Spring 5-2011

A Juggling Act: Balancing Institutional Needs and Donor Restrictions in Art Museums

Nicole A. Ferdinando
Seton Hall University

A JUGGLING ACT:
BALANCING INSTITUTIONAL NEEDS
AND DONOR RESTRICTIONS IN ART MUSEUMS

Nicole A. Ferdinando

Submitted in partial fulfillment
of the requirements for the degree of
Master of Arts in Museum Professions

Seton Hall University
May 2011

Jürgen Heinrichs, Ph.D., Faculty Advisor

ABSTRACT

The last several decades have seen a drastic rise in prices of modern and contemporary art. As a result, American art museums have become heavily reliant on the benevolence of collectors and patrons to aid in the growth of their collections. A gift of art can have substantial benefits to the museum, but museums should be diligent in their decision making and should not accept gifts blindly, no matter how generous donors may appear. Museum collections management policies often have a provision that recommends against accepting gifts with restrictions or any conditional gifts. However, there have been instances when museums acquiesce to a donor's stipulations. Often, the passage of time has revealed these situations as unduly restrictive or the acceptance of donor restrictions have drawn public and professional criticism that may damage an institution's reputation. This thesis explores how to balance institutional limitations with donor interest in the midst of rapidly changing economic, social and political circumstances when regarding the transfer of private property to museums.

Table of Contents

I. Introduction

Overview

Throughout the history of museums[1] in the United States, the formation of museum collections has been a process of gradual accumulation of objects. Art museum collections[2] have been amassed from a variety of different sources. Works in the collections can be from purchases, permanent loans, commissions, absorptions, bequests or donations of a work of art. Today, the process of acquiring works for the collection is reflective of the collective input of the director, curator(s), board of trustees and, in large-enough institutions, an acquisition committee. A number of factors such as quality, depth of work, representation of the artist, costs of purchase and of maintenance summarizes, in brevity, a decision reflective of the institution's best judgment and taste. The deliberations must be rigorous because acquiring the work is a promise to care for it in perpetuity on behalf of the public. Museums are faced with the difficult task of collecting works of art perceived to be worthy of preservation in the present and for generations to come.

The last several decades have seen a drastic rise of prices of modern and contemporary art. As a result, museums have become heavily reliant on the benevolence of collectors and patrons to aid in the growth of their collections.[3] A gift of art can have substantial benefits to the museum, but museums should be diligent in their decision making and should not accept gifts

---

[1] This paper chooses to focus on the museum culture in the United States from the 1870s to present. Stephen E. Weil, *A Cabinet of Curiosities: Inquiries into Museums and their Prospects* (Washington, D.C.: Smithsonian Press, 1995) establishes this time period as the start of the museum movement in the United States. However, the author of this paper acknowledges that the birth of museums took place centuries prior in Europe.

[2] This paper will focus exclusively on the effect of donor restrictions on gifts of art work in the United States. When referring to other geographical areas or types of institutions, it will be specifically noted.

[3] Marie Malaro, *Museum Governance: Mission, Ethics, Policy* (Washington: Smithsonian Institution Press, 1994), 176. According to Congressional testimony submitted in 1983 by then administrative vice-president of the Art Dealers Association of America, Ralph Colin, museums with substantial acquisition budgets were rare and 90% to 95% of museums annual acquisitions were gifts. The percentages could be higher with the continued rising prices of art.

blindly, no matter how generous donors may appear. Museum collections management policies often have a provision that recommends against accepting gifts with restrictions or any conditional gifts.[4] A restricted gift is an object offered to and accepted by a museum with legally binding conditions that limit the museum's use or potential disposition of the work.[5] However, there have been instances when museums acquiesce to a donor's stipulations. Often, the passage of time has revealed these situations as unduly restrictive or the acceptance of restrictions has drawn public and professional criticism that may damage an institution's reputation.

Conflict

In 1996, the Laguna Art Museum (LAM) decided to dispose of its collection of photographs, drawings and lithographs by Paul Outerbridge, an internationally respected photographer who lived in Laguna Beach until his death in 1958. In 1968, his widow, Lois Outerbridge Cunningham, gave the museum a group of 71 platinum, silver bromide and color prints. Among these are unique images, for which no duplicate photographs exist.[6] The museum justified the decision to sell the works because they do not explicitly fit the museum's mission of showing California art. Outerbridge lived in Laguna from 1943 until his death, but the works predate his arrival, when he worked in New York and Europe. The proceeds from the sale would be used for the museum's general acquisition fund, but not without criticism from the museum community. This is an insightful scenario that illuminates many issues related to donor restrictions, one that shows both museum and donor interests.

---

[4] Ibid., 79.
[5] Ibid., 80.
[6] Christopher Knight, "A Most Misguided Mission," *Los Angeles Times*, February 8, 1996, accessed March 1, 2011, http://articles.latimes.com/print/1996-02-08/entertainment/ca-33454_1_laguna-art-museum.

Christopher Knight notes that when the collection came to LAM, Outerbridge was a minor figure but through a process of "rediscovery" his reputation began to rise.[7] In the decade after the museum received the collection, photography had acquired new stature within the art world and concurrently a competitive commercial art market was developing and growing in unforeseen ways.[8] The solidification of Outerbridge's reputation came when the museum mounted a critically important touring exhibition, complete with catalogue raisonné. John Upton, a former member of the LAM acquisition committee in the early 1980s, was puzzled by museum's decision to deaccession its collection of Paul Outerbridge's photographs. During his time on the committee, he said, "the museum treated the Outerbridge collection as one of its most valued assets and perceived it to be the nucleus for further acquisitions of photographs representative of California modernism."[9]

The sale had been opposed by critics because it broke up one of the top holdings of Modernist photography in the nation; many of the pieces went to private collections making them inaccessible to the public. The museum claims that it made a considerable effort to find another home for the collection, approaching several museums about acquiring the works as a whole.[10] However, two likely recipients of the collection were never approached – the Museum of Photographic Arts in San Diego and the Los Angeles County Museum of Art (LACMA). Arthur Ollman at the Museum of Photographic Arts said, "They were sitting on an extremely important grouping of one of Southern California's most important artists and one that is

---

[7] Knight, "A Most Misguided Mission."

[8] Ibid.

[9] John Upton, "Museum Lets Down Public, Donors," *Los Angeles Times,* March 2, 1996, accessed March 1, 2011, http://articles.latimes.com/print/1996-03-02/entertainment/ca-42363_1_outerbridge-collection-laguna-art-museum-paul-outerbridge.

[10] Cathy Curtis, "Outerbridge Works to Be Sold," *Los Angeles Times,* February 1, 1996, accessed March 1, 2011, http://articles.latimes.com/print/1996-02-01/entertainment/ca-31223_1_laguna-art-museum-collection.

intimately connected – as a [longtime] resident – with their community."[11] Furthermore, the Outerbridge collection, "has every characteristic that a museum wants in their collection: a world-famous artist, extremely important work, a large round[ed] collection of material …and perfect provenance because it came from the widow."[12]

Once on sale at auction, museums purchasing power is typically eclipsed by private collectors. The auction record for a single Outerbridge was $99,000 paid at Sotherby's in 1990 for a 1927 self-portrait. Two years before the museum went public with the decision to sell the collection, Christie's sold *Piano* (1926) for $46,000. The sale of the Laguna collection of 93 Outerbridge works netted the museum $1.7 million. Christie's did not release the names of the buyers. The amount that LAM would have tried to solicit from another museum to take the entire collection is unknown, but it is unlikely that LAMCA or the Museum of Photographic Arts could have mustered an amount more than $1 million.

Opponents of the sale also argued the sale violated donor-recipient trust claiming that Lois Outerbridge Cunningham intended collection remain at the museum.[13] Trustees say that no documents have been produced outlining Cunningham's intentions. To the public, the personal motivations of Cunningham to donate the works to LAM are still unknown. Did the museum hold a special place of personal significance to her and her husband? Was LAM the only museum willing to take the collection in its entirety, something that was important in the donor's decision making process? In earnest, there could have been an understanding of Cunningham's wishes or requests by the museum leadership at the time, but if no documentation exists it does

---

[11] Cathy Curtis, "2 Museums Might Have Bought Outerbridge Works," *Los Angeles Times,* February 2, 1996, accessed March 1, 2011, http://articles.latimes.com/print/1996-02-02/entertainment/ca-31643_1_ permanent-collection.

[12] Ibid.

[13] Zan Dubin, "Outerbridge Photos Sold For $753,000," *Los Angeles Times,* October 4, 1996, accessed March 1, 2011, http://articles.latimes.com/1996-10-04/local/me-50481_1_outerbridge-photos-sold.

not inform future generations nor does it create a legally enforceable situation. The individuals involved in the acquisition of Outerbridge's work in 1968 were highly unlikely to be the same as those dealing with the decision to deaccession the works almost thirty years later. Conversely, if LAM had in fact accepted the gift of Outerbridge's works under the conditions that it would keep the collection in its entirety, the museum would be bound to keep the works despite efforts to refine its mission focus more directly on Californian artists.

LAM's selling of its Paul Outerbridge collection is one instance where the museum's actions and donor wishes seem at odds. The museum was working to refine its permanent collection. Selling works that fell outside of a more narrow interpretation of the mission would increase acquisitions funds for more fitting works. The widow of the artist found an institution that would take her husband's works, some exceedingly rare and in its entirety, possibly with the intention that the collection remain together forever. Donor relations play an important role in the public's perception of the museum. If the museum is seen as unsympathetic or unyielding to the wishes of its patrons, this can create conflicts with future donors. Are the concerns of museums and interest of donors so different that they cannot co-exist?

LIMITATIONS

As the Outerbridge case demonstrated, documents involving terms and conditions of a gift of art to museums are extremely important. Not only does documentation of the gift establish title of the work, but it is a record of whether the museum is legally bound by any form of donor restrictions. Museums should ensure that a relationship of trust is established and maintained with its individual donors by respecting the private nature of information about the donor and the donation. Balancing the museum's obligation to maintain public accountability

with its obligation to protect donors' privacy requires outlining what type of information can and cannot be kept confidential. Loans agreements are confidential documents that remain private sometimes even after the duration of the loan to protect the interests of the museum and the donor. [14]

Therefore, the public is asked to trust that what goes on behind closed doors is in their best interest and for the betterment of the institution. Robert Storr offers this:

> However, it is the nature of art collecting – due to its competitiveness, and to the strictures that may be, and frequently are, imposed by the seller, buyer, or donor of a work – that full disclosure before or even after a deal has been completed is impossible. Thus the issue of how much light can be shed on deliberations that are, in many respects highly confidential has become a crucial one of trust between museums and the various communities they are intended to serve. Under these circumstances, the greater understanding that people have of the basic process of museum collecting, and the more rationally and equally the power to select which works will enter or leave such collections is divided between benefactors and curators, the more faith the public can have in the outcome, even though the specifics in most cases, of necessity, remain unknown to them.[15]

Specific and intimate knowledge of gift details are often not available to the public to safeguard the interests of the museum and the donor. To establish whether institutional integrity and donor restrictions can co-exist, this paper will construct an overview of private philanthropy in regards to donation of art to museums. Through research and personal observations, the author will illustrate the limitations of museums and concerns of donors when evaluating the benefits and

---

[14] Barbara Rominiski (Head of Research Library and Archives, San Francisco Museum of Modern Art), e-mail message to the author, December 29, 2010 – January 4, 2011. The paper will use the recent acceptance of the Fisher Collection at the San Francisco Museum of Modern Art as a case study. When asked to have access to the archives at SFMOMA to find out more information on the terms of the gift, the author was told that all documents concerning the Fisher agreement with the SFMOMA are confidential, internally as well as externally, at this time. Active loan agreements between collectors and institutions are considered confidential until the loan is no longer active, and often well after that. This is standard protocol within museums and is certainly not limited to SFMOMA policy. Given that this agreement was worked out between the Fisher family and SFMOMA in 2009 and the length of the loan is 100 years, it is unlikely that these documents would be available to archival researchers for quite some time.

