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**RULES FOR AN EMERGENT MARKET:  
Selling paintings in late seventeenth-century London**

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## Introduction

Conditions of sale were a feature of the Roman auction, and probably published along with the written public announcement, the *proscriptio*, that preceded a sale. When such conditions appeared on the front pages of printed sale catalogues for paintings, prints and drawings in late seventeenth-century London, then, this was nothing new; but the rules themselves were almost certainly modified to fit the circumstances then prevailing.<sup>1</sup> Here I wish to examine those rules and explore the rationale for either modifying traditional elements among them or introducing some for – it seems – the first time. I will also use the exploration as an occasion to conduct two additional probes. One of these will be into the likely level and structure of prices in these early London sales, the inquiry into structure revealing that many sales were two-in-one, appealing to dual audiences. The other probe will show that the market was also segmented by quality and location, which must have restricted the possibilities for immediate profitable resale and thus the likelihood that individuals' bids were influenced by those of others.

Paintings sales and book auctions are recorded in London from the mid-1670s, and their numbers increased sharply towards the end of the 1680s. Sales peaked in 1691 for paintings and in 1694 for books, after which there was a slump.<sup>2</sup> Conditions of sale

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<sup>1</sup> See J.A.C. Thomas, "The Auction Sale in Roman Law," *The Juridical Review. The Law Journal of the Scottish Universities* (1957), 42-66, p. 43. The basic form seems to have remained remarkably constant over the centuries: written rules, read at the sale itself; a sales manager who, for a commission, kept the accounts, was responsible for paying off the seller, and bore the cost until buyers had paid; and a crier or auctioneer who conducted the bidding, for a fee (pp. 43-4). The order of bidding was ascending (p. 43).

<sup>2</sup> These statements are based on the research of Brian Cowan, the preliminary results of which are given in his Ph.D dissertation, *The Social Life of Coffee: Commercial Culture and Metropolitan Society in Early Modern England, 1600-1720*, Princeton University, 2000, esp. tables 4.1, 4.2 and 4.3. Of 880 auctions advertised in England between 1660 and 1700, 416 were book auctions (the first in 1676) and 355 art auctions (the first in 1674). 92 per cent of these auctions took place in London, making the all-England figures given by Cowan reasonably good guides to what happened in London. In the decade of the 1680s, art auctions rose from 2 in 1685 to 7 two years later, and to 12 and 28 in 1688 and 1689. In 1691 there were 76, the next year 64 and in 1693, 50, then 25, 9 and 3. Book auctions were more numerous throughout the 1680s, rose to 36 in 1689, 38 in 1691, and peaked at 43 in 1694; immediately thereafter there were 34, 22, 17 and 12. The sharp rise and collapse in art auctions closely mirrored the numbers of joint-stock startups and of new patents granted. On this see W.R. Scott, *The Constitution and Finance of the English, Scottish and Irish Joint-Stock Companies to 1720*, 3 vols (Cambridge: Cambridge University Press, 1910-12); and Christine Macleod, "The 1690s Patents Boom: Invention or Stock-Jobbing?"

appear in both book-sale catalogues and those for the sale of paintings, which typically also included some prints and drawings, plus assorted other items. A few printed book-sale catalogues exist for which the conditions of sale have been preserved and there are many more catalogues for the sale of paintings where this is true. The single best source for the latter is a collection of 131 catalogues, bound in a single volume in the British Library, and covering the period May, 1689 to March, 1692.<sup>3</sup> This set comprises the main body of evidence used here. It is not known what led to the composing or survival of this collection, so that it cannot be treated as a sample; nevertheless, for the purpose of observing the introduction and adoption of rules it seems sufficient.<sup>4</sup> All but four of the sales were held in London, those four being held in nearby spa towns.

### **Sales “upon different and more justifiable methods”**

Conditions of Sale were printed in a catalogue for a sale of paintings, prints and drawings, in the spa town of Tunbridge Wells, not far from London, on August 13, 1689. This is their first appearance in the British Library set. It may not have been the first time for a sale in England, however, for the auctioneer, Edward Millington, also announced that he had “of late made several sales of Prints, Paintings, &c. upon different and more justifiable Methods than were before practised in the City of London”. Having no basis for comparison, we can only infer what was “different and more justifiable” about the rules which followed. The conditions themselves are shown overleaf.

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*Economic History Review*, 2<sup>nd</sup> ser. 4 (1986), 549-71). Giles Mandelbrot warns of the book-sales numbers that they conceal two distinct sets of forces. “While auction sales of major private libraries continued more or less at a constant level throughout the 1680s and 1690s, it was the trade disposals [linked to bankruptcies] that created the peak in the figures between about 1689 and 1692”. See his “The Organization of Book Auctions in Late Seventeenth-Century London,” in Robin Myers, Michael Harris and Giles Mandelbrote (ed), *Under the Hammer: Book Auctions since the Seventeenth Century* (XXX: Oak Knoll Press and the British Library, 2001), 15-53, p. 20. This information seems to confirm a link between financial and economic circumstances and the peak in auctions. The slump in 1694 probably had much to do with the Locke-recommended recoinage, which caused a temporary lack of currency.

<sup>3</sup> Shelfmark BL 1402.g.1. The set actually comprises 132 catalogues, but one is a duplicate.

<sup>4</sup> The collection covers 54 per cent of picture sales in 1689, 91 per cent in 1690 and 71 per cent in 1691.

The conditions numbered IV, V and VI are obviously meant to facilitate participation in the sale; they tell us nothing about its conduct. Conditions I through III do that. The sale was to be by public outcry, with ascending bids. Buyers were to clear their purchases within three days. And successful bidders were to give in their names and lodgings, “otherwise to Pay in part the third part of the price” before leaving the premises, or the full amount. The quoted portion of the text is a peculiar verbal construction whose significance will become apparent.

Ascending price, with outcry, was the established method for sales in the City.<sup>5</sup> The right to conduct public sales belonged to the office of Outroper, a title borrowed from the Dutch *uitroeper*, literally one who cries out. As early as 1585 it was written that the Outroper’s sales would be “by the voyce, for who gives most”, and it is unlikely that this technique had been lost to collective memory.<sup>6</sup> Why, then, repeat the rule, claiming at the same time that it was part of an improved set?

One reason might have been to distinguish paintings sales from book sales. Book sales could be at fixed prices, or by the method called “mineing”. In a strict fixed-price sale, a price would be written in each book. Sometimes this price was described as “cheap” or “the cheapest”.<sup>7</sup> Each book would be held aloft and sold to the first who cried “mine” at the price specified. If there was no claimant at that price, normally the book would be returned unsold. However, sometimes “mineing” meant according to the Dutch, or descending price method, then as now used for sales of perishables, and in seventeenth-century Amsterdam for common estate sales. In the case of books in London, if there was no taker at the written price, the price might be lowered

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<sup>5</sup> It will be important to maintain a distinction between the City of London proper and the adjoining but separate administrative entity, the City of Westminster. In what follows, “the City” will always mean the former.

<sup>6</sup> Iain Pears, *The Discovery of Painting. The Growth of Interest in the Arts in England, 1660-1768* (New Haven and London: Yale University Press, 1988), p. 67. Millington’s sale was certainly not the first in the late seventeenth century to employ this method. The sale in 1682 of Sir Peter Lely’s paintings was announced to be “by way of Outcry”. See Diana Dethloff, “The Executors’ Account Book and the Dispersal of Sir Peter Lely’s Collection,” *Journal of the History of Collections* 8 (1996), 15-51, p.17.

<sup>7</sup> I owe this information on book sales to Giles Mandelbrote. Timothy Clayton, *The English Print, 1688-1802* (New Haven and London: Yale University Press, 1999), p. 31, cites a 1725 sale at which books were to be sold “cheap (the Price being mark’d in each Book)”.

successively until someone shouted “mine”.<sup>8</sup> Given a degree of flexibility attaching to the “mineing” method, and since Millington intended to use the outcry, ascending bid method in his Tunbridge paintings sale, clarification might have been in order. Moreover, auctions of paintings probably were still a novelty, and newcomers could not have been expected to be familiar with the procedure.<sup>9</sup>

The new rules seem to have served larger purposes as well. I shall argue presently that specifying that the bidding would be by open outcry (Condition I) was important to strengthening auctioneers in disputes with irresponsible bidders, but also that Conditions I-III, taken together, helped bring the auctions under the aegis of the recently promulgated Statute of Frauds. Irresponsible bidders were individuals who bid freely yet failed to collect and pay for their purchases.<sup>10</sup> Millington complained as early as 1681 that “many persons have appeared at our Auctions, and buy with great freedom to the injury of others...yet in most Auctions have hitherto neglected to fetch away and pay for their own”.<sup>11</sup> This was said of book sales, though there is no reason to think that it was not true also of paintings sales.

