioned patrimonial decree in 2002, a group of six collectors sued it in the hopes of proving the law unconstitutional. This group owned the majority of Maria Izquierdo's works, and by means of a lengthy legal process, not only called for a repeal of Izquierdo's work within the cultural patrimony law, but also aimed to reform the cultural patrimony laws in general. While the collectors were successful in obtaining protection from the law itself, granting them exemption from cultural patrimony restrictions with regard to Izquierdo's work, this protection was only extended to that small group which participated in the trial. Legal counsel for the collectors was successful in finding unconstitutional elements of the cultural patrimony laws, but was unable to discredit all.⁴ This case illustrates the discontent of Mexican gallerists and collectors with the legal restrictions inhibiting the sale of art.

Effects on the Market

The presence of these cultural patrimony laws not only prohibits sales, but also restricts where the works can be exhibited. In order for a work to be temporarily exhibited outside of Mexico, special permission must be received from INBA and a bond must be posted to the national treasury.⁵ These laws both impact the sale price of

the works, and also restrict which gallery and museums can show the works. The restrictions may well have a detrimental effect on the provenance of the works, as gallerists have to further contend with restrictive policies when selling artwork valued over a certain price. Laws commonly known as the "Mexican Anti-Money Laundering Act" stipulate that any artwork that has a value of over 15,000 pesos (\$13,000 USD) is considered a "vulnerable activity." Information from any such "vulnerable activity," including the identity of the beneficiary (purchaser), all relevant documentation concerning the sale, and the details of the sales report must be made available to the Ministry of Finance and Public Credit, as well as any other corresponding government entity.⁶ Not only do such laws affect gallerists and collectors living in Mexico, such as those who brought forth the case with regard to Maria Izquierdo's work, but they also increasingly affect American collectors who are willing to pay over \$3 million for a work by a famous Mexican artist, such as Diego Rivera. U.S. collectors and galleries might be discouraged from purchasing established Mexican art, as they might want to avoid possible legal battles that could ensue, including unexpected restrictions on rights of ownership.

The influences of restrictive Mexican cultural patrimony laws can be examined by analyzing quantifiable auction data for the markets of artists such as Maria Izquierdo, Frida Kahlo, Jose Clemente Orozco and Diego Rivera. Each of these individual markets has been affected in a different manner. For instance, Maria Izquierdo's market contains a large number of works that went unsold. Of the 90 recorded sales for Izquierdo's works, 36 were unsold, and her highest price achieved at auction was less than \$200,000.⁷ These high instances of unsold works and relatively low asking prices may signal that Izquierdo is a lesser known Mexican modernist. It also highlights that there may be a lack of quality work available on the market.

A similar situation can be made with Kahlo's market. While her highest selling lot was above \$5 million, there were only 61 recorded sales of her work.⁸ The paucity of Kahlo's works on the market can be attributed to Mexico's active repatriation of her works, as stipulated in the decree made by President Miguel de la Madrid. The high price paid at auction for a Kahlo self-portrait not only indicates the desirable subject matter, but also signals a growing collector base for this type of art.

While the markets of Frida Kahlo and Maria Izquierdo suffer from a lack of works available to purchase, the markets of Diego Rivera and Jose Clemente Orozco do not suffer from a lack of sales. While Rivera has over 1,000 documented auction sales, only 12 of those are over \$1 million, with his most expensive lot being sold at over \$3 million.⁹ Of Orozco's over 500 sales, only one sold for \$1 million.¹⁰ These numbers reflect the lack of quality work available on the market by these artists. The high prices paid illustrate that there is an interested collector base

willing to spend money on these artists; however, a lack of quality works, due to restrictive legislation, leads to fewer sales over \$1 million as compared to other modern masters.

Conclusion

When examining relevant market data, it can be argued that the scarcity of works on the market by the aforementioned artists, as well as their low sales prices, can be attributed to the presence of restrictive cultural patrimony laws. By restricting international sale of important works of modern art, the Mexican government has monopolized the sale of these works, distorting the market and significantly lowering the prices for these modern masters. Furthermore, such restrictive laws have cemented these artists in a regional market, and have hindered them from gaining status within the international art historical canon, thereby jeopardizing their legacy and reputation.

Endnotes

1. Lopez Coll, Hugo, Luis Torres, and Guillermo Miranda, "In Love with Diego or Frida? A Brief Look at Mexican Art Regulations," Greenberg Traurig, 2014, 1-3, accessed February 27, 2015.
2. *Id.*
3. UNESCO World Heritage, "Acuerdo numero 317 por el que se declara monumento artistico toda la obra pictorica producida por la artista Maria Izquierdo," accessed March 1, 2015, available at <http://en.unesco.org/>.
4. Teresa Vicencio, "El INBA Se Desistió En El Caso De María Izquierdo: Teresa Vicencio," Proceso, June 1, 2010, accessed March 4, 2015, available at <http://www.proceso.com.mx/?p=104511>.
5. *Supra* note 1.
6. *Id.*
7. Art Net, "Maria Izquierdo," accessed May 8, 2015, available at www.artnet.com.
8. Art Net, "Frida Kahlo," accessed May 8, 2015, available at www.artnet.com.
9. Art Net, "Diego Rivera," accessed May 8, 2015, available at www.artnet.com.
10. Art Net, "Jose Clemente Orozco," accessed May 8, 2015, available at www.artnet.com.

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