[15] Robert Storr, "To Have and to Hold," in *Collecting the New*, ed. Bruce Altshuler (Princeton: Princeton University Press, 2005), 29.

disadvantages of donor restrictions. When possible, the paper will offer examples of donor restricted gifts when details have been made available to the public.

Definitions

It is important to begin the discussion of the issues involved with donor restrictions at the basic level of establishing what is meant by "private" and "public" within the context of museums. To delineate what is thought of as private for the purposes of this discussion, the idea of private property rights will be discussed briefly. Land, capital or other items, specifically in this case, works of art, can be owned by an individual and that individual possesses certain rights to use, dispose of, or to bequest the property as he or she sees fit. Ownership, as understood by many in the United States, is to posses something at the exclusion of others. This country's social and legal traditions at both federal and state levels protect individual private property rights.[16] The system of private property works to insure the freedom of individuals to possess objects including dominion over objects of great cultural and historical significance.[17] The owner of a work of art does not have to relinquish control over his or her property even at the time of death. As the courts have stated:

> One of the most treasured rights of a free man in a free civilization is the right to dispose of his property at death as he sees fit. No right is more solemnly assured to him by law. This right is so sacred that a testator's direction will be enforced even though repugnant to the general views of society.[18]

Even when relinquishing ownership through a charitable gift or bequest, the individual can exercise or dictate how the property is used in perpetuity.

---

[16] Malaro, *Museum Governance*, 95.

[17] Joseph L. Sax, *Playing Darts with a Rembrandt: Private and Public Rights in Cultural Treasures* (Ann Arbor: The University of Michigan Press, 2002), xii.

[18] In *re Girard's Estate*, 386 Pa. 548, 127 A.2d 287, 288 (1956), reversed by *Commonwealth of Pennsylvania v. Board of Directors*, 353 U.S. 230 (1957), rehearing denied *Commonwealth of Pennsylvania v. Board of Directors of the City Trusts of the City of Philadelphia*, 353 U.S. 989 (1957).

Approximately two-thirds of museums in the United States are privately governed[19] meaning that the day-to-day operations are overseen by private citizens and not by local, state or federal employees.[20] Even if management of a museum is vested in private individuals, museums are considered to have a broad public purpose. While institutional goals vary in detail from one museum to the next, art museums are committed to preserving the objects in their care for posterity, making those objects available and accessible, physically and intellectually, to the public through exhibitions and public programming.[21] Museums operate under the universal responsibilities "to collect, to conserve, to study, to interpret, and to exhibit."[22] The government recognizes the educational agenda of museums as a public benefit and awards tax exemptions for both the institution and its supporters. The designation as a 501(c)(3) by the Internal Revenue Service makes a non-profit museum eligible for exemption from federal income taxation. The 501(c)(3) organizations are also eligible to receive tax-deductible contributions from individuals and businesses, a reflection of the fact that they are expected to serve broad public purposes as opposed to the interests and needs of the members of the organization alone.[23]

The majority of museums operate as charitable trusts that hold property as assets for the public or a broad section of the public even if privately financed and owned.[24] Art museums' assets are the collection. A museum might view itself not as owner of a collection, but rather as steward who holds and cares for culturally significant objects. A museum's possession of a work

---

[19] Margaret J. Wyszomirski, "Arts and Culture," in *The State of Nonprofit America,* ed. Lester M. Salamon (Washington, D.C., Brookings Institution Press, 2002), 202. According to Wyszomirski, the remaining one-third of museums are publicly run ranging from municipal museums to the Smithsonian Institution. Of the two-thirds of privately ran museums, fifteen percent are art museums.

[20] European museums are for the most part civic and state institutions that function as government agencies.

[21] Andrew McClellan, *The Art Museum: From Boullée to Bilbao* (Berkeley: University of California Press, 2008), 13.

[22] Joseph Veach Noble, "Museum Manifesto," *Museum News* 48, no. 8 (April 1970), 29.

[23] Lester M. Salamon, "The Resilient Sector: The State of Nonprofit America," in *The State of Nonprofit America,* ed. Lester M. Salamon (Washington, D.C., Brookings Institution Press, 2002), 7.

[24] Glenn D. Lowry, "Deontological Approach to Art Museums and the Public Trust," in *Whose Museum? Art Museums and the Public Trust,* ed. James Cuno (Princeton: Princeton University Press, 2004), 133.

of art does not exclude others from enjoying that work, whereas private ownership of a work often precludes others from enjoying it.[25] The tax code classification and legal organization recognizes a fundamental reason for the existence of a museum is to make art accessible to a broad public. Therefore, museums are charged with using their assets, the collection, in a way that fulfills this public mandate.

When a work leaves a private collection and enters a public museum, the change in ownership goes from the hands of one, at the exclusion of others, to the hands of many, for the benefit of all. Yet, history has proven that the transfer of art is not always as straightforward, simple or as smooth as that. Some individuals choose not to relinquish full control over their private property despite the moving of the art into the public domain. The donor may attach restrictions that the museum may not sell the work. At other times, the donor may seek to specify how the art should be exhibited. By limiting the use of the work within a museum, the wishes of a donor affect how the public is allowed to interact with a particular work and the museum at large. Can there be a reconciliation of seemingly opposite values of private and public, if a donor wants to give a restricted gift and a museum is to accept that gift?

Significance of Study

This paper aims to reach a conclusion on how museums can balance their institutional mission with donor intent in the midst of rapidly changing economic, social and political circumstances when faced with a decision to accept private property into their collections. The paper illustrates the various dimensions of this conflict including the institution's prerogative in accepting (or declining) works of art vis-à-vis the donor's motives in giving (or withdrawing)

[25] The author of the paper notes that there are instances when private collectors have made their homes available to a limited population of the public for the purpose of viewing art work or have lent work to a museum to be displayed publicly for an exhibition.

from historical and systemic perspectives. After examining how this conflict comes to bear and continues to persist in today's professional practice, this thesis hopes to offer a solution that would serve as an acceptable conjunction of public and private interests.

II. Significant Historical Trends in the Development of Art Museums

Standard museum practice strongly recommends that museums do not accept restricted gifts. To better understand the current museum management position, it is important to look at the history of donating to and collecting of art by museums in the United States. While this will not be a comprehensive history as the depth of the subject is far too broad for the purpose of this paper, certain social and economic trends affecting private patronage of art museums and the evolution of museum management, specifically the authoring of collections management policies, will be highlighted. Looking at how museums were founded in the United States will illuminate how certain professional practices were able to persist, and in some cases still do, with regards to the area of donor-restricted gifts of art.

Origins of America Art Museums and the Role of Private Philanthropy

European museums had beginnings as royal, aristocratic and church collections that became public in the age of the industrial and political revolutions of the eighteenth century.[26] As the United States outpaced European countries in industrial productivity, the nation saw a need to prove itself as civilized. Despite national expansion and material prosperity, still lingering was a certain complex of perceived cultural inferiority. There was a desire to accumulate cultural capital as in European museums like the Louvre, London's National Gallery and the Berlin Museum.[27] After visiting Paris, John Jay, a prominent New Yorker proposed the city construct a monument of cultural importance, one that would be in the company of the Louvre and other great European art museums.[28] A visitor to the Philadelphia's Centennial Exposition in 1876 noted its "union of two great elements of civilization – Industry, the mere

[26] Weil, *Cabinet of Curiosities*, 85.
[27] McClellan, *The Art Museum*, 28.
[28] Carol Duncan, *Civilizing Rituals: Inside Public Art Museums* (London: Routledge, 1995), 48.

mechanical, manual labor, and Art, the expression of something not taught by nature, the mere conception of which raises man above the level of savagery."[29] In the early 1900s, art museums were a site of aesthetic idealism that provided social value for the rich and poor alike through nonmaterial nourishment[30] that complimented the nation's industrial advancements. The idea of the public art museum as a site of learning and uplifting pleasure was consciously borrowed from the European model.[31]

At the end of the nineteenth century, large-scale urban art museums were created by a number of wealthy individuals in cities such as New York, Boston, Philadelphia, Chicago and others. Many successful models stood before the new American class of philanthropists such as the "Enlightenment aristocrats, the Viennese nineteenth century upper-middle class, the Medieval church, Renaissance kings."[32] The first American addition to the list of history's great patron classes to the arts is the industrial titans of the early twentieth century. In a nation absent of great state and church collections, museums and the subsequent of building of their collections is inextricably linked to private patronage in the United States. The great private collections in America, unlike those in Europe, were not the results of centuries of accumulation, but were created in several decades or even years. Burt describes that the founding of the Metropolitan Museum of Art as a collaboration of motivated individuals. He says:

> Who were the geniuses at work? No one person can be held responsible. No Napoleon sent out armies to ransack the world for masterpieces. No previous, well established institutions backed the effort. No royal collections made the Met their home. No one great millionaire gave the board security and help. It was a group effort, the efforts started from scratch.[33]

---

[29] Ibid., 49.
[30] McClellan, *The Art Museum,* 28.
[31] Duncan, *Civilizing Rituals*, 49.
[32] Marjorie Garber, *Patronizing the Arts* (Princeton: Princeton University Press, 2002), 85.
[33] Nathaniel Burt, *Palaces for the People* (Boston: Little, Brown and Company, 1977), 87.

Philanthropic support of art museums had particular appeal for captains of trade and industry like Andrew Carnegie and Pierpont Morgan, who saw their gifts of art as transforming their wealth into aesthetic and spiritual uplift for the people.[34]

The development of the large, urban art museum in the United States– such as New York's Metropolitan Museum of Art, Boston's Museum of Fine Arts, Chicago's Art Institute – was to provide a source of beauty, civility and education for the masses. The American museum was birthed from a pedagogical nature focusing on communal improvement.[35] The public agenda of such institutions was in large part the brainchild of a few wealthy people with vast amounts of money from banking and industry who maintained that their cities were being invaded by uneducated immigrants. A fear developed that the cities would be over run and culture would disappear. These wealthy philanthropists wanted to present to workers, tenement dwellers and immigrants objects so as to learn about western European high culture. These new institutions disseminated a single high culture, the culture of Protestant elites, but they identified it as a national culture, the philosophical and moral heritage of the American people.[36] The creation of museums, libraries, and recreational spaces like Central Park made sure that the new immigrants could have leisure time, could be educated and could be acculturated.