Irresponsible bidding should be distinguished from two other contemporary practices that differ from it in intent, if not in the outcome. One is a form of private bidding where an owner would bid, personally or through an agent, without meaning to buy back his or her own property, but to elicit bids from others sufficiently strong to prevent the property from selling “at an under-value”. This easily shaded into the separate practice of “puffing”, or “setting” or “false bidding”, where persons would be hired, perhaps by an owner, or by an auctioneer, to enhance the overall level of bids

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<sup>8</sup> Mandelbrote, “The Organization of Book Auctions”, note to Fig.1, p. 17.

<sup>9</sup> A possible additional reason should be mentioned. Despite the outcry, ascending price method being officially accepted, it seems that a lottery was sometimes used. The executors of the Lely estate originally intended to sell his paintings by lottery, being dissuaded by the argument that serious buyers prefer to bid for items of their choice rather than take what chance throws their way. See Augustus Jessop ed., *The Lives of the Norths*, 3 vols (London: George Bell and Sons, 1890), III, p.193. In the British Library set of catalogues one sale was announced as being “by way of Mineing, (a Method of Sale not hitherto used in England)” (BL 1402.g.1, no. 74: March 12, 13, 14, 1691). The experiment was not repeated.

<sup>10</sup> I borrow Giles Mandelbrote’s apt term for this behavior.

<sup>11</sup> Mandelbrote, “Organization of Book Auctions”, p. 30, quoting Millington’s *Catalogus librorum...D.Georgii Lawsoni*, May 30, 1681.

without reference to fair value. Owner-bidding was traditionally favored – owners or their agents being permitted to bid up to a set figure, a reserve – on the ground that it was unfair to let property sell for less than its proper value, a notion hinting at ordinary or average market conditions.<sup>12</sup> Legal tradition even permitted puffing, provided that at least one bidder was “real”, and despite a presumption by some judges that buyers should be able to proceed on the assumption that they, as “real bidders” are bidding “only against real bidders”. On this lenient view, puffing would become fraudulent only if a person or persons were employed deliberately “to take advantage of the eagerness of bidders to screw up the price”.<sup>13</sup> English juridical opinion nonetheless was divided on the degree to which individuals allow themselves to be influenced by others, hence on the degree to which protection against that possibility really was necessary.<sup>14</sup> Though I am able to cite only later commentary on these practices, false bidding was a definite concern in the 1680s and early 1690s, as will be made clear later. The concern extended to the practice of commission-bidding by or on behalf of auctioneers.

To continue with irresponsible bidding, what was the issue at the time? Millington’s statement on the nature of the problem is clear enough, but evidence as to its causes is at best indirect. I postulate that the behavior arose in part out of auctions being regarded as entertainments, and in part out of a certain presumption on the part of aristocrats in particular that they might behave disruptively, even to the extent of ignoring the rules, with impunity.

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<sup>12</sup> Joseph Bateman, *A Practical Treatise on the Law of Auctions* (London: Maxwell, 1838), pp. 37-8, judgements cited in note (f). “Ordinary or average” was Adam Smith’s phrase for distinguishing between what he called natural and market (spot) conditions. See *An Inquiry into the Nature and Causes of the Wealth of Nations*, 2 vols; vol. II of the *Glasgow Edition of the Works and Correspondence of Adam Smith*, R.H. Campbell and A.S. Skinner (eds) (Oxford: Clarendon Press, 1976 [1776]), Book I, ch. vii. See also p. 527 §8, where this is linked to “moderate and reasonable” prices, and to trade “upon a fair level”.

<sup>13</sup> Bateman, *Practical Treatise*, pp. 35, 38-9, and note (f), quoting an opinion given in *Smith vs Clarke*, 12 Ves. June 477, 33 Eng. Rep. 180, 183 (1806). I am grateful to Peter Lindsay for tracing this opinion back to its source.

<sup>14</sup> *Ibid.*, pp. 37-8, note (f), citing Lord Rosslyn, who “felt vast difficulty to compass the reasoning, that a person does not follow his own judgement because other persons bid,” as well as the contrasting opinion expressed in an early nineteenth-century case, that “it is universally felt and acknowledged, that the judgements of most men are deluded and influenced by the biddings of others.”

That auctions were seen as entertainments is not in doubt. Millington even consciously played up this aspect. He presented his Tunbridge sale, the very one at which he introduced new and improved rules, as being “for the Diversion and Entertainment of the Gentlemen, Ladies, &c.”. In his case, far the greater part of the attraction was his own performance, not the goods on offer. John Evelyn’s daughter Susanna attended this sale. Evelyn himself was sceptical – “What can there be but trash!” – but he gave his permission for Susanna to participate. She was looking to purchase a print or drawing, but did not, because the lots were offered in bundles. Yet she returned several times, just “to hear the man talk over every picture”.<sup>15</sup> Millington’s patter and showmanship indeed became famous, celebrated in print more than once, including in a broadside elegy.<sup>16</sup> His own contribution to the entertainment value of an auction was so patent (and rewarded by such high fees) that it raises the question whether Millington was not partly to blame for creating an atmosphere in which some contrived to exploit both him and the occasion for some added private amusement.

Roger North’s account of the sale of Sir Peter Lely’s prints and drawings in 1688 conveys the strange thrill that could be generated by competitive bidding, a delicious tension that engulfed participants and onlookers alike. North does not suggest that there was any irresponsible bidding at this auction, but he hints at the potentially disruptive behavior of aristocrats all too conscious of their very special status in a mixed audience. North was an executor for Lely, who had been principal painter to the king, and took upon himself the main responsibility for organizing the sale of the artist’s paintings, prints and drawings. Two sales were held. The first, in 1682, was to dispose of the “prime” paintings; the second, held in 1688, was for the drawings and prints. North had insisted prior to the first sale that everything would be above board. No extra paintings were to be slipped in, only “what Sir P. Lely left”, nor was any to be withdrawn during

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<sup>15</sup> Cowan, *The Social Life of Coffee*, p. 248, n.178; Carol Gibson-Wood, “Picture Consumption in London at the end of the Seventeenth Century,” forthcoming in the *Art Bulletin*. See also the extended discussion by Cowan of auctions as social occasions: “Arenas of Connoisseurship: Auctioning Art in Later Stuart England,” in Michael North and David Ormrod (eds), *Art Markets in Europe, 1400-1800* (Aldershot: Ashgate, 1998), 153-66.

<sup>16</sup> Mandelbrote, “Organization of Book Auctions”, pp. 31-2.

the auction; instead, the whole was to be exposed, “and without any false bidding.”<sup>17</sup> That is the shorthand expression used in North’s diary account; in the printed lists distributed prior to the sale the phrase false bidding was not employed, rather it was stated that “no Person shall be Employed to bid which is not a Real Buyer”.<sup>18</sup> By the end of the decade art sales were more familiar and more popular, yet North was amazed at the interest excited by the 1688 sale of Lely’s collection of drawings and prints. “It was wonderful to see with what earnestness people attended...One would have thought bread was exposed in a famine. Those that bought laid down their guineas...ten, twenty, thirty, &c...” Just as at the first sale, no false bidding was allowed.<sup>19</sup>

It is clear from events that “no false bidding” did not preclude agents executing commissions on behalf of absent bidders. One lord in attendance at the 1688 sale was angered to find himself in competition with Frederick Sonnius, art dealer and former studio assistant and friend of Lely, and one of the managers at the sale. In the particular instance involved here Sonnius was bidding on behalf of Lord Berkesteyn of the Netherlands, for a Raphael drawing. The English lord dropped out at £70, and the drawing went to Sonnius, with a bid of £100. Excitement was high. In a draft account of what happened North referred to “the fervour of the company, especially the painters”, when £100 was put up, and later he wrote of the impression this made on him at the time: “There is no play, spectacle, shew, or entertainment that ever I saw where people’s souls were so engaged in expectation and surprise...”<sup>20</sup> The unnamed lord apparently resented Sonnius’s persistence (as did Berkesteyn, when he discovered what he had paid<sup>21</sup>). North tells us that, having lost, the lord “held up his eyes and hands to heaven, and prayed to God that he [presumably the new owner] might never eat bread cheaper.” He also hints that things might have got out of hand; at any rate, he was grateful when others intervened and “turned...into jest” what might have become an ugly scene.