The aforementioned institutions, according to Carol Duncan, were "both complex and contradictory, a mix of personal and public ambitions, elitist and democratic."[37] However, as Duncan points out, this was more of a lip-service to democratic ideals than a reality. In a day and age when public transportation was non-existent, inhabitants of the slums, whom the museum claimed to serve, were located too far away from a museum to make the trek by foot or

---

[34] McClellan, *The Art Museum*, 30.
[35] Weil, *Cabinet of Curiosities*, 85.
[36] Duncan, *Civilizing Rituals,* 55.
[37] Ibid., 54.

too expensive by carriage. These museums generally were not open on Sundays when most workers had a day off. These institutions soon found ways to speak to the ideas of democracy but in practice they maintained an aura of exclusivity. Even the architecture became an area that reflected a discord between how ideas were promulgated and how they were practiced. Monumental staircases and gigantic columns created a palatial atmosphere that was not particularly inviting and did not readily advance the idea of social inclusion.

These museums served as monuments not only to civic pride but as a means of social distinction for those who possessed them. The wealthy few that paid for the museums and the art often also controlled the board of trustees. They could stake a claim that their particular cities were to be respected financially and politically. The museums were a means to highlight individual greatness as well as to convey national and international prestige and status. In addition to bolstering the reputation of a museum's respective city, an opportunity stood to aggrandize the collector. Galleries and wings were named after the generous few who financed the building and assembled the collections through private purchase.

Immortalizing the patron could go farther than inscribing his or her name on a wall. When donating works to an institution, wealthy patrons sometimes sought to place legally binding restrictions that items were never to be sold or stipulating that the collection had to be displayed in a particular manner. Placing such restrictions meant another level of control to exact upon a supposedly public gift. The French sociologist Pierre Bourdieu's view is that art museums are a means to force upon each successive generation the existing class structure. He wrote, "Art and cultural consumption are predisposed, consciously and deliberately or not, to fulfill a social function of legitimating social differences."[38] If the wealthy patrons controlled the

[38] Pierre Bourdieu, *Distinction: A Social Critique of the Judgment of Taste* (Cambridge: Harvard University Press, 1984), 7.

marble temples and the works within them, their social positions of prestige and cultural sophistication would be secure for generations to come.

Carol Duncan's research on the formation and development of museums in the United States cites examples of private collectors using public museums to leave personal memorials to their taste and generosity:

> The more art museums achieved credibility as public spaces, the more attractive they became to collectors seeking personal and family memorials. There were, of course, enlightened donors who helped museums fulfill their public missions by the collection's art-historical survey. Others, however, took to leaving their hoards to museums on the conditions that they be displayed in perpetuity, and in rooms reserved exclusively for them. Very quickly, such gifts turned public art museums into a series of separate, jealously guarded terrains, each one crammed with what one critic, speaking of the [Metropolitan Museum of Art], called a 'hodge-podge of bric-a-brac' and another, speaking of the [the Boston Museum of Fine Arts] described as a cemetery lot.[39]

Despite restrictions, museums accepted donor conditions, in part, because of the long-standing financial position that many wealthy patrons held. The patrons gave not only art, but provided funding as well. At the birth of the art museum, museum staff was unable to foresee how donor stipulations would restrict the activity of the museum in years to come. The tendency to collect indiscriminately resulted in the addition of works to the collection that did not meet curatorial standards and left museums with the promise to care for these gifts indefinitely.[40]

Development of Professional Guidelines

Even though the model for art museums was borrowed from Europe, the museum as an institution was a new creation for the United States and its earliest generation of staff members. Developing professional guidelines often times lags behind the development of the field. After

---

[39] Duncan, *Civilizing Rituals*, 60.

[40] Duncan, *Civilizing Rituals*, 65 and John William O'Hagan, "Art Museums: Collections, Deaccessioning and Donations," *Journal of Cultural Economics* 22 (1998), 90.

the crystallization of problematic areas, guidelines can be formulated in response to the need for codification of best practices or standard operating procedures. As fledgling field, it is difficult to anticipate areas that will prove troublesome until time has passed. Once there is a distance between the present and past, it allows for a field to be reflective and critical about conducting itself ethical and responsibly in future activities.

During the 1980s and 1990s, museums began to draft collections management policies in the spirit of professionalism.[41] Undisciplined collecting can create serious administrative, legal and ethical problems. For example, Adelaide Milton de Groot, a member of a wealthy New York family, had been courted by a number of museums for her collection of modern art masters. In 1950, she was persuaded to leave a large portion of her collection to the Metropolitan Museum of Art, with an apparent promise by museum staff that the collection would not be dispersed.[42] De Groot's will expressly stated that that the Met was to give unwanted works to local museums rather than offering the works for sale at auction. In 1972, five years after her death, her collection was broken up and among the works that went to private hands were those by Modigliani, Bonnard, Toulouse-Lautrec, Picasso, Gris, and Renoir. Meyer said, "There was an uproar. The secret sales were denounced by art historians, the College of Art Associations, the Art Dealers Association and the friends and kin of Miss De Groot. There were a host of objections... Was the spirit of the bequest violated by ignoring a donor's wishes?"[43]

The controversial decision to deaccession the works, approved by the director, Thomas Hoving, lead to an investigation by the New York Attorney General Louis J. Lefkowitz. The Met trustees interpreted the language of the de Groot bequest as precatory, requesting that they

---

[41] Malaro, *Museum Governance*, 81.
[42] Karl E. Meyer, "The Deaccessioning Controversy," in *The Plundered Past* (New York: Atheneum Publishers, 1973), 52.
[43] Ibid., 53.

not be sold, but not prohibiting the museum from selling works from her gift. Although the language in de Groot's will was found to not legally binding, the actions on the part of the Met appeared to be a breach of trust between the donor and the institution. Not only was the understanding between the two parties not honored, but the expressed wished of the donor were disregarded. Following the questionable sales, the Met issued a white paper, "Report on Art Transactions 1971-1973," that gave a history of all deaccessioning from 1971-1973. Also, the museum adopted, with consultation of the Attorney General's office, new procedures for deaccessioning and the disposal of art work.

The events surrounding the disposition of works from the de Groot gift brought deaccessioning into the public view the public. With an increased concern of what might happen to donated works, a written collections management policy would clearly outline the standard practices of a museum in regarding the management of its collection. A collections management policy is a detailed written statement on the museum's position on what to accept, decline and potentially remove from the collection and how to care for works that have been entrusted to the museum's care. In some instances, museums generated these documents on their own accord. In others, the generation of a collections management policy was mandated by the Attorney General's Office like at the Met. The policy is intended to reflect the institutional judgment in light of current ethical obligations. Therefore, it is advisable to review and potentially revise policies every several years to remain current.

Marie Malaro[44] notes that with a greater interest in the role of museums in society, a renewed sense of their obligation to the public, and collateral responsibilities of museum

[44] Marie Malaro is an attorney and former director of the Graduate Program in Museum Studies at George Washington University. Established in 1976, the Graduate Program in Museum Studies at George Washington was one of the first post-graduate degree programs of its kind in the United States. The fact that the program is a little

trustees, a more cautionary stance was taken by some museums on the issue of restricted gifts.[45] At the time, relatively new codes of ethics and professional guidelines waved a cautionary flag marking similar developments in regards to accepting restricted gifts. Warnings issued by the International Council of Museums and the Association of Art Museum Director in the 1980s suggest an uneasiness of allowing future administrators and scholarly judgment to be bound for years to come by the wishes of donors. Other attempts had been made earlier in the century to dissuade donors from giving work of art with restrictions. However, such efforts did not appear to hold as much weight until decades later.[46]

The de Groot instance illustrates some reasons why the museum profession would take a stance against accepting restricted gifts. If a gift is accepted without any restrictions, the museum would not be legally obligated to uphold the wants of a donor. It would be the museum's sole discretion to determine the best use of the gift. The actions of the museum, in regards to the disposition of art work, would be less likely to incur public criticism or the attention of the Attorney General's office, if it was not subject to donor restrictions. Despite the ethical codification of a policy against accepting restricted gifts, some museums stand firm while others continue to acquiesce to donor's demands. In 1984, Jack and Belle Linsky, owners of the Swingline Staple factory, donated their collection of eighteenth-century furniture and porcelain, Renaissance oils and bronzes, and bejeweled objects made for monarchs and millionaires to the

---

over a quarter-century old reflects that professionalism in terms of formal educational programs for museum studies is still relatively young and continues to grow and adapt to the challenges present in the museum world.

[45] Malaro, *Museum Governance*, 80.

[46] See Daniel M. Fox, *Engines of Cultures: Philanthropy and Art Museums* (New Brunswick: Transaction Publishers, 1995) for a discussion on the decline in restricted gifts after the mid-1920s and instances of museums turning down gifts with restrictions in the 1930s. Also for a discussion of a statement made by the American Association of Museum's in 1957 advising small museum to exercise diplomacy and tact in dealing with local philanthropists.

Met. In accepting the collection, the Met agreed to curatorial preference of the collectors such as the Flemish paintings must be kept forever near the Louis XV chairs and porcelains.[47]

Escalating Prices on the International Art Market

Why does the acceptance of restricted gifts still occur in some situations? As museums continue to face budgetary constraints even in favorable economic climates, the funds allotted for acquisition fail miserably to keep pace with escalating prices on the international art market. Over the last thirty years, works of art have gained an increased investment value as prices began to rise drastically in the 1980s. From 1975 to the early 1980s, the prices of art increased steadily. Beginning in 1985 the prices of Impressionist art work accelerated rapidly.[48] In 1990, a seemingly unstoppable rise in art market valuations burst in the face of economic uncertainty and the pending war with Iraq leaving potential buyers paralyzed.[49] It was 2005 before the prices of Impressionist, modern and contemporary art returned to 1990 levels.[50] Coupled with the recent economic recession, the art market returned to a repressed state in 2009, but has emerged stronger than ever.

In 2010, Christie's recorded the best year in its two-hundred-and-forty-five year history; reports from early January showed its sales of art last year reached $5 billion, up 53% percent from 2009.[51] The figures from sales in the Americas were the most profitable at almost $2

---

[47] Duncan, *Civilizing Rituals*, 70.

[48] See the Sotheby's Index of art prices: selected categories, 1975-1990 as reproduced in James Heilbrun and Charles M. Gray, *The Economics of Art and Culture: An American Perspective* (Cambridge: University of Cambridge, 1993), 149.

[49] Don Thompson, *The $12 Million Stuffed Shark: The Curious Economics of Contemporary Art* (New York: Macmillan, 2008), 240.

[50] Ibid.

[51] Katherine Ryder, "How High Can the Art Market Go?" *The Wall Street Journal*, February 17, 2011, accessed March 1, 2011, http://blogs.wsj.com/scene/2011/02/17/how-high-can-the-art-market-go/.

billion in 2010, which marked an 111% increase from 2009.[52] With swelling art markets and record breaking prices,[53] museums are effectively priced out of the art market. Private collectors possess the purchasing power that museum acquisition budgets do not. As a result, museums are more reliant than ever on donations of art work from individuals if they want to continue to augment areas of the collection.

Not only has competition among museums and private collectors increased across the board, but the ability of corporations to invest in blue-chip artists has added another player with substantial purchasing power to the art market. Shirley Reiff Howarth[54] notes that in the 1970s and 1980s there was an upsurge of corporations purchasing art.[55] During the booming 1980s, some of the greatest Impressionist paintings were purchased by corporations and have not been seen since.[56]

According to the Mei/Moses All Art Index, a measure of fine art's long-term price performance, in 2010 works of art posted a return of 16.6%, outpacing the 15.1% total return for the S&P 500-stock index.[57] Despite financial and economic assessments of whether art is or is not a sound investment, it would be imprudent for museums to discount that individuals participate in purchasing art for speculative reasons. One of the greatest opportunities for nonprofit organizations is the anticipated intergenerational transfer of wealth that is expected to occur within the next 50 years. It is estimated at $41 trillion, making it the largest generational

---

[52] Ibid.

[53] In 2010, Pablo Picasso's *Nude, Green Leaves, and Bust* set a record for the most expensive art ever sold at an auction, going to a telephone bidder for $106.5 million.

[54] Shirley Reiff Howarth is the founder and editor of the International Directory of Corporate Art Collections.

[55] See Garber, *Patronizing the Arts*, 115 for comments and quotes from an interview conducted by Bruce Peterson with Shirley Reiff Howarth "Art in the Workplace....or Art in a Pinstripe Suit," on May 22, 2005.

[56] Sax, *Playing Darts with a Rembrandt*, 7. In 1991, the press reported that a Japanese paper mogul, Ryoei Saito bought two of the world's most expensive painting ever sold at auction, Auguste Renior's *Au Molin de la Galette* and Vincent van Gogh's *Dr. Gachet*, for a total of $160 million and kept them locked in a Toyko warehouse. Saito caused a stir as he said he would be cremated with the painting. He claimed the comment was made in jest to poke fun at Japanese inheritance laws. In 1993, Sayto was arrested for bribing public officials and tax evasion. When he died in 2000, it became unclear the fate of the painting – would it go to his heirs, the government or his creditors.

[57] Katherine Ryder, "How High Can the Art Market Go?"

wealth transfer in history.[58] Coupled with the sophistication of donors and reliance on financial planners, museums will need to reevaluate donor solicitation and cultivation methods in years to come, especially when it comes to individuals looking to donate works of art with or without restrictions.

[58] John J. Havens and Paul G. Schervish, "Why the $41 Trillion Wealth Transfer Estimate is Still Valid: A Review of Challenges and Questions," *The Journal of Gift Planning* 7, no. 1 (January 2003), 11.

III. Balancing Institutional Needs with Donor Interests

Museum professionals are expected to balance professional judgment regarding what artworks legitimately belong in the museum's collection, with the belief that private collectors' interest must be accommodated if the museum is to secure desired artwork.[59] Museums are tasked with acting in a manner that upholds the institutional mission and with proper deference to the wealth, status and associated influence of a prospective or long-time donor. This section addresses the limitations and concerns of the museum, as the receiving party, and the motivations and interests of the collector, as the giving party in regarding to gifts of art with restrictions.

Institutional Limitations and Concerns

Cost of Accepting Art

Accepting a work of art means accepting the responsibility to care for the work and no gift of art is free. There are expenses related to care including monetary costs, spatial considerations and physical and intellectual accessibility. The acceptance of every object in the museum's collection involves fixed costs (purchase or rental of a space) and on-going expenses (perseveration, climate control, security, etc). In 1983, George E. Hartman, Jr.[60] calculated that the average object kept in storage costs $25 per square foot and that such items occupied two square feet.[61] To this annual expense must be added the original cost of construction which Hartman calculated at $215 per square foot. Considering the cost of inflation, today these

---

[59] Ann Stone, "Treasures in the Basement? An Analysis of Collection Utilization in Art Museums" (PhD dissertation, RAND, 2002), 51.

[60] George E. Hartman Jr. is a Washington architect who presented these findings at a museum conference at the Smithsonian Institute in 1983.

[61] Stephen E.Weil, *Rethinking the Museum and other Meditation* (Washington, D.C.: Smithsonian Press, 1990), 107.

figures would be $55 and $475, respectively.[62] With the adjusted figures, to maintain and house 1,000 newly acquired works would cost an institution approximately $486,000 for one year.

In addition to initial construction and ongoing maintenance, expenses occur related to taking periodic inventories, maintaining records, and producing condition reports. The art work should be carefully documented for internal records by the registrar who is responsible for the packing, shipping, storage, cataloging, insurance and documentation of works of art in permanent collections as well as for those on loan for temporary exhibitions. Adding additional works to the collection increases the work load of not only the registrar department, but also the conservation staff who is tasked with providing care and technical research on the works.

In accepting works, considerations must also be made for making the work accessible for scholarly research by curators and academics. The work is to be a benefit to the public through display and the furthering of scholarship. A curator may be responsible as gatekeepers for outside scholars wishing to do academic research on works in storage. This includes scheduling appointments and escorting those with temporary credentials to storage space. This task can take time away from the curator's other responsibilities related to exhibition development including research, writing, exhibition design and coordinating loans from other institutions. Many large-scale museums need to utilize offsite storage facilities to accommodate the works not currently on display. Visiting off-site storage locations requires security clearance and presents an instance in which museum personnel needs to travel rather than participating in normal duties. Due to budgetary constraints, access to offsite areas may be extremely limited for full-time staff members and visiting professionals.

---

[62] Figures were arrived at by using the Bureau of Labor and Statistics CPI Inflation Calculator, http://data.bls.gov/cgi-bin/cpicalc.pl?cost1=215&year1=1983&year2=2011.

Agreeing that a donated work will never be sold puts strain on the accepting institution. If a work is accepted with that condition, in theory, the museum is making a commitment to allot resources for its care and preservation for the foreseeable future or, in fact, for perpetuity. Staff may already be short and storage may be at capacity. The work may never be studied or even readily accessible for the museum staff. Neglect is not an ideal situation for any of the parties involved.

The Collection as Signifier of Reputation and Relevancy

A museum's collection remains a significant factor in determining the reputation of the museum. The most revered art museums are those with the finest collections, along with superior educational programming, qualified staff and enlightening research initiatives. Steven H. Miller makes the connection between the perceived excellence of an institution and its collection. He says, "The better the collections the more highly respected the museum, and the new acquisitions are the spiritual manna that prove an institution's worth."[63] Acquisitions, as suggested by Miller, serve as a signal for the strength of the museum, indicating artistic dynamism on the part of the museum's curators and a sound vision from the management. Theodore E. Stebbins notes the "collection...is often the most important factor in attracting the attention and the allegiance of both its professional staff and its major supporters."[64] New acquisitions can bring rewards such as enticement for staff recruitment, donation solicitation and increased visitation from the public.

---

[63] Steven H. Miller, "Selling Items from Museum Collections," in *A Deaccession Reader,* ed. Stephen E. Weil (Washington, D.C.: American Association of Museums, 1997), 53.

[64] Theodore E. Stebbins, Jr., "The Museum's Collection," in *The Economics of Art Museums*, ed. Martin Feldstein (Chicago: The University of Chicago Press, 1991), 13.

Since the strength of the collection can impact the museum in positive ways, acquiring works should not be based on capriciousness or poorly informed judgment. Typically, acquisitions are decided upon by a number of individuals or by committees. The group responsible for evaluating whether a work should be accepted into the collection can include the director, board of trustees, curators and an acquisition committee. Annette de la Renta describes her involvement as chairman of the Acquisitions Committee at the Metropolitan Museum of Art as such:

> Our mission is simple but crucial: to build the collection... at Acquisitions you get to meet and hear the Met's curators, young and old, veterans and newcomers, as they passionately describe the works of art they hope the Museum will acquire. They are passionate in their earnestness and dazzling in their scholarship – genuinely inspiring. Somehow, at each and every meeting we run the gamut from ancient to contemporary art in just a couple of hours, and manage to add to the collection, filling gaps at what Phillippe [de Montebello] calls the highest level of artistic accomplishment. Nothing less will do.[65]

The deliberations should be a forum for rigorous debate focusing not only on the quality, aesthetic merit, physical condition, attribution and redundancy in relation to existing collection, but how, within the museum's existing institutional structure, can the work be cared for. The group responsible for acquisitions must be diligent in securing the best works and making sure they are in a position to allot the necessary resources to the work. If those conditions are not met, considering a donor's proposed restrictions on the gift is a mute point.

The acceptance of a work must augment the collection, first and foremost, rather than please a donor. For example, an influential donor offers to donate his private collection of twenty works of contemporary art to your museum. The curator of painting and sculpture evaluates the collection and makes a recommendation to the acquisition committee that two or three pieces would be of great interest to the museum, but the remaining works are either similar

[65] Danny Danziger, *Museum: Behind the Scenes at the Metropolitan Museum of Art* (New York: Penguin Books, 2007),193.

to works already in the collection or of lesser quality. However, the donor insists that the collection must come to the museum as a whole or the offer is to be withdrawn. The museum must carefully assess if accepting all the works for the few superior ones would be the best use of the museum's resources. Haphazard acceptance of donated work might be a result of an overestimate of the museum's financial position and the staff's ability to care for the work on the different levels outlined in the previous section. The gift may be a tempting offer, but the museum must be discerning and ask whether this is truly adding something to the institution or if it will be an institutional burden in years to come.

Predicting future constraints of an organization is a difficult task, but that is why acquisitions decisions should not and are not left to a single individual. The museum leadership who is entrusted with building a museum's collection is also responsible for refining the collection through the process of deaccessioning. One must also take into account personnel change through the years. The director, curators and board of trustees in twenty-five or thirty years will likely be replaced. The building of a collection is a multi-generational enterprise which requires respect for the decisions made by those who have preceded, coupled with the understanding that those who follow will make decisions based on the constraints and needs in that period.

Museum as Arbiters of Excellence

Museums have a cultural responsibility to society at large. While the collection may signal the reputation of a particular museum, the decision to absorb a work into the permanent collection reflects on the field of art history as a whole. Western civilization has assigned art

museums the role of custodians of the past:[66] a past that is marked by unique creations and the productions of gifted individuals. Displaying a work of art within the walls of an institution assigns historical, social and aesthetic value in the present moment and for generations to come. Therefore, art museums act as arbiters of excellence. Museums have the authority to confer substantial and enduring importance on the works of art that it chooses to add to its collection.[67] When a work of art is accepted into a collection of a museum, it also frequently receives art historical validation. Glenn Lowry, Director of the Museum of Modern Art, acknowledges that canon making might be a by-product of accepting a work into a collection but it is not the aim or purpose.[68] Private collectors operate under different assumptions. Buying art can satisfy an aesthetic pleasure, be a form of financial investment, or function as a social signifier. Collectors might not be aware of their potential roles in the formation of art history. Museums must be diligent when considering to accept or to decline a work because of the impact that it may have on the institution and art history.