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<sup>17</sup> Jessop, *The Lives of the Norths*, III, p. 193.

<sup>18</sup> Dethloff, “The Dispersal of Sir Peter Lely’s Collection,” p. 17.

<sup>19</sup> *Lives of the Norths*, III, p. 199.

<sup>20</sup> Compare Dethloff, “The Dispersal of Sir Peter Lely’s Collection,” p. 49, note 85, with *Lives of the Norths*, III,, p. 200.



The 1688 Lely sale thus supplies a sketch of the ways in which an auction could be entertaining, and also indicates quite clearly how aristocrats felt free to interject their opinions and displeasure, disrupting the proceedings. Millington also had firsthand experience of innocent diversion being turned into a struggle of wills, in which the advantage of social position was held by aristocrats. In the catalogue for an auction of select paintings, meant for the nobility and gentry and to be held at the upscale “Vendu” in Covent Garden, in January 1692, he announced that the lots would be offered “the fair way according to the course of the Catalogue.”<sup>22</sup> The warning was surely unnecessary if members of the gentry and the aristocracy could be trusted not to clamor for lots of special interest to them to be brought up early.

Millington was both justified in complaining about bids freely made but purchases not fetched away, and serious about combating the practice. He concluded his 1681 statement of the problem with a promise that past offenders would have their names published. Moreover, not only would he “desire their absence” if they turned up at future auctions of his, but he warned that he intended “to Prosecute them according to Law.”<sup>23</sup>

What law did Millington propose to invoke? In all likelihood, the Statute of Frauds, proclaimed by Charles II in 1677.<sup>24</sup> This Statute was meant to undermine the practice of renegeing on verbal agreements, and of lying about them or suborning perjury by others in the same cause. The full name of the Statute was An Act for prevention of Frauds and Perjuries.

Under the new Statute, to guarantee a contract it was necessary to obtain the buyer’s signature and ensure that the transaction would be completed within a year. In lieu of a signature or a note or memorandum, the seller might obtain from the buyer “something in earnest to bind the bargain, or in part of payment”.<sup>25</sup> The strict signature or memorandum

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<sup>21</sup> Brian Cowan supplies the identity of Sonnius’s principal in *The Social Life of Coffee*, pp. 231-2 and note 152.

<sup>22</sup> BL 1402.g.1, number 120.

<sup>23</sup> Mandelbrote, “Organization of Book Auctions”, p. 30.

<sup>24</sup> 29 Car.2, c.3. The Statute was made perpetual under James II.

<sup>25</sup> Section 17; cf. section 4.

requirement came to be insisted upon in the courts of common law, though the court of Chancery, in contrast, came to accept that the very form of an auction could satisfy these requirements. Thus, before that court at least, the auctioneer's acceptance of an open bid, and the entry by a clerk of the name of the high bidder alongside the relevant lot number in a catalogue made for that specific sale, might stand in lieu of a buyer's signature or memorandum. On this reading, and confusingly at first sight, auctions fell *outside* the Statute, since there could be no perjury if an open bid amounted to a signed contract or memorandum.<sup>26</sup> It is not known how quickly this legal split developed, but Millington acted anyway as if he felt it wise to stick fairly closely to the provisions of the Statute.

Thus Condition I was important among the rules because, although it stated only that high bidder wins, it was implicit in the public auction form that bidding would be by open outcry. This meant that bids were public knowledge, and that there were witnesses to the contract implicitly entered into by a winning bidder. To have a catalogue printed for each sale, moreover, supplied the possibility of adding a written record of winning bids and bidders. Condition I, in short, interpreted against the standing practice of public auctions in London, and combined with printed, sale-specific catalogues, must have strengthened the hand of the auctioneer in any dispute with irresponsible bidders. But Millington also added Condition III, which required successful bidders to give in their name and lodgings before leaving, "otherwise to Pay in part the third part of the price." Whether the auction form and catalogue record were judged sufficient to stand in for a signature or written memorandum, this additional Condition placed Millington's auctions squarely in line with the Statute of Frauds, echoing portion of its very wording. Subsequently he, and others, sometimes used a slightly different form of words, but one even closer to the Statute's text: Gentlemen to "give in their Names and Places of Abode, or Earnest for what they buy".<sup>27</sup> As to the time limit set by the Statute, Millington's second rule in his August 1689 Conditions of Sale set the clearance time at three days,

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<sup>26</sup> Bateman, *Treatise on the Law of Auctions*, p. 48 note (m), and p. 50 note (r). The reason for the more open view of the provisions of the Statute adopted by the court of Chancery probably had to do with the fact that in this court there was no jury while witnesses could be questioned directly by the judges. See W. S. Holdsworth, *A History of English Law* (Boston: Little, Brown, 1924), vol. VI, pp. 393-4.

<sup>27</sup> BL 1402.g.1, number 50 (John Bullord sale, October 20, 1690); number 53 (Millington sale, November 12, 1689)

well within the one-year limit specified.<sup>28</sup> Collectively, then, Millington's first three rules put his sales in compliance with the Statute of Frauds, with a double safeguard – the auction form plus catalogue, and name and address or earnest – almost as if he foresaw the split that would evolve in its interpretation.

### **The Statute of Frauds and the level of prices**

At this point I wish to embark on a brief excursion into pricing. This is directly relevant to the application of the Statute, and leads us to a fuller grasp of the nature of the London sales. Section 17 of the Statute dealt with sales of “goods” or chattels, which included paintings.<sup>29</sup> But the Statute only covered transactions of a value of ten pounds or more. Millington's third rule, the one relating to buyers giving name and place of abode, or an earnest, or an amount of cash in part payment of the price, was almost universally adopted within ten months of its introduction. So too were his Conditions I and II. The three became a sort of core set of rules used in the great majority of sales covered by the British Library set. (See timeline of adoptions shown overleaf.) This suggests that auctioneers generally in our period saw an advantage in conforming to the requirements of the Statute of Frauds.

An additional implication of these widespread and sustained adoptions, however, is that a significant number of paintings was expected to fetch the minimum price necessary for the transaction to be covered by the Statute. But just how frequent was a price of ten pounds or more in paintings sales at the time? Since there are no price annotations in the catalogues in the British Library set, the question seems unanswerable. Yet there are scattered references to actual prices in other, roughly contemporary sales; in addition, two of the British Library catalogues contain printed reserve prices. Then too, recent research has established something like a lower bound for prices in our sales.

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<sup>28</sup> This was tighter than for book sales, where a week was allowed before purchases had to be fetched, while payment for items above five pounds could be stretched to three months (though with a bill confirming the contract). See Mandelbrote, “Organization of Book Auctions”, Fig's 2 (p. 21) and 3 (p. 23).

First the anecdotal evidence. I have mentioned already the prices at the Lely prints and drawings sale: 10, 20 and 30 guineas, and even £100 for the Raphael drawing. Brian Cowan notes that at a sale at Somerset House in 1674 the Marquis of Worcester paid £100 for just six pictures. He also reports some prices recorded by John Verney at an auction held at the Banqueting House at Whitehall, in 1683: £45 for an Adam and Eve driven from paradise; £301 for a battle scene; £260 for a painting of the child Jesus confounding the doctors in the temple.<sup>30</sup> These bits of information are useful reminders that there were high-priced paintings sold at auction in our period.

Next, the two catalogues with reserve prices. Both relate to sales conducted by the bookseller-auctioneer John Bullord.<sup>31</sup> He touted the paintings with a reserve as being “of extraordinary value”. The first of the two sales contained seven paintings with a reserve price, three above ten pounds. The average reserve was £9.75. The second such sale contained eleven paintings with reserves, averaging £6, though only one was above ten pounds. The numbers translate into 1.2 per cent of the lots in the first sale, and 0.4 per cent in the second. However, bearing in mind that the reserves indicated not actual but minimum acceptable prices, many of the paintings offered subject to a reserve, perhaps even all – certainly in the first sale – could have fetched more than ten pounds. Assuming all reached the limit under the Statute, the percentages would become 4.5 and 2.7, respectively. Those are still low, from which (and assuming Millington intended to invoke the Statute of Frauds) we should probably infer that he considered at least some of his sales to be a cut above Bullord’s.<sup>32</sup>

Certainly Millington held more sales than Bullord aimed expressly at “Persons of Quality and Gentlemen”, or “the Nobility and Gentry”.<sup>33</sup> For such sales, where it was reasonable to expect some high bids, the actual percentages of paintings meeting the

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<sup>29</sup> Bateman, *Treatise on the Law of Auctions*, p. 68.