Impact on Curatorial Discretion

Art is the language by which curators talk about intangible ideas through tangible works. Communication is possible because curators illustrate abstract concepts with the visual aids at their disposal, the collection. Through the art, physical space of the gallery and the presentation of the curatorial staff, the collection is the way in which broader themes are to be experience by the public. Museums are in possession of original art works, primary documents of creativity. Curators have the tools to channel curiosity into visceral responses. Curators are responsible for

---

[66] Howard N. Fox, "The Right to Be Wrong," in *Collecting the New*, ed. Bruce Altshuler (Princeton: Princeton University Press, 2005), 25.

[67] Weil, *Cabinet of Curiosities*, 83.

[68] Glenn D. Lowry (Director, Museum of Modern Art), comments were made at a Museum of Modern Art Internship Educational program which the author was present on November 16, 2010.

exhibition development that involves formulating the concept, curatorial research, collection evaluation, selection and documentation. All of these responsibilities are directed towards facilitating the presentation and interpretation of the collection for the public.

The process of collection development for an exhibition falls between the two extremes of using works from the permanent collection and borrowing from other institutions. An exhibition may be drawn entirely from the museum's own holdings or it may be the occasion to combine, compare or contrast works of art from disparate sources, giving scholars and the general public an opportunity to chronicle the career of an artist whose works were held in many museums around the world. Curators must be flexible and ready to adapt when faced with logistical challenges beyond their control, i.e. a work is unavailable because it has already been promised for another show or is undergoing conservation work.

However, curatorial discretion is impeded when gifts with restrictions are accepted into the collection with conditions such as the work must always be displayed or can never be loaned to another institution. For example, Philadelphia lawyer John G. Johnson left his 1,300 paintings to the city of Philadelphia upon his death in 1917. He stipulated that his paintings should never leave his house on South Broad Street for permanent exhibition "unless some extraordinary situation shall arise making it extremely judicious."[69] A decade later, on the pretext that the Johnson mansion was deteriorating and proved to be a fire hazard, Johnson's will was broken and his entire collection was moved to the Philadelphia Museum of Art (PMA), where it remains to this day. For over sixty years, the PMA honored the spirit of Johnson's will by keeping his collection together. In 1989, the museum convinced the courts to allow the Johnson collection to be broken up so that his paintings could be more effectively integrated into the museum's

[69] "Art: John G. Johnson's Art," *Time*, November, 10, 1941, accessed April 3, 2011, http://www.time.com/time/printout/0,8816,851423,00.html.

overall collection: allowing for a more unified presentation of European art between the fourteenth and the late-nineteenth centuries.[70] To memorialize any method of display is to permit only one way of seeing at the expense of all others – without any regard for changing visitor habits or accounting for innovative theories of perception. Exclusivity in the ways in which a work is to be used by an institution hinders the possibility that new relationships can be discovered through the curatorial process.

Curators have the responsibility and privilege to pick and choose what artworks their audiences get to see.[71] Curators undergo rigorous academic training to cultivate aesthetic sensibilities and to increase broader interest in art and culture. Their professional training qualifies them to make decisions on behalf of the museum and for the benefit of the public. Letting donors decide what is done with their gifts of art undermines the museum's authority and usurps the power of the curator to present and interpret material on behalf of the public.

Collectors Motivations and Interests

Collector as Social Beneficiary

Francis Henry Taylor describes the impulse of collecting as "a complex and irrepressible expression of the inner individual, a sort of devil of which great personalities are frequently possessed."[72] Psychologists have noted, in a more than negative assessment, that "collecting is regressive (anal) activity with strong narcissistic and fetishistic traits... [T]o collect is to deny... death and castration."[73] The collector occupies an interesting position as there is no obligation to share with a wider audience if one is in possession of a culturally significant object. As a private

[70] Philadelphia Museum of Art, "The John G. Johnson Collection," accessed April 3, 2011, http://www.philamuseum.org/information/45-231-27.html.
[71] Fox, "The Right to Be Wrong," 15.
[72] Francis Henry Taylor, *The Taste of Angels: A History of Collecting from Ramses to Napoleon* (Boston: Little, Brown & Co., 1948), ix.
[73] Sax, *Playing Darts with a Rembrandt*, 62.

collection, there is no duty to care or protect a work of art. Many of the greatest works of artistic genius can be owned by anyone who can afford to buy them or the luck to find them.[74] The notion that art belongs to people is an idealized democratic one, but not a universal mandate. The private collection is a means to separate the people from works of communal importance.

Though collectors are by definition acquisitive people and collect for a variety of reasons, some view themselves are temporary trustees or stewards of works of art.[75] It was said of the noted Picasso collectors Sally and Victor Ganz that "their engagement expanded beyond the private interaction of buying for their own satisfaction to the public stewardship that guides our public museums and civic projects... placing works in museums, lending pictures to exhibitions, and welcoming a constant stream of visitors into [their] homes."[76] The full realization of acting as a social beneficiary might be seen as donating works of art to museums, which will care for the object in perpetuity on behalf of the public. It is the choice whether to be a beneficiary to the public or not.

If a collector chooses to do something that benefits society, does that mean he or she should continue to exercise control over the work after it has left his or her possession? By applying donor restrictions, the collector extends the tendencies of being an avaricious hoarder, not a social beneficiary. However, John Sare notes that the museum's promise for perpetual adherence to a set of restrictions can be seen as consideration for the collector's release of the property.[77] The system of private property, as traditionally held in the United States, works in favor of the possessor to exercise his or her wishes even over objects of cultural and historical

---

[74] Ibid., 1.
[75] Ibid., 69.
[76] *A Life of Collecting: Victor and Sally Ganz*, ed. Michael Fitzgerald (New York: Christies, 1997), 8.
[77] John Sare, "Art For Whose Sake? An Analysis of Restricted Gifts to Museums," *Journal of Visual Law and Arts* 13 (1988-1989): 379.

significance.[78] Since a collector is not required to donate a work of art and the act is voluntary, it might seem fair that the museum accepts a donor's restrictions. However, donors are rewarded for their charitable acts with tax deductions. Accepting restrictions continues a pattern of leverage on behalf of those who possess culturally significant objects over the rest of the museum's stakeholders, the public.

Legacy of the Collector and the Collection

Art collections are a means of both self-expression and self-glorification for many wealthy men and women.[79] In writing about Joseph Duveen, a prominent American art dealer of the twentieth century, S.N. Behrman made these observations about the desires that prompted many of the industrial titans for whom Duveen worked to give away their art:

> The art patrons of the Renaissance had themselves painted into the pictures they commissioned; because their American counterparts lived too late to have this service performed for them, they had to gain immortality by buying collections and putting them in public museums. It is human and perhaps touching, this impulse to project oneself beyond one's mortal span.[80]

Collectors can only possess works of art during their life time; making arrangements for works of art shows an understanding that possession of tangible goods does not escape the limitations of mortality. Donating works to a museum to be held in trust for the public is a way to transcend one's own mortality and secure a place for one's legacy in a public forum. Requesting that works are always to be displayed or never sold makes the legacy present for perpetuity.

The concernment with legacy is even greater in today's increasingly global, ever changing society. The spread of information and technological advances happens at such a rapid pace that what is current and the best at one moment appears outdated and obsolete in the next.

---

[78] Sax, *Playing Darts with a Rembrant,* xii.
[79] Storr, "To Have and to Hold," 37.
[80] S.N. Behrman, *Duveen* (New York: The Little Bookroom, 1951), 232-3.

Elaine A. King and Gail Levin note the difference between the early blue-blooded patrons of the early twentieth century and the nouveaux-rich museum trustees and donors of today. They say that the likes of Carnegie, Frick, Mellon and Whitney were confident about their financial and social status, but used the establishment of museums to further secure a political base or social prestige.[81] Donating public works to museums or creating their own was both an advertisement of power and a part of civic duty or *noblesse oblige*; rather today's giving is characterized as a form of "social résumé" building.[82] Giving is a way to gain social visibility and clout for the new rich, as well as, the benefactors of inherited wealth.[83]

There is a level of social prestige involved with charitable transactions. Museums, small and large, have donor recognition events throughout the course of the year and publish a list of donors in an annual report. The benevolence of some is broadcasted for all to see. Some museums will segment receptions, curator-led tours and dinners as a means of issuing member benefits by levels of graduated giving. The most prestigious museum galas and parties are covered in the "Style-section" of the New York Times and Los Angeles Times. The featured photographs serve as a visual map to a "who's who" of society's upper echelon. Perhaps, today's giving is not about immorality, as it may have been with the robber barons, but a way to arrest moments in an otherwise fleeting world. Financial security can vanish in a volatile economic climate and a public image may be tarnished by scandal and loss of good standing in one's community. Restricted giving can solidify a moment of good will that remains forever though wealth and image may not.

The transfer of private property to a museum is not the only way to ensure that a legacy of a collector lives on. Great works pass quietly down from generation to generation within a

---

[81] Elaine A. King and Gail Levin, *Ethics and the Visual Arts* (New York: Allworth Press, 2006), 5.
[82] Ibid.
[83] Garber, *Patronizing the Arts,* 105.

family unit and the public is none the wiser. Here the level of public recognition is almost none. This legacy may not be carried on by relatives due to lack of interest or the financial burden of estate taxes, especially with appreciated works of art. A once prominent collector declared, "A man....shouldn't force his taste on his children; and his children shouldn't have to pay a tax in order to own some pictures they don't want."[84] Paul Schervish writes:

> These numbers confirm what we have learned repeatedly from wealth-holders and financial advisors. As net estates become very large, wealth-holders make a conscious decision to move their resources away from heirs and toward charity.... It seems... that once wealth-holders recognize their families are financially secure, they tend to look for deeper purposes for their material means.[85]

Donors seem to be well aware that the transfer of wealth is not limited to heirs.

Museums may be perceived as being better equipped for dealing with the preservation and care of an art collection than heirs. Donating works to a museum is a way to find a permanent and fitting heir for the works collected during the collector's life. For those passionate about art, selling is often associated with a sense of loss, and this is compounded when the selling is brought on by the loss of a loved one.[86] Honor James[87] reflected somberly as the work from her parents' collection went up for sale at a Christie's contemporary sale in London. She said, "That was in my parents' bedroom" or "That was on the table in the hall."[88] A collector can have an emotional investment in the work and therefore, is conscious about finding a fitting home for the work. If the works went to auction, they might be passed from owner to owner in any number of combinations. Finding a permanent and suitable repository for the works at a museum would end the line of successive collectors' hands. To ensure that the

---

[84] Thomas B. Sherman, "Art and Taxes," *The Sunday Review,* July 7, 1956, 26.

[85] Paul G. Schervish, John Haven and Albert Keith Whitaker, "Leaving a Legacy of Care," *Philanthropy* 20 no. 1 (2006), 13.

[86] Sara Thorton, *Seven Days in the Art World* (New York: W.W. Norton & Company, 2008), 32.

[87] Ibid., The real name of a social worker from the Midwest in the books was changed. She was made executor and put in charge of liquidating her parents' $100 million estate so the proceeds could be entirely donated to a local community center.