<sup>30</sup> Cowan, “Arenas of Connoisseurship,” p. 153, notes 1 and 2.

<sup>31</sup> Both were Bullord sales: BL 1402.g.1, numbers 82 (May 19, 1691) and 87 (June 15, 1691).

<sup>32</sup> That Bullord, in twenty sales during the period 1689-92, attached a reserve above ten pounds to just four paintings, perhaps tells us that in his case, anyway, the Statute was not particularly relevant.

Statute's ten-pound minimum must have been well above 4.5, let alone 2.7. How much higher, however, we are unable to say; nor does this help at all towards knowing what prices might have been at more ordinary sales, which were the majority.

Nevertheless, we have, as a result of recent research, two indicators of average prices probably applicable to sales at the low end. Carol Gibson-Wood reports that valuations of paintings in a large sample of contemporary inventories made for the London Court of Orphans were ten shillings (£0.5) or less.<sup>34</sup> She offers this as a possible clue to prices at auction in our period, arguing that some of the paintings bought there no doubt found their way into contemporary Court of Orphans inventories. Those familiar with these inventories believe that systematic under-valuation was practiced; aware of this Gibson-Wood also sought an alternative measure as check; this she found in a case in Westminster involving a fire insurance claim. Such claims, she recognizes, possibly were exaggerated in the other direction; for what they are worth, however, a pair of observations yielded estimates of £0.75 and £1.5.

Gibson-Wood's findings are in line with what David Ormrod has concluded from his examination of declared values at customs for imported "pictures", the term used in the Customs Ledgers. Prints mixed in with paintings may have imparted a downward bias to the customs figures, apart from deliberate under-valuation. This problem notwithstanding, the Customs Ledgers yield useful information relating to imports of pictures from several countries and for various years between 1697 and 1704. The mean declared value for imported pictures, averaging across all available countries and those years for which records have survived is £1.29, with a median value of £0.88.<sup>35</sup> Ormrod notes that import duties on paintings rose in 1693 (from five to ten per cent), had further risen to 30 per cent by 1695, and that by 1704 paintings were liable to a 60 per cent

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<sup>33</sup> BL 1402.g.1, numbers 53 (November 12, 1690), 105 (November 23, 1691), and 120 (January 22 and 23, 1692).

<sup>34</sup> Data here and below from "Picture Consumption". Normally, Gibson-Wood points out, the Orphans' Court inventories valued not individual paintings but whole rooms of "pictures", a term which covered prints as well as paintings. The average values she quotes, therefore, are for pictures in spaces such as staircases, where it is almost certain that all the pictures were in fact paintings.

<sup>35</sup> Ormrod, "The Origins of the London Art Market, 1660-1730," In North and Ormrod (eds), *Art Markets in Europe*, 166-86, p. 185 note 63.

impost, making it certain that values for customs purposes were deliberately understated.<sup>36</sup> In the period 1689-92 the rate was only 3 per cent, so any under-valuation would have been largely conventional – not determined by the duty as such – though possibly considerable nonetheless.

To turn declared values at customs into real cost-covering landed prices one would have to adjust upward for under-valuation and possibly also for handling, shipping and insurance costs. If some of the pictures were imported for re-sale at auction in London, moreover, the owner-importers would have wished to recoup in addition the 3 percent duty. And, there would have been separate costs associated with actually selling the paintings. One such was the auctioneer's fee, which in Millington's case was unusually high, 15 to 20 per cent, though this may have included managers' charges (in his case 7 per cent or so). Separate fees were charged for the Lely paintings sale in 1682 (7½ per cent for the managers and 2½ per cent for the crier).<sup>37</sup> While we have good information on fees and expenses, the other adjustments must be guessed at. Whatever allowances are deemed appropriate, the corresponding anticipated sales prices would have to have been, on average, more than trivially above Ormrod's reported average and median.<sup>38</sup>

Unfortunately that seems to be about the limit of what there is to be said about the level of prices in our sales. At this point, accordingly, I will change tack and investigate, instead of the level of average prices, the likely price frequency distributions in these sales. To get a sense of the likely distributions in the absence of actual prices, I shall use near-contemporary sales for which prices are available. Two such sales will serve as

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<sup>36</sup> Ibid., p. 177. See also the specific evidence for under-valuation listed in Ormrod, "The Rise of the London Art Market, 1660-1760," paper presented at the Settimana di Studi XXXIII, *Economia e Arte. Secc. XIII-XVIII*, Prato, April 30-May 4, 2001.

<sup>37</sup> Mandelbrote, "Organization of Book Auctions", contains a great deal of information on fees. Total expenses could amount to 20 or 25 per cent of revenues at book sales (pp. 24, 28 and 36, note 42).

<sup>38</sup> It is important to keep in mind that this logic applies only to imported paintings intended for resale. If, as preliminary study suggests, most of the paintings sold in the auctions I have looked at were "local" stock, this narrows the application of the reasoning. If the valuations in the Boone inventory discussed in note 40 below are more accurate than those of the Orphans' Court inventories generating Gibson-Woods low average value, it is interesting that this one inventory is not of expressly imported paintings, and that their mean value is still well below Ormrod's average declared value at customs for imported pictures. In other words, Ormrod's mean may be low relative to what it should be for imported paintings meant for resale; but such paintings probably were exceptional, and unusually valuable to start with.

illustrations. One is a sale of the “collection” of Robert Streeter, Jr, held on December 13 and 14, 1711, the other the Lely paintings sale of 1682. Streeter was the son of the Serjeant Painter to Charles II and himself held that post under James II. His sale included numerous works, many possibly unfinished, by his father, as well as some of his own making, plus pictures he had assembled over the years, perhaps to serve as models. It was a motley collection with only a few items of quality.

The Lely sale was a cut above this. Of the 568 paintings separately mentioned, 135 were by artists other than Lely himself, and their number included some by the best Italian and Flemish painters of the fifteenth, sixteenth and seventeenth centuries.<sup>39</sup> These paintings, though not numerous, raised the average quality and price. Thus, the arithmetic average in the Lely sale was £10.68, while the mean for the Streeter sale was just £3.37. The latter figure, of course, is not much above what an appropriately adjusted set of numbers for Ormrod’s results, or Gibson-Wood’s estimates should yield.<sup>40</sup>

Though these averages are far apart, the two sales show striking similarities of structure (see price frequency distributions overleaf). Both have low modes (in the £0-1 range for the Streeter sale, and £1-2 for the Lely); and the frequency distributions of prices fetched have an extended right-hand tail, with medians below the means. Fifty-six per cent of the works in the Streeter sale sold for under £3; fifty per cent in the Lely sale sold in that range. Looking just at higher-priced works, 4 per cent of paintings in the Streeter sale sold for £10 or more, collectively producing 31.7 per cent of the total

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<sup>39</sup> Dethloff, “The Dispersal of Sir Peter Lely’s Collection,” pp. 17-18. Appendix I of this article is a transcription of the account book of the sale. My count excluded works on paper, works in “craon”, clay and plaster figures, bronzes, a steel mirror, drawings, etc. I also counted as separate works those paintings sold in lots in which two or more were bundled.

<sup>40</sup> Gibson-Wood has recently uncovered a Westminster probate inventory (AM/PI/2/1694/002 in the London Metropolitan Archive) which adds to our knowledge in interesting ways. Dated 1694, it is the inventory of an artist, Daniel Boone, and the appraisers were Ferdinando Verryck and Joseph Guston. I have not seen this document but report details kindly shared with me by Carol Gibson-Wood. The document lists 81 paintings by subject, some attributed. Twenty five of the paintings have a value of £1 or more. Most of these were listed at one pound or just a bit above, but the mean value of all 81, nonetheless, is 18 shillings and 4 pence – considerably above the average from her Orphans’ Court inventories. The figure may be slightly biased upwards, since the total value of the inventory includes a few books and prints, whereas only the paintings were included in the divisor. On the other hand, it is extraordinary to have valuations for individual paintings, and valuations, moreover, by an artist and auctioneer (Verryck).

revenue. In the Lely sale, 20.8 per cent of the paintings sold for £10 or more, while just 5.8 per cent of works, each selling for £40 or more, generated 44 per cent of the revenue.