[88] Ibid.

museum served as a permanent, rather than transient caregiver, the donor could put in place restrictions to never sell or loan the work.

Accepting donor restrictions not only memorializes the person, but validates the work involved in amassing a collection. Assigning value to the collector's effort acknowledges that collecting can be a result of discerning behavior and tempered acquisition for private individuals. Taking an entire collection from a donor offers recognition that a collection is more than the sum of its parts. Picking and choosing selected works out of a private collection may result in the loss of the organic feel of the collection. Amassing a private collection is one that can be likened to a creative process; picking out works as individual pieces but also relate to one another as a whole within the framework of an individual's personal taste. Here the collector is the sole curator whereas museum collections grow by accumulation depending on the aesthetic predilections of an ever-changing staff, board of trustees, and other donors. Separating works that come in as a part of or an entire private collection divorces the role the collector played in painstakingly assembling it.

A collector may wish that the collection, not only be taken in its entirety, but displayed in the fashion that the collector dictates. When the collector Emery Reves died in 1981, it became known that his wife's collection of Impressionist, Post-Impressionist and Modern paintings, sculptures, and works on paper, and decorative art objects, might be available to a museum.[89] The Dallas Museum of Art (DMA) courted Wendy Reves arduously and won a commitment to receive the collection.[90] In order to be the favored museum that received the highly coveted collection, the DMA accepted a series of conditions. Reves demanded that the museum recreate six of the principal rooms of her home, Villa La Pausa, with the furniture, paintings, tapestries

[89] Keith L. Bryant, Jr., "The Art Museum as Personal Statement: The Southwest Experience," *Great Plains Quarterly* (1989), 109.
[90] Ibid., 110.

and other furnishings as she had them arranged. The rooms recreated in the museum include the library, dining room, salon, bedroom, hall and patio built around a central courtyard. Furthermore, the collection would also include iron works, Winston Churchill memorabilia, and decorative arts, to be displayed as a unit. The DMA bore the responsibility of raising $6 million dollars needed to recreate the Reves' villa from the South of France.

The Reves Collection, features important works by Pierre Bonnard, Paul Cezanne, Gustave Courbet, Paul Gauguin, Edouard Manet, Claude Monet, Auguste Rodin, Henri de Toulouse-Lautrec, and Vincent van Gogh, among others. The gift doubled the value of the museum's permanent collection, but at some sacrifice. The museum's collection is not united as the Reves Collection and the museum's other permanent holdings cannot be fully integrated. In addition, the reconstructed rooms place the paintings at a great distance from the viewer where waist high barriers keep viewers separated from some works by 20 feet.[91]

By acquiescing to Wendy Reves' wishes, accepting the collection in its entirety and housing in a replica of the donor's villa, the DMA validates the collection and, in a sense, the lifestyle of the collector. The DMA may have seen these conditions as reasonable considering the gift transformed the Museum's collections of late nineteen and early European art and decorative art. The museum's acceptance of the conditions ensured the DMA would secure a collection of great magnitude and value. The Reves Collection did provide the DMA a major collection of Impressionist and Post-Impressionist paintings, areas in which the Museum was lacking, at the expense of offering the Reves a measure of immortality. To receive a collection that increased the overall value of the museum's holdings and depth and representation in certain areas, the museum relinquished curatorial discretion and submitted to the taste of the donor.

[91] Sare, "Art for Whose Sake," 377.

Accountability and Ultimate Use of Gift

To an increasing degree, donors are concerned with the impact of their gifts and the outcomes of the organizations they support. In a study conducted by the National Committee on Planned Giving, donors identified the 'desire to support the charity' and the 'ultimate use of the gift by the charity' as the main charitable motivations.[92] Ultimate use of the gift can mean a broad number of things but this shows that donors are aware that a donation, be it monetary or art work, is a resource to a museum. However, the donor's definition of the word "use" may differ from the museum's definition of the term.

Researchers are finding that a concern with how an organization uses a donation is prevalent in younger philanthropists.[93] The wealth associated with younger philantrophists is often times new wealth made from the dot-com and other booming industries of the 90s or inherited wealth.[94] This group is characterized by wanting to have a greater level of involvement with the organization, rather than the donation being the only connection. The National Arts Forum Series[95] panelists and participants recognized that new "entrepreneurial" donors have different expectations than more traditional donors, preferring to be "part of the process... feel involved... help solve problems... have fun, and most of all know they are making a difference."[96] Donor restrictions are an extension of the entrepreneurial spirit capturing the desire to have a more hands-on role with the organization through management and specified use

---

[92] Donna Richardson and Gwen Chapman, "What some Recent Research tells us about Planned Giving (Legacy Marketing) in North America," *International Journal of Voluntary Sector Marketing* 10 (2005), 38.

[93] For the purpose of this paper, younger philanthropists are from Generation X, defined as being born between 1965-1980.

[94] Kay Grace and Alan L. Wendroff, *High Impact Philanthropy: How Donors, Boards, and Nonprofit Organizations can Transform Communities* (New York: John Wiley & Sons, Inc., 2001), 87.

[95] Since 2002, MetLife Foundation has supported the National Arts Forum Series, which convenes a series of community dialogue issues faces the arts filed and greater society. For the 2005-2006 series, 40 forums were held in 20 communities across the country, taking as their theme the changing landscape of private-sector support for the arts. Leonard Fleischer, "Private-Sector Giving to the Arts: Strategies For Survival, Guidelines for Growth," *Monograph* (Washington, D.C.: Americans for the Arts, 2006) discusses the findings of these focus groups.

[96] Fleischer, "Private-Sector Giving to the Arts," 9.

of a donation. Pro-active attitude and increased involvement might find an outlet in pursuing donor restrictions. Not only do younger donors want to be active in the organization, they demand transparency and accountability.[97] This stems from a need to know what a nonprofit does and how their support makes a difference in accomplishing the institutional mission. They expect responsible stewardship and seek recognition for their gifts.[98] Donor restrictions would provide an additional layer of involvement and oversight in the use of donated resources.

Concern with what a museum will do with a work of art is not a new sentiment for collectors. In 1980, Burton and Emily Tremaine sold *Three Flags* (1959), an iconic early Jasper Johns painting, to the Whitney Museum of American Art for $1 million – then the highest price paid by a museum for a work by a living artist. The Tremaines could have donated the work to the museum, which they paid $900 for in 1959. "If a museum pays $1 million for a painting, it won't wind up in the basement," Mrs. Tremaine said in a 1987 interview.[99] The Tremaines saw the premium price as a guarantee that the museum would keep the work out of storage and on view. Anthony Haden-Guest claims there was a deeper history here. The Tremaines, avid contemporary art collectors, had donated 90 works to the National Gallery of Art in Washington, including a work by Bridget Riley. The piece was not taken on a worldwide tour that the Tremaine believed they had been promised when donating the work.[100] Leo Armstrong, former director of the Whitney, said "They took this as a symbol that no museums are to be trusted."[101] Selling the work rather than donating the work to the museum was a way to safeguard the couple's interest in the use of the piece.

---

[97] Ibid.
[98] Ibid.
[99] Rita Reif, "50 Painting to Be Sold From Tremaine Estate," *New York Times,* June 7, 1991, accessed March 23, 2011, http://www.nytimes.com/1991/06/07/arts/50-paintings-to-be-sold-from-tremaine-estate.html.
[100] Anthony Haden-Guest, *True Colors: The Real Life of the Art World* (New York: Atlantic Monthly Press: 1996), 76.
[101] Ibid.

Good Faith and Future Relationships

There may be concern that if an object has been donated to a museum, its subsequent disposition might be construed as a breach of good faith to the donor. The donor gave the work to the museum to use for display, not as an asset to liquidate. In turn, this could discourage new donors from considering that institution as worthy of receiving gifts of art or make long-term donors skeptical about giving to the institution again. Since private collectors often donate cash as well as art works, they can be seen as an important source for the museum's financial welfare.[102] In making clear his or her wishes, the donor may choose to put in place restrictions on what can be done with it in the future. The museum should be conscious of the sensitivities of the relationship between the donor and the institution and the impact that one decision may have on all other future relationships.

Increased Value to Private Collection

Collectors profit from having works in a museum, not only socially, but financially. The prestige of being accepted in a museum's collection validates the collector's choices and boasts a provenance that can claim museum pedigree. The museum's acceptance a work from a private collector can increase the rest of the stock of the donors remaining collection. Museums typically do not exhibit the work of a private collection without being promised a future gift of most or all of the works, because the show had the potential to increase the value of the private collection.[103] Museums cannot assume that patrons have the same generous intentions in mind as the institution without proper communication. For example, a rare early sculpture by Bruce Nauman, *Henry Moore Bound to Fail* (1967) had been on long-term loan to the Walker Art

---

[102] Stone, "Treasures in the Basement?" 51.
[103] Thompson, *$12 Million Stuffed Shark*, 223.

Museum by a member of the board of trustees. To the museum, it seemed certain the work would remain there permanently.[104] However, in 2001, the work went to auction and sold to a private collector in Europe for $9.9 million, a price most American art museums could not compete with. It would be unfair to speculate why an American collector did not show an interest in this particular piece. Auction house records respect the anonymity of buyers. The example is not to comment on the prevalence of international buyers versus American buyers in the art market,[105] rather to illustrate the museums' inability to compete with the purchasing power of private individuals. The piece could have very well been purchased by an American collector, but even so the result is still the same. The work is no longer available for the public to enjoy, whether it ends up in a New York penthouse or in a villa in France.

According to Jack Gold[106] many more people are coming to see art as a way to "diversifying your investment portfolio." Although this financial agenda might conflict with those that collect to enrich their lives, Gold says, the:

> New collectors, who have been making their money in hedge funds, are very aware of alternatives for their money. Cash pays so little return now that to invest in art doesn't seem like such a dumb idea. That's why the art market's been so strong – because there are few better options. If the stock market had two or three consecutive quarters of large growth, then, perversely, the art market might have a problem.[107]

For individuals motivated by financial gain, donating selected works to a museum might increase the value of the pieces remaining in their possession. If a museum agrees to never sell the world, the work may appear at other institutions, as well, much like the *Henry Moore Bound to Fail*

---

[104] Storr, "To Have and to Hold," 35.

[105] However, the art market has been increasingly diversified with international buyers over the last decade. For a discussion on the appearance of new wealth overseas and the interest in the art market, see Aaron Levine and Josh Baer, "Ultra-Rich Collectors Help Keep Art Market Afloat," interviewed by Elizabeth Blair, *National Public Radio*, podcast audio, June 25, 2008, accessed April 3, 2011, http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=91864488&m=91868730.

[106] Thorton, *Seven Days in the Art World*, 17. The real name of a pair of avid collectors, married with no children, in their late forties were not revealed in the book.

[107] Idib.

piece that was featured in the 1995 Nauman retrospective at the Museum of Modern Art in New York. Being exhibited in a temporary exhibition adds an additional layer of prestige through increased museum exposure and another degree of pedigree provenance. For a museum to hold some works that were once part of a private collection can benefit what remains in the collection.