The Lely sale seems a plausible stand-in for those sales by Millington which he directed to the nobility and gentry, some winning bids at which he could legitimately expect to reach the minimum value necessary to claim protection under the Statute of Frauds. What I wish to emphasize here, however, is what we have just seen in the price distributions of both sales with prices, the Lely and the Streeter, namely, that they may be treated as two sales in one. Each contained a group of paintings that sold for prices well above the mean, and relatively speaking were far enough removed from the more ordinary works in quality and price that their appeal must have been to an altogether different audience. To judge from the descriptions of lots in the 1689-92 set of catalogues, most of our sales had this two-in-one character – two sales in one – though probably there were many more sales of the Streeter class than of the Lely.

If we may consider the Streeter and Lely sales as types of ordinary and high quality sales, respectively, in the set covered by the British Library group of catalogues, then we must also conclude that the audiences at many of them were of mixed composition. When Roger North records that in the preparations made for the Lely sale there was “parted out a place with chairs for the quality” and “forms” (benches) for the rest, he is identifying precisely the audience distinctions that correspond to quality differences among the pictures.<sup>41</sup> And, when those two elements were put together – “Persons of Quality” and quality paintings – they produced the upper portion of the two-in-one structure we have been able to tease out of our two illustrative sales with prices.<sup>42</sup>

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Since Verryck was close to the market at this time, we may assume that the valuations, which he must have approved, are less subject to downward bias than those in the typical Orphans’ Court inventory.

<sup>41</sup> *Lives of the Norths*, III, p. 193. Rosamond McGuinness has documented that it was not unusual at the time for aristocrats to attend concerts along with common people. (Ref. to be supplied.)

<sup>42</sup> I am assuming here and throughout that aristocrats were experienced in buying and living with paintings, whereas London’s newly rich were not. The implication is that, although some of them could afford to bid with aristocrats for the more expensive and better paintings, probably they did not. Obviously this may have to be modified as more information on the sales emerges.



## **Dispatch, and the auctioneer's temptation to place fictitious bids**

Ten months after his initial new and improved conditions of sale, in May 1690, Millington added a further rule, specifying that the minimum acceptable increment in a bid would be sixpence.<sup>43</sup> In a 1692 sale, of items “Lately brought over”, most from the collections of Prince Ludovico and General Doushfeild,<sup>44</sup> Millington adjusted this upwards, apparently on a one-time basis: sixpence up to one pound; then one shilling up to twenty pounds; thereafter five shillings.<sup>45</sup> The new rule was an immediate and sustained success, as is plain in the timeline of adoptions shown earlier.

Millington justified his new minimum-bid rule as making things easier for the auctioneer; in his words “because of Dispatch and ease to the Sales-man”. Speed was an issue, then, but in what sense? A number of Millington's (and some other, though not all) sales were advertised as proceeding in four-hour sessions, in his case eight to twelve in the morning, or ten to two.<sup>46</sup> Two of his book sales went from two to eight and three to eight in the evening.<sup>47</sup> Sometimes at sales of paintings two sessions would be held on a single day. It is frequently unclear how many lots it was hoped to sell in a single session,

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<sup>43</sup> BL 1402.g.1, number 30 (May 20, 22 and 23, 1690).

<sup>44</sup> This spelling seems odd, but e before i was not uncommon at the time.

<sup>45</sup> Ibid., number 120 (January 22, 23, 1692). Parenthetically, the stepped bidding introduced in this sale tells us that Millington must have expected some of the prices to exceed the ten-pound minimum required for protection under the Statute of Frauds. It may be useful to give some sense of what sixpence meant at the time. The economic historian Peter Earle, in his inventory-based study *The Making of the English Middle Class. Business, Society and Family Life in London, 1660-1730* (Berkeley and Los Angeles: The University of California Press, 1989), takes fifty pounds as a rough lower bound to the annual incomes of Londoners of the “middle station” in the period 1660-1730 (p. 14). Rounding this to a pound a week, sixpence would have been one-fortieth of minimum “middling” weekly income, or approximately one-sixth of daily income. In terms of what one could buy for sixpence, a contemporary reports a cheap meal of shin of beef, small beer and bread for tuppence ha'penny (2½d.); but there were also people willing to pay one shilling just to look at a rhinoceros, and two shillings for a ride, while the prices for seats to watch a leopard be baited to death by bull and bear dogs were 2s.6d., five shillings and 10s.6d., the same as seats at the opera. Concert seats were 5s. and up; but entrance to “publick days” at popular spas near London, with music and dancing all day, could be had for 3d.(pp. 56-7, 58). Sixpence, then, was more than equivalent to the cost of a good, simple meal, and twice the cost of admission to a day's simple entertainment, though there were also plenty of more expensive diversions.

<sup>46</sup> For example, 1402.g.1, numbers 12 (August 13, 1689), 41 (August 4, 1690), and 105 (November 23, 1691).

<sup>47</sup> Mandelbrote, “Organization of Book Auctions”, pp. 23, 29, Fig's 3 and 4.

nor is the length of a session specified in more than a few instances. However, in several instances we can be fairly certain of the number of lots per session: they vary from a low of 100 to a high of 175, with a clustering in the 140s. And in two of these the length of the session is also known: four hours.<sup>48</sup> A third instance has 307 lots to be sold in a single session lasting from two to nine.<sup>49</sup> Putting the two sorts of information together, and assuming that these combined instances are roughly representative, the time available per lot would have ranged from 1.4 minutes to 2.4. Or, assuming four hours was the norm for the much wider range of sales for which we do know the number of lots per session with some certainty, it would have been 1.0 to 1.7 minutes. Sotheby's currently informs prospective participants in its painting auctions that they should expect speeds ranging from 0.5 minutes to 1.2 per lot.<sup>50</sup> Thus the early sales appear to have proceeded at speeds somewhat slower than modern ones, though possibly with some overlap at the upper end of Sotheby's range.

The point is that even if the early sales were a bit more measured than now, still very little time was available per lot. If, then, bidding could proceed in very small increments, a penny or three, the possibility of raising the initial bid by much in the time available was severely restricted. The burden was thus on the auctioneer – whose interest it also was, since his commission was calculated as a percentage – to elicit a reasonably high opening bid. This might be attempted through persuasive patter, which Millington refined into an art, or by taking bids “from the chandelier” (a more modern phrase, but with clear relevance to the earlier situation). Without a minimum-bid rule there was pressure on the auctioneer to engage in some deception, or at the very least, an onus to work hard to elicit good starting bids. In both respects, a minimum-bid rule promised greater “ease to the Sales-man”, and to the extent that it lessened the temptation to invent bids it both improved the appearance of fairness in the proceedings and worked to protect the auctioneer from possible charges that deception had been practiced.

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<sup>48</sup> BL 1402.g.1, numbers 12 and 105 (as in note 46).

<sup>49</sup> *Ibid.*, number 112 (December 11, 1691).

<sup>50</sup> Sotheby's, London, 1999 “Guide to Prospective Buyers”, item 2, “Bidding in the sale.”

## Fairness, and owner bidding

English common law tradition, we saw earlier, seems to have favored owner bidding, as a way of preventing sales at an under-value. As far as we know, however, this convention grew out of sales of real property; it may not have been meant for or tested on chattels, especially since the sale of household furniture from estates seems to have been at fixed prices, based on prior appraisal by sworn valuers.<sup>51</sup> Yet in February, 1690, Millington introduced a new rule denying owners the right to bid on their own paintings. Was such a rule needed?

There has been a tendency to see in the rapid expansion of paintings sales in the 1680s, followed by the steep decline in their numbers in the early 1690s, evidence of a speculative boom and bust. Evidence is lacking, however, that buyers speculated in paintings, whether in London in our period, or in Amsterdam, during the tulipmania of the 1630s there. It is possible nonetheless that the general economic exuberance of the times in London spilled over onto paintings and caused a rash of commission bidding of the puffing sort, that is, designed “to screw up the price.” On the assumption that owners typically did not bid for their own property but employed an agent for the purpose, perhaps Millington’s rule was intended to eliminate “false” bidding by such agents.

This would imply that prices were in fact being pushed to artificial heights. The suggestion might seem far-fetched, since, as we have seen, except for a small percentage of works in these sales, most seem likely to have sold for prices between a few shillings and a pound or two. Recall, however, that £1 is what Peter Earle found to be the lower bound of middling incomes for a week.<sup>52</sup> For buyers at that economic level, clearly a price jump, say from fifteen shillings to a pound, was a serious matter. The same reasoning of course applies to higher incomes and proportionally larger artificial additions to price. If, then, puffers or false bidders were, or were believed to be, operating at his sales, Millington had reason to fear that attendance might suffer unless he

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<sup>51</sup> See Pears, *The Discovery of Painting*, pp. 63-4.