Tax Benefits of Charitable Contributions

Private donors of artwork are motivated not only by civic responsibility and prestige, but by the considerable tax benefits attached to charitable contributions.[108] A donor of art works is entitled to claim an immediate income-tax charitable deduction and avoid capital gains taxes. In the cases of appreciated property, artworks that have increased in value since the time of purchase, the donor can claim an income-tax deduction for the full market value of the work up to 30% of adjusted gross income with a five-year carryover. The tax benefit for appreciated works can be quite substantial, given the dramatic increase in art prices over the last several decades. Stone says this, "same increase in art prices, of course, has had a negative effect on the buying power of art museum' acquisition budgets, which only underscores the importance of private collectors in museums' collection development plan."[109] Unfortunately, the financial gain of an art collector is to the determent of the museum's overall purchasing power.

To be eligible for a tax deduction at the fair market value, donors must meet the qualifications of the relatedness rule; meaning the donor must establish that the property will be put to a tax-exempt use by the receiving organization. A full market-value deduction is not

---

[108] Tax deductions for charitable contributions were enacted in 1917. The limit on charitable deductions has varied considerably over the years. See Don Fullerton, "Tax Policy Toward Art Museums," *The Economics of Art Museums*, ed. Martin Feldstein (Chicago: The University of Chicago Press, 1991) for a historical overview on the various taxes that affect donation to art museums. See also Malaro, *Museum Governance*, 369-383, and Weil, *Cabinet of Curiosities*, 157-181.

[109] Stone, "Treasures in the Basement?" 52.

allowed, however, if the donated works fall into the "unrelated use" category, per the Internal Revenue Code (IRS). The concept of "related use" concerns whether or not donated objects are used directly for the museum's charitable purposes under IRC § 501. For example, if an individual wanted to donate a Mark Rothko painting to the Frick Collection, it would not qualify under the related use doctrine. The purview of the Frick Collection is works from the Barbizon School and European Old Masters, not 20th century American Abstract Expressionism. Therefore, the donor would be eligible to deduct the work at its base value, the value at which it was originally purchased, not the fair market value.

Another example of unrelated use is if a museum accepts donated artworks with the intention of selling the work rather than using the donated art in its exhibition programs. If a museum accepts a work only to sell the piece, such a transaction would not qualify the donation for the intended charitable purpose. Museums must fill out a Form 8282 to report information to the IRS and donors about dispositions of charitable deduction property made within three years of the contribution. Reporting the sale of the work is necessary because it may invalidate the donor's deduction. The filling of the Form 8282 alerts the IRS and discourages turning over works with the three year period.

Once the related use rule is met, a donor must fill out a Form 8283 to report information about non-cash charitable contributions if the amount of the deduction is greater than $5,000. A Form 8283 confirms the receipt of the gift and verifies that it will be used for the expressed purposes of the mission. Therefore, at minimum, it is in the donor's best interest that the museum accepts a work with the intent that it will not sell the piece within three years and it is appropriate for furthering the mission of the institution.

Modes of Giving

Analysis of the practices of giving and institutional practices in the specific instances, the Fisher Collection at the San Francisco Museum of Modern Art and Eli Broad at the Los Angeles Museum of Art, illustrates how a potential conflict can come to bear when donor interests and institutional limitations are not aligned. The Fisher Collection at SFMOMA is indicative of a creative solution which addresses many of the points of departure between a museum and donor discussion in Chapter II. LACMA's relationship with Eli Broad is complex and demonstrates how much influence a donor with resources, monetarily and property-wise, can dictate the decisions of an institution.

Case Study I – the Fisher Collection at the San Francisco Museum of Modern Art

Donald and Doris Fisher began collecting art a few years after they opened their first Gap clothing store in San Francisco. When the couple began buying art, their aim was to brighten up the office and their purchases were limited to prints. In 1976, Gap was transformed from a private business into a public corporation. In the years that followed, the Fishers' art holdings increased in tandem with the expansion of the company.[110] The collection quickly grew to include painting and sculpture and, in more recent years, photography and media art. The Fishers decided to display art in the public spaces of their headquarters filling corridors, conference rooms, the staff cafeteria, and other public spaces. The collection with over 1,100 works includes masterpieces by Alexander Calder, Chuck Close, Ellsworth Kelly, William de Kooning, Phillips Guston, Roy Lichtenstein, Gerhard Richter, Cy Twombly, Andy Warhol and many others. The Fishers were avid collectors and seldom sold or traded the works they

[110] Gary Garrels, "Introducing the Fisher Collection," in *Calder to Warhol: Introducing the Fisher Collection* (San Francisco: San Francisco Museum of Modern Art, 2010), 17.

purchased.[111] The collection had been seen by relatively few people: "Gap employees, the occasional museum tour group and those in the upper echelons of the art world with the right connections."[112] Through a partnership with the San Francisco Museum of Modern Art (SFMOMA), the Fisher Collection is going to be shared with the public.

Though Donald and Doris Fisher have a long history of philanthropy and culture leadership involving many different organizations, their relationship with SFMOMA has been particular deep and multifaceted.[113] Donald Fisher first joined the museum's board of trustees in 1983, while Doris became a member of the education committee in 1992. Over the past three decades, they have offered financial support for exhibitions, made numerous gifts of art, subsidized educational and public programming initiatives through the Gap Foundation and were among the most generous donors to the museum's 1995 expansion project. As the Fishers developed their private collection, Donald was a driving force in expanding SFMOMA's collection serving as the founding chair of the museum's accession committee.

In 2006, Donald Fisher first approached Neal Benezra, Director of SFMOMA, about the possibility of the Fisher Collection coming to SFMOMA.[114] These initial conversations proved unfruitful as both sides saw that "the stars were not aligned."[115] Fisher envisioned his collection requiring about 50,000 square feet of exhibition space which was roughly the entire gallery capacity of SFMOMA. Fisher said, "We talked. But I have such a big collection. For them to show it all the time and for me to have any kind of control over it was not what they wanted....You give it away and people leave it in the basement. I don't want to have our art in

---

[111] Ibid.
[112] Carol Kino, "Private Collection Becomes Very Public," *New York Times*, June 2, 2010, accessed March 24, 2011, http://www.nytimes.com/2010/06/06/arts/design/06fisher.html.
[113] Neal Benerza, "Foreword," in *Calder to Warhol: Introducing the Fisher Collection* (San Francisco: San Francisco Museum of Modern Art, 2010), 13.
[114] Ibid.
[115] Kino, "Private Collection Becomes Very Public."

the basement."[116] Benezra, knowing that the museum could not devote the majority of its space and resources to one collection, maintains that the dialogue continued in a trustful and supportive way even when the Fishers explored other options.[117]

In 2007, the Fishers submitted a proposal to build a new museum devoted to their personal collection in the Presidio, a former military base turned national park in San Francisco. Fisher said it was not his intention to set up a competitor for SFMOMA but rather to use his museum as a way to assure that his collection is seen. Fisher said, "We don't have a lot of choices about what to do with art if you want someone to see it. You can't make a deal with a museum to guarantee that the public sees it."[118] Other major collectors have chosen not to donate to an established museum in favor of creating their own museum, like Ronald Lauder and the Neue Galerie in New York and Alice Walton and the Crystal Bridge Museum of American Art in Betonville, Arkansas. However, the project met strong community resistance by local activists. Concerns were voiced about increased traffic and crowding around the Presidio. Gary Widman, Presidio Historical Association President, said, "The city of San Francisco and the public will greatly benefit if the Fisher family selects a more visitor-friendly location that does not destroy the unique National Historic Landmark."[119] The Fishers ultimately withdrew the proposal to build the Contemporary Museum of Art (CAMP) in July 2009.

When SFMOMA announced plans to expand its gallery space in April 2009, the Fishers revisited the idea of partnering with a museum to house their collection in San Francisco. After

---

[116] Kenneth Baker, "Art For Our Sake / Plan: 100,000 square feet for works that have mostly been seen by art world," *San Francisco Chronicle* video, 7:07, August 2007, accessed April 3, 2011, http://www.sfgate.com/cgi-bin/object/article?f=/c/a/2007/08/08/MNVJREV8S2.DTL&o=0.

[117] Benezra, "Foreword," 13.

[118] Jesse McKinley, "Founders of the Gap Now Plan a Museum," *New York Times,* August 8, 2007, accessed March 24, 2011, http://www.nytimes.com/2007/08/08/arts/design/08coll.html.

[119] C.W. Nevius, "Only S.F. would snub gift of world-class museum," *San Francisco Chronicle*, July 4, 2009, accessed March 24, 2011, http://articles.sfgate.com/2009-07-04/bay-area/17217029_1_presidio-bowling-alley-army-base.

the Fishers formally abandoned the CAMP project, negotiations between the family and SFMOMA resumed with the chairman of the board, Charles R. Schwab, playing a pivotal role in reengaging the Fishers. The longstanding relationship of trust and goodwill between Don Fisher and Schwab propelled the prospective loan and expansion to a larger scale than originally anticipated.[120] John Zarobell says that over the last several years a series of conversations has occurred between the Fishers and SFMOMA about the future of the collection.[121] The final stage of these conversations marked a change in "tone."[122] Zarobell attributes this change partially because the vision of the director [Benezra] to expand came at a time when the museum was ready and the Fishers were ready to give.[123] Zarobell says with a collection of this size and stature, it brings everyone to the table in a different mood.[124]

On February 4, 2010, almost seventy-five years to the day of opening as the San Francisco Museum of Art,[125] the board of trustees and staff members met with members of the Fisher family to sign a historic agreement entering the museum in an unprecedented partnership. The Doris and Donald Fisher Collection of more than 1,100 artworks will be on loan to the museum for 100 years, renewable thereafter for another 25 years. At that point, the descendants of the Fisher family along with the current museum leadership will negotiate the fate of the collection. The agreement stipulates that within the new wing 75 percent of the work on view will be drawn from the Fisher Collection and the remaining 25 percent will come from SFMOMA's permanent collection with the works displayed side-by-side. The expansion will provide SFMOMA with more than 100,000 square feet of new gallery and public spaces in its

[120] Benezra, "Foreword," 13.
[121] John Zarobell (Assistant Curator of Painting and Sculpture, San Francisco Museum of Modern Art), in discussion with the author, March 21, 2011.
[122] Ibid.
[123] Ibid.
[124] Ibid.
[125] The San Francisco Museum of Art's name changed to the San Francisco Museum of Modern Art on its 40th anniversary in 1975.

current building, while consolidating all staff offices to one on-site location[126] and include larger and more advanced conservation facilities and an expanded library.