<sup>52</sup> See note 45 above.

acted. Worse, if he failed to act the belief might easily spread that he was in cahoots with the puffers, for his own commissions were calculated as a percentage of sales revenues. He had been firm in addressing the problem of irresponsible bidding; why not be equally so in dealing with false bidding?

Unfortunately the matter is more complex. Intentions being hid from scrutiny, in practice it was possible to allay fears of false bidding only by proscribing all forms of commission bidding, including as a limiting case owner bidding, whether direct or through an agent. But such a blanket proscription would have brought a no-owner-bids rule (Read: no commission bidding) into conflict with the interest of Millington and other auctioneers at our sales. For it seems likely that it was fairly common practice among auctioneers to accept commissions and possibly also to buy works for subsequent re-sale, making them on the one hand agents and on the other owners. I know of no direct evidence linking Millington, Bullord, Verryck or other named auctioneers of paintings to the latter practice<sup>53</sup>; but Millington, for example, in his book sales made no bones about inviting absent bidders to employ him as their agent. In 1687 and again in 1695 he advertised in book sales catalogues that he could provide such services.<sup>54</sup>

Millington's apparent indifference to the possibility that he might be linked in the public perception to false bidding, set him somewhat apart from contemporaries. In 1678 the booksellers Richard Chiswell and John Dunmore advertised prior to a sale that they had felt obliged to deny a report "that we intend to use indirect means to advance the Prices."<sup>55</sup> To remove all suspicion, they added, "we have absolutely refused all manner of Commissions".<sup>56</sup> Similarly, in the catalogue for a sale of paintings to start on March 5, 1713, we encounter a denial of what had been "maliciously reported, That in this Sale,

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<sup>53</sup> For the practice of buying items "for ready mony" with the intention of slipping them into a later sale, see Cowan, *The Social Life of Coffee*, p. 225, note 32, and Antony Griffiths, "Early Mezzotint Publishing – II. Peter Lely, Tompson and Browne," *Print Quarterly* VII (1990), 130-45, p. 132.

<sup>54</sup> Mandelbrote, "Organization of Book Auctions", fig. 4, p. 29 [1695] and p. 35, note 37 [1687].

<sup>55</sup> *Ibid.*, pp. 29-30.

<sup>56</sup> *Lives of the Norths*, III, pp. 199-200.

Unfair Means would be used to raise the Price of the PAINTINGS”.<sup>57</sup> The anonymous organizers in this case did not openly eschew all commission bidding, but they promised to reimburse anyone who could publicly identify persons who had lured them into over-paying. Thus, “if [injured parties] perceive any such Unfair Dealing they may declare it openly, *and a full and reasonable satisfaction will be given to them.*” Millington conspicuously failed to act with comparable decisiveness, though he was cognizant of the need to allay fears of unfairness.

Evidence of Millington’s awareness of the need is abundant. Thus his new rule against owner bidding was proclaimed as being “for the further satisfaction of all Gentlemen &c., the Buyers,” and he did not disguise his own interest in securing that satisfaction, which must have made the move seem somewhat genuine. His motive all along, he said, had been to gratify his customers “with moderate Pennyworths [reasonable value for money] in the things I sell,” this being also “the most probable way to continue” successfully what he had begun. In other ways, too, he professed to be concerned about fairness at his sales, though still without taking the steps that would have made his professions truly credible. Earlier we saw him promising at one sale to sell “the fair way according to the course of the catalogue.” He hoped thereby, he said, to “remove the Prejudices of some, and the Misapprehension of others”. In yet another catalogue he promised that all the works on offer were “warranted Originals to the Nobility and Gentry”. Such a guarantee, he explained, was “The greatest Encouragement for Persons of Honour & Quality &c., to buy what they fancy, or to make an Addition to what they have collected”.<sup>58</sup> Similar sentiments were expressed in connection with a book sale in 1687. At that time he offered buyers the services of a person to assist them in examining and collating their purchases, in the “hope [that] it may perfectly remove all other Scruples that yet remain in the minds of any, as to the sincerity and fairness of the Auctionarian Undertakings.”<sup>59</sup>

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<sup>57</sup> Anonymous sale of “Extraordinary Original Pictures lately brought over from Italy, France and Flanders” at the Three Chairs, Corner of the Little Piazza, Covent Garden. Lugt no. 236<sup>o</sup>, copy in British Art Library, Victoria and Albert Museum, London.

<sup>58</sup> BL 1402.g.1, number 105: Sale of the collections of Cardinal Antonio Barberini and Sir James Palmer.

Yet such assurances did not actually address the possibility that there was a link between false and commission bidding, including Millington's own practice thereof. To those who held this perception, therefore, his high sentiments must have been less than persuasive. Moreover, he had reason to believe that such a perception was abroad. At least one contemporary remembered him as untrustworthy, a rascal, one who "at the end of his Auctions [could not] be brought to give an Account to the Persons that employ'd him, so that by that means he allow'd w[h]at he pleased, & no more, & kept a great Number of Books that were not sold to himself."<sup>60</sup> If this was Millington's reputation as a book auctioneer and he brought it with him to his paintings sales, he needed to do something more than issue assurances that he would have fairness at his auctions. John Bullord was another who confined himself to vague promises. He announced in the catalogue for a sale on October 20, 1690, that "[it] shall be Manag'd with all the fairness that can be desir'd." But then Bullord never adopted Millington's no-owner-bids rule.

If Millington really intended his new rule to eliminate all forms of commission bidding he ought to have said so, as Chiswell and Dunmore had done in 1678, leaving no room for doubt as to the scope of the proscription. Alternatively, if he meant to ward off a charge that he implicitly condoned false bidding, he ought to have promised recompense as did the organizers of the 1713 sale cited above. He did neither. Instead, his 1695 reiteration of the offer of his own services as agent suggests that he was loath to give up a lucrative aspect of his practice, thus making his new rule into a mere sop. One other option was open to him. He could have dealt with public fears of false bidding, and suspicion that perhaps he condoned it, by operating with reserves, and being open about how they were to function, as well as stating which if any lots he had a financial interest in.

As to reserves, a policy of openness would have required him to advertise which lots were offered subject to a reserve. He would also have had to state that commission bidding would be allowed to him alone, as agent of the seller, and that he would bid only

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<sup>59</sup> Mandelbrote, "Organization of Book Auctions", p. 30.

<sup>60</sup> The recollections of Thomas Hearne, dated September 13, 1724, quoted in *ibid.*, p. 31.

up to the level of the reserve. Ideally, too, in such a regime, he would have published how high the reserves were. Bullord came close to this degree of transparency in the two sales with reserves discussed earlier, but only in recent years has it become standard practice. Reserves are now the rule at Christie's and Sotheby's sales. In addition, both state that the reserve will not exceed the (published) low pre-sale estimate, while Sotheby's adds that its reserves are normally seventy-five per cent of that estimate, except by prior written agreement between seller and auction house. Needless to say, Millington's promises fell far short of this degree of transparency, and we are left without a clear understanding of why he introduced his no-owner-bids rule at all.

I conjecture that Millington did mean to get rid of false bidding, but also required a way to protect his own commission practice; hence, he banned owner bidding but not all forms of agency involvement. The conjecture extends to the further proposition that he was not willing to be open about how he operated, on the ground that so much of the outcome of an auction rested on his control and manipulation of the bidding. Perhaps a similar rationale lies behind the fact that the degree of transparency described above has been reached only in the last few years, close to three centuries after Millington's own attempt – either plain inept or, more likely, obfuscating – to address public suspicions.

### **Location, quality and segmentation in the London market**

Millington's no-owner-bids rule was the least popular of his innovatory regulations. It was adopted slowly, never very widely, and then not always applied consistently, even by its originator. The relative resistance to it is visible in the time line of adoptions shown earlier. Millington's competitors, John Bullord and Ferdinando Verryck, never used the rule, no matter where they held their sales. On the other hand, within the City, it was employed in sales at the Outroper's office in the Royal Exchange, as well as at some other locations. And it was consistently used in sales at the Exeter Exchange in the Strand, just to the west of the City proper. Millington himself used the rule in the first five of twelve known sales he held at the Barbadoes Coffee House in Exchange Alley, on

the south side of the Royal Exchange, though he dropped it for his next seven sales there. Then, for two subsequent sales he held at the Scotch Coffee House, in Bartholomew Lane, also opposite the Exchange but on the north side, he re-introduced the rule.

While this is confusing, there is a pattern of sorts, though it is clearer in the non-use of the rule than in its application. Thus, the patchy and apparently inconsistent use of the rule in City (and nearby) sales is not matched in sales outside London (in the spa towns of Tunbridge Wells and Epsom), nor in sales in the West End, beyond the City proper and the Strand. There the rule was applied only once or twice, and never by Millington. (For his sales in London, see map overleaf.) The asymmetry, while imperfect, is strong enough to lead one to ask whether there was something different about the audiences or the paintings on offer, or both, in sales in and near the City, and in the West End, respectively. The answer is yes on both counts.

Sales in the City, and the Strand, as at the spa towns of Tunbridge Wells and Epsom, were addressed to and attracted mixed audiences. On the one hand there were merchants and financiers, though also wholesalers, shopkeepers, well-to-do tradesmen and artisans, and innkeepers; and on the other, though in the minority, aristocrats and members of the gentry. This characterization is partly inferred, and in part based on a smattering of evidence. That merchants and financiers were targeted is implicit in Millington's holding of his City sales just a step from the Royal Exchange, and in the fact that he started them upon the close of business there (4 p.m.). That shopkeepers, tradesmen, innkeepers, and so on, were involved is based on three grounds. One is the evidence of material culture studies showing the explosion in acquisitions of "pictures" and other household goods in London during our period.<sup>61</sup> The second is that many catalogues for sales in and close to the City expressly touted the decorative value of the paintings on offer. I shall say more on this in a moment. The third basis for the inference is Peter Earle's finding from his sample of inventories from the London Orphans Court, 1660-1730, that newly rich

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<sup>61</sup> See Lorna Weatherill, "The meaning of consumer behavior," in John Brewer and Roy Porter (eds), *Consumption and the World of Goods* (London and New York: Routledge, 1993), pp. 206-27, Table 10.4 (p. 220).



individuals of every rank and occupation in London died holding surprisingly large numbers of paintings, some of which no doubt came from our auctions.<sup>62</sup>

People of the middling sort, however, while not excluded from sales held in the West End, were given to understand that those sales were not really for them. Social distinctions of course were entrenched and well understood, but reminders could be conveyed with greater or less subtlety. Roger North simply took it for granted that at the 1682 Lely sale chairs should be set apart for persons of quality, others having to make do with benches.<sup>63</sup> Millington's West End sales, by contrast, and as we have seen, were advertised expressly as being for the "Nobility and Gentry", or "Persons of Quality". In two cases, a sale of prints and drawings, and his sale of a double collection at the foot of the steps of the House of Lords, it was made clear that others were not expected, possibly not even welcome. In these catalogues there was an address either to "those...that are the ablest Judges and greatest Patrons of the Noble Art of Painting" or to "the Virtuoso's of the Age", not language used in any of his other catalogues, least of all one for a sale in the City. In the prints and drawings sale, moreover, the works were said to be distinguished by "their Fairness and rarity of their Blackness", to which was added: "Those which are slight or defaced [are] reserved for other Time and Place, and another sort of People".<sup>64</sup>

Differences of location, then, were correlated with differences in dominant intended audience and, we can add, on the basis of the catalogue descriptions of the works offered, differences in artistic quality according to the then-prevailing markers. Quality differences in the paintings themselves are plain from three extracts of catalogues, overleaf. The first is for a Millington sale at the Barbadoes Coffee House and is typical of his sales there. On offer were many portraits of royal personages and other prominent figures from current or recent history, though only as copies. There were few

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<sup>62</sup> *Making of the English Middle Class*, pp. 74, 295-6, and, for a more recent survey, "The economy of London, 1660-1730," in Patrick O'Brien, Derek Keene, Marjolein 't Hart and Herman van der Wee (eds), *Urban Achievement in Early Modern Europe. Golden Ages in Antwerp, Amsterdam and London* (Cambridge: Cambridge University Press, 2001), ch. 4, esp. pp. 88-9.

<sup>63</sup> *Lives of the Norths*, III, p.193.

<sup>64</sup> BL 1402.g.1, numbers 53 (November 12, 1690) and 105 (November 23, 1691).

attributions, and none to internationally renowned artists (though there were some copies after works by such artists). The other two illustrations are taken from the House of Lords sale and for a sale in Covent Garden.<sup>65</sup> Not only are these two sales of collections, but many more of the paintings were foreign, including a number by Italian masters. Attributions, moreover, were the rule, and included many to universally respected artists.

What significance should be ascribed to these audience and quality-of-ware differences? Consider first another aspect of the differences. The dominant groups expected at City (and nearby) sales, though probably no less affluent at the mercantile and banking top, were almost certainly less knowledgeable about paintings and less experienced in paintings auctions, than the interested aristocracy and gentry. Even if less money per painting was at stake, then, it is conceivable that these other characteristics in the targeted audiences might have induced Millington to want to appear eager to protect bidders at sales there against puffing, and hence to employ his no-owner-bids rule only in his City sales. This possibility is to be rejected, though for reasons that lead us – as with our digression into prices – to a better grasp of the nature of these sales.

For the fact is that the dominant group of buyers at City (and nearby) sales, though less experienced, were also less in need of protection against puffers. Shopkeepers, artisans and proprietors of taverns figure prominently among those in Earle's study whose liabilities were fifty per cent or more of their assets.<sup>66</sup> This rendered them vulnerable to a downturn or accident; yet these same sorts of people were likely to experience difficulty collecting small debts owed them, and in getting credit should business turn bad. Merchants, too, though frequently playing for higher stakes, were

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<sup>65</sup> There were two prominent auction houses at this time in the West End. One was known as “the VENDU”, variously said to located “next Bedford Gate in York Street in Covent Garden” and “next Bedford-Gate in Charles-Street Covent Garden”. Carol Gibson-Wood informs me that contemporary Parish maps show that the southern part of Bow Street, Covent Garden, between Russell Street and Tavistock Street, was called Charles Street, while the eastern end of Tavistock Street was called York Street. The Vendu must have been at the intersection of Charles and York streets. The other main auction house was what Millington refers to as “the Auction-house in St Albans-Street”. St. Albans Street parallels the eastern side of St. James's Square, intersecting the Charles Street running off the square. Millington operated out of both locations. The paintings for his sale at the steps of the House of Lords were transported from the St. Albans Street venue.

<sup>66</sup> *Making of the English Middle Class*, table 4.5, p. 119.

exceptionally conscious of cash flow and of the consequences of not being in a position to accept when presented with a bill of exchange. In short, then, those making up the targeted audiences at City (and nearby) sales, needed no lessons in prudence.

Two further characteristics of City (and nearby) sales count against the assumption that the dominant groups at these auctions were people at risk of being carried away. First, those in the targeted groups, if we may judge from the descriptions in catalogues, had humble intentions in acquiring paintings or prints. They were frequently addressed as if they were chiefly interested in the “furniture” aspect of paintings, in the chance afforded by the auctions for them to obtain some attractive decorative pieces.<sup>67</sup> An example of a Bullord catalogue striking precisely this note is given overleaf.<sup>68</sup> It is true that eighteenth-century writers often spoke of paintings as objects whose prices had a strong “imaginary” or “fancy” component in them. But this was noted only about those with the financial freedom to give vent to whims.<sup>69</sup> There was no suggestion that those seeking the utility of a decorative painting in the late seventeenth-century could also afford themselves the luxury of injecting a fancy element into their valuations.

Second, City (and nearby) sales in our period were frequent and, in particular, very repetitive. Both factors would have weakened the competitive element in the bidding. Would-be owners might be prodded into matching others’ bids if the object on offer is somewhat unique, and where its value is as much a matter of social appreciation as what

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<sup>67</sup> Gibson-Wood, “Picture Consumption in London,” properly makes much of the decorative character of many of the paintings in the sales covered by the British Library set of catalogues. By my count, no fewer than 16 of these catalogues have a preamble referring to the decorative value of the paintings on offer (numbers 38, 52, 59, 61, 64, 68, 75, 77, 81, 85, 88, 98, 104, 113, 118, 127). Almost all these sales were held in the Strand, beyond the City’s walls and its jurisdiction, but an extension of its retail and artisanal heart. The Strand, in the seventeenth century, was a favorite shopping street of the well to do and well placed, though by our period it had slipped in reputation and favor among the aristocracy, and should not be viewed as belonging to the West End proper.

<sup>68</sup> BL 1402.g.1, number 64 (Bullord sale of January 21, 1690). Notice that catalogues were said to be obtainable at prominent spots in the City. This sale was held in the King’s Head Tavern, near Charing Cross, known to Pepys as “the great half-a-crown ordinary” for its cheap but ample dinner (lunch), though, if late, he might dine there at the “second table”, for 12d. (Samuel Pepys, *Diary*, ed. XXX, II, p. 352, III, p. 185. In Pepys’ day the clientele was heavily “Parliament-men” (III, p.110), possibly meaning officials like Pepys himself. It does not appear to have been a particular haunt of young nobles.

<sup>69</sup> See, for example, Adam Smith, in the student lecture notes published as *Lectures on Jurisprudence*, Volume V of the *Glasgow Edition of the Works and Correspondence of Adam Smith*, R.L. Meek, D.D.

the buyer alone thinks of it. Paintings usually qualify. However, if a painting has numerous close substitutes where it is first sold, and when resale for profit in a better market is denied, as here, because of the segmentation of the market by quality just discussed, then the influence of the judgements and bids of others is much reduced. So too, concomitantly, is the power of false bidders to screw up the price.

In sum, the probability of a buyer's getting carried away by any particular painting in one of the City (and nearby) sales must have been slight. It is not at all clear, therefore, that anyone at such sales was in serious need of protection from false bidders; this, therefore, as a particular justification for Millington's use of his no-owner-bids rule in City sales, collapses.

In the course of giving this possibility a hearing, it has emerged that market segmentation in these London sales meant that purchase for resale was probably quite limited – certainly for the more ordinary sort of paintings. This has significance beyond its negative implications for the need for a no-owner-bids rule. It reinforces my earlier suggestion, illustrated in the frequency distributions of prices at the Lely and Streeter sales, that many of the London paintings sales of this period probably had a two-in-one character. At the upper end of quality and prices there was a genuine possibility for resale, thus for highly competitive bidding (as illustrated by the battle between Sonnius and the unnamed lord at the 1688 Lely sale), and for bidding with an eye to the asset value of a painting. What I have just said about limited resale applies to the lower-priced, ordinary works on offer. But for that end of the market, the absence of resale possibilities becomes a further reason for thinking that the very low price estimates reached by Gibson-Wood and Ormrod are probably of the right order of magnitude. Moreover, the same reasoning that led to this conclusion seems also to confirm that purchases at this end had a strongly utilitarian character.

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Raphael and P.G. Stein (eds) (Oxford: Clarendon Press, 1978), p. 358; Pears, *Discovery of Painting*, p. 103, quoting Horace Walpole. Smith's use of the word fancy is consistent with Millington's: see note 58 above.

## Conclusions

Art markets have always been, by and large, self-regulating. It is natural therefore to ask under what circumstances such regulations as have arisen emerged, and what form they took. We have been concerned here with these questions in a particular context; with why rules, or Conditions of Sale, proclaimed as “different and more justifiable” than previous practice, suddenly appeared in London paintings sales catalogues in the late seventeenth century. Some of the new conditions were self-evidently meant to encourage participation. Those, however, I have neglected, in favor of others which affected the character of the selling mechanism. The basic mechanism was the auction, but said in the first of the Conditions to be by ascending bid, with the understanding that bids would be by open outcry.

This first rule, together with Conditions II and III – Roman numerals were retained for the Conditions in most catalogues – were designed, I posited, to bring the sales within the scope of the 1677 Statute of Frauds. Condition II laid it down that clearance would be within a period of a few days, while III provided for a buyer’s name and place of lodgings to be given, or an earnest, or part payment of the price. Together these three rules put the sales in line with what was required of a transaction if it was to fall under the Statute. The Statute was important, I argued, because it protected an auctioneer from irresponsible bidders: individuals who bid freely and for fun, with no intention actually to purchase.

An additional requirement for an individual transaction to fall under the Statute was that it be for an amount of £10 or above. Since losses were greatest on frivolous bids when these were highest, the Statute gave protection where it was needed most. The requirement of a minimum price of ten pounds, however, also led me to ask just how common such prices were at these auctions.

The question cannot be answered directly because there are no price annotations in surviving catalogues from the 1689-92 period. There are a few reserve prices specified

for items “of extraordinary value”; however, reserves were stated for only 18 out of some 35,000 paintings in the catalogues I have used, and only four of the reserves were above ten pounds. The claim that works offered subject to a published reserve were of extraordinary value may be true, but since reserves were so little used this doesn’t tell us much. There is a strong presumption in the bland descriptions given for most of the paintings listed in the British Library set of catalogues that they were undistinguished and probably sold for very low prices. Independent estimates due to Gibson-Wood and Ormrod seem to confirm this.

Slotting those estimates into price frequency distributions for two roughly contemporary sales *with* prices, however, creates a different context for assessing the presumption. I used two sales that straddle the period 1689-92: an earlier (1682) sale of significant paintings, and a later (1711) one of more ordinary works. This quality difference was reflected in the average prices prevailing at each. The modal price for both sales is low, close to the Gibson-Wood and Ormrod estimates. But the price distributions also seem to be naturally decomposable into two distinct components, the bulk of the lots going for prices comparable to the estimates, but a smaller proportion for much higher prices. This separation by quality and price suggests that auctions at the time were designed to appeal to distinct audiences, or, in most instances perhaps, to two publics in one.

These notions – separation, and two-in-one audiences – turned out to be useful for other purposes. They correspond to evidence in the catalogues themselves. Sales in the City of London and just beyond, but not in the West End proper, comprised mostly ordinary paintings. These may be defined as paintings whose decorative value was emphasized, and whose descriptions have a generic quality to them. Many ordinary paintings, too, were copies; while attributions, where ventured at all, tended to be to English artists, or to Flemish or Dutch artists who had worked in England for longer or shorter periods, some of them still living. In short, ordinary sales comprised mostly recycled “local” stock. I infer from scattered information that these sales were meant primarily to attract newly rich, but relatively inexperienced, buyers of the “middling”

sort: artisans, shopkeepers, merchants, financiers and professionals. The nobility and gentry were not excluded, though the reverse was closer to being true in “their” sales, held in the West End. These differences by location, together with the asymmetry just mentioned, lead to a strong presumption in favor of a market that was segmented, and to price distributions for which a single average price is very little informative.

Segmentation is also important to the question whether purchase for resale at a profit was possible. Resale with gain by arbitraging between sales of different quality was not an option if the market was segmented by quality. Nor was it if, in sales of the same quality, close substitute paintings were available, either in the same sale or in others like it soon to be held in the same general area. Both conditions – strong segmentation and multiple close substitutes – were features of the London market in our period. But under these circumstances buyers were unlikely to allow themselves to be influenced by others’ valuations or, therefore, their bids; hence the risk of prices being pushed up artificially by fictitious bidders was also low. The argument is strengthened when we consider the economic constraints under which targeted publics at sales in the City and nearby lived. This double train of reasoning allows us to reject as superfluous a Condition of Sale proscribing owner bidding.

One other new rule was introduced, also some time after the three initial Conditions. This was a minimum bid rule, said to be for “Dispatch and ease to the Sales-man”. Estimates of the speed of the contemporary auctions – not much slower than the current 0.5 to 1.2 minutes allowed per lot – suggest that without a minimum bid rule the auctioneer would have had trouble advancing the price far above the starting bid in the time available. Moreover, he would have been under pressure to entertain fictitious bids, leaving him vulnerable to having to buy in, and to suspicions and charges of unfairness. This new rule, unsurprisingly, found quick and general acceptance – unlike the misconceived no-owner-bids rule.

What we have been observing, through the lens of these rules or Conditions of Sale, is an emergent but self-regulating market whose players were experimenting with

appropriate ways to govern their sales. Four out of the five new Conditions affecting the way sales were conducted have an obvious rationale and soon became (and remain still) features of most sales. The fifth, the no-owner-bids rule, is puzzling, because it was a clumsy way to address perceptions of unfairness and seems likely to have run counter to an auctioneer's interest in other ways. It was not applied widely, nor did its innovator use it in a patently consistent manner. A better way to address suspicions of unfairness would have been to employ reserves, combined with a policy of transparency about their level and how they were to be used. This has become the norm in art auctions, though only in the last few years. The rule lacked an obvious rationale when it was first introduced, and seems to have been a sop to fairness without requiring an auctioneer to relinquish any real or supposed control over the momentum and outcome of a sale.

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