SFMOMA had been working with Bain and Company, a global management consultant firm, to develop an extensive business plan to define the impact of the enlarged facility, increased operations, and enhanced programming of the museum's expansion and annual operation budgets. SFMOMA says:

> We will be going through a period of due diligence so that we have a clear and concise picture of the funding that is needed to support the unprecedented collaboration. This presents a tremendous opportunity for SFMOMA and the city, and with it we have a cultural responsibility to ensure that the museum has the necessary physical, financial and staff resources in place to sustain growth overtime.[127]

The business plan will inform both the contributions to the capital campaign and the endowment that will be made by the Fishers, as well as the funds that need to be raised by the museum.[128] The museum announced it has already raised more than $250 million to finance the building and double the museum's endowment from the board's leadership.[129]

The size and scope of the Fisher Collection makes it a "transformational gift." Grace and Wendroff define a transformational gift as one that is unique in its capacity to alter the programs, perceptions, and future of an organization.[130] A collection of this magnitude will solidify SFMOMA as a vital cultural hub and make San Francisco an art destination in a new way. The Fisher Collection and expansion will heighten the profile of SFMOMA. The Fisher Collection is a complement to SFMOMA's permanent collection. The Collection will add new depth to

---

[126] Currently, several departments – Public Relations & Marketing, Development, Human Resources and Interactive Educational Technologies – are located in an administrative building across the street from the museum known as the "Minna Annex."

[127] San Francisco Museum of Modern Art, "SFMOMA Announces Pioneering Partnership to Share Fisher Collection with the Public," September 25, 2009, accessed December 15, 2010, http://www.sfmoma.org/press/releases/news/823.

[128] Ibid.

[129] It is unclear whether that Fisher family's contribution is accounted for in the initial $250 million figure or not.

[130] Grace and Wendroff, *High Impact Philanthropy*, 2.

artists already represented in the SFMOMA collection like Ellsworth Kelly and Gerhard Richter and give a more comprehensive presentation of the development of artists like Roy Lichtenstein and Andy Warhol. Zarobell says that in dealing with museum colleagues having a world class collection at your disposal helps in organizing exhibitions.[131] Institutions are more eager to lend works when they see what your museum can do in return. With the addition of the Fisher's holdings, Arne Glimcher says SFMOMA should become "the second most important modern museum in America, just behind the Museum of Modern Art," and "in the Top Ten among modern art museums in the world."[132] The partnership between the Fisher's and SFMOMA ensures that the collection is a public resource to benefit the Bay Area as well as national and international visitors for generations to come.

Zarobell says this partnership goes beyond the "simple notion of the collection."[133] The Fisher Collection at SFMOMA is not an outright gift but rather a partnership between the two parties. The collection will be transferred to a foundation directed by the Fisher family but stored, conserved, managed and organized into shows by the museum, as if it was part of the permanent collection. SFMOMA feels that the partnership is significant to the art and museum world as a whole. The partnership "offers a new model for museums to partner with major collectors in a way that satisfies patrons' natural desires to share their collections publicly, while allowing them to benefit from museum's curatorial expertise and encouraging them to make choices that will benefit future generations of museum visitors."[134] Benezra says, "for some time

---

[131] Zarobell, discussion.
[132] Kino, "Private Collection Becomes Very Public."
[133] Zarobell, discussion.
[134] San Francisco Museum of Modern Art, "Our Expansion: The Fisher Collection," accessed December 15, 2010, http://www.sfmoma.org/pages/expansion_fisher_collection.

now we've needed to find a third way for museums and collectors to work together. Hopefully, this might be it."[135]

Zarobell says, "The onus is on us [museum professionals] to bring collections into our orbit. It is important to try new avenues; keep the conversation going."[136] The perseverance and vision of SFMOMA and the dedication and benevolence of the Fishers allowed for the conversation to continue even when the circumstances seemed to be unable to meet the needs and wants of both parties. The Fisher Collection will be on the public stage shortly; the works will remain at Gap until the completion of the expansion. In June 2010, about 160 pieces went on view in the exhibition "Calder to Warhol: Introducing the Fisher Collection," as the opening act before the main event. The stewardship of the entire collection is scheduled to take place in the fall of 2016, when SFMOMA plans to open a wing largely dedicated to the new holdings. The museum community will see if the terms accepted by both parties will prove a successful marrying of the interests of institution and the collector.

Throughout the development of this historic relationship, SFMOMA has assessed its increased financial needs and resources, respected the sensitivities of collectors who have shown great dedication to the museum and their home city, accounted for integration of the permanent collection with the Fisher Collection to maintain an appropriate level of curatorial discretion and included provisions for revaluation of the partnership in the future by the descendants of the Fisher family and the museum leadership at that time. At present, the partnership looks to be a hybridization of donor restrictions and institutional practices resulting in a creative solution that respects the wishes of the collector and ensures integrity of the museum. However, time will tell if this is a truly a successful partnership between SFMOMA and the Fisher family.

---

[135] Kino, "Private Collection Becomes Very Public."
[136] Zarobell, discussion.

Case Study II – Eli Broad and the Los Angeles County Museum of Art

Eli Broad, the billionaire financier, philanthropist and collector of modern and contemporary art, has had a long and storied relationship with the Los Angeles County Museum of Art (LACMA). The section will focus on most significant developments of Broad's relationship with the museum, where he serves as a lifetime trustee, over the past decade. In 2001, the 109 work show, "Jasper Johns to Jeff Koons: Four Decades of Art from the Broad Collections," which showcased Broad's collection, debuted at LACMA and traveled to Washington, D.C.'s Corcoran Gallery and Boston's Museum of Fine Arts. The museum was widely criticized for mounting a large exhibition of Broad's collection without arranging a promised gift of art. Having a major exhibition of works from a private collector without having secured a promised gift is an act that is prohibited at many prominent art institutions because it can be viewed as a strategy to increase the market value of the collection. Some public opposition claimed the exhibition was a blatant attempt on the part of LAMCA to entice Broad to make a donation of art work to the museum. Whether that was indeed the intention of LACMA remains unknown. Ultimately, the works from the show were not donated to the museum.

However, Broad continued to have strong philanthropic ties with LACMA. Broad agreed to fund LACMA's Wilshire Boulevard expansion plan. In 2004, the expansion appeared permanently stalled after the competition-winning design by Rem Koolhaas was abandoned due to impracticality and difficulty in securing necessary funding. Broad's $56 million dollar gift resuscitated the project. He financed the 72,000 square foot structure and contributed an additional $10 million for acquisitions including a 200-ton Richard Serra sculpture, *Band* (2006). In exchange for his donation, he was allowed to select the architect, Rienzo Piano, and set up an

independent board to oversee the construction and the acquisition fund of the Broad Contemporary Art Museum (BCAM).

Certain aspects of Broad's arrangement with LAMCA resemble that of the Robert Lehman Wing at the Metropolitan Museum of Art in New York. Robert Lehman, an investment banker and Met trustee who died in 1969, left his collection to the museum but set up a private board to oversee the gift, required the Met to install the collection in a new wing that was a replica of his Manhattan townhouse and placed tight restrictions on the display of the art. In 1975, the Met welcomed the Lehman Collection as a permanent installation of Old Master paintings, drawings and decorative objects. Hilton Kramer was less than ecstatic over the new galleries filled with paintings by Ingres, Cezanne, Matisse, Goya, and Rembrandt. He said:

> We see great paintings tethered to the sumptuous taste of their former owners, inured forever in an atmosphere of decorative extravagance that – to some eyes, at least – denies these paintings their proper ambiance… In the Lehman wing, we see great art in a broker's vision of good life – an interesting object of social curiosity, to be sure, but not what some of us look to museums to provide…The collector's taste has been allowed to obtrude upon the painters, and it is the painters' taste and vision and achievement we have come to see.[137]

But Broad dismissed any intimation that he was walking in Lehman's footstep and that the board was merely a means of overseeing the construction and spending the acquisition budget efficiently, not to influence museum operations.[138] What is notable is the willingness of the museum leadership at the Met and LACMA to grant both Lehman and Broad an architecturally distinct wing constituting a personal memorial of immense proportions.

Was too much power granted to a donor whose support was essential to the completion of the project? The former President and Director of LACMA, Andrea Rich, defended the amount of deference granted to Broad. She said:

---

[137] Hilton Kramer, "Manner of Displaying Works Raises Vital Questions," *New York Times*, May 14, 1975.
[138] Suzanne Muchnic, "The Art of Giving In to a Giver," *Los Angeles Times*, August 23, 2004, accessed April 2, 2011, http://articles.latimes.com/print/2004/aug/23/business/fi-broad23.

> The agreement ensures that LACMA, in the end, is the sole proprietor. Donors shouldn't be given control of museum operations, personnel and policy. And anything that would inhibit the institution's long-term control of a gift is not a good thing. But I figure of Eli [Broad] wants to have fun with this for 10 years, if he wants to buy art, build a building and know, when it's all said and done, his contribution is part of something forever, what's wrong with that?[139]

The concession made might have not had an effect on the long-term control of a gift, per se, but does this set a precedent for other museums to allow donors to dictate how their money can be used to transform an institution? The addition of BCAM is another example of a "transformational gift," much like the Fisher Collection at SFMOMA. The actions of one donor is enough to change the institutional fabric of a museum and describing that ability as "fun" seems caviler and short-sided.

In 2008, the opening of the BCAM was eclipsed by the news that Broad would not donate his artworks to LACMA, but rather his independent foundation would retain permanent control of the works. Broad's foundation loans works of art rather than gives the art away. This decision sparked controversy because Broad had made public statements about his intentions to donate most of his collection to one or several museums. In an interview the day before BCAM's opening gala, he said, "If I had to do it over again maybe I should have just said, 'I haven't decided.' I blew it, OK? I figured an honest answer that makes sense was better than avoiding it."[140] His decision not to donate the works evolved as the collection grew. It became clear to Broad that no museum, LACMA included, would commit to placing a large percentage of the works on permanent exhibition. Broad said, "We don't want it to end up in storage, in either our basement or somebody else's basement. So I, as the collector, am saying, 'If you're not willing to commit to show it, why don't we just make it available to you when you want it, as

---

[139] Ibid.

[140] Lee Rosenbaum, "L.A. Story with Broad and Piano," *Wall Street Journal*, February 20, 2008, accessed March 24, 2011, http://online.wsj.com/article/SB120346534895278441.html.

opposed to giving it to you, and then our being unhappy that it's only up 10 percent or 20 percent of the time or not being shown at all?'"[141]

He describes that decision as part of an effort to help smaller museums maximize the educational reach of his collection. Broad said, "Museums do not share their collections with other museums unless they get something in exchange...The Metropolitan [Museum of Art] will deal with the Louvre, but will they send their stuff to Memphis? No."[142] Broad argues that small museums have great difficulty competing against larger institutions for funding and quality work. His foundation has made over 7,000 loans to over 450 groups since its creation in 1984. The foundation will bear the responsibility of conserving, storing and insuring the works. While this is an interesting model, most individuals do not have the financial capacity to endow a foundation of this nature. It seems unlikely that "lending foundations" will be a trend among donors.

This is not the first time that LACMA has missed out on the gift of a major collection from a prominent local patron. The actor Edward G. Robinson sold his art work in a divorce settlement. Both Armand Hammer, the founder of Occidental Petroleum, and Norton Simon, the canned-food magnate, decided to build their own museums in Los Angeles after toying with the idea of donating their works to LACMA. In 2001, the museum lost out on the collection of Nathan Smooke, a former museum trustee and industrial real-estate developer whose heirs sold much of his collection rather than donating it. Broad's decision to keep his collection of contemporary art instead of giving it to LACMA evokes these lost opportunities. For LACMA, this decision has negative and positive aspects. Other collectors may be less inclined to donate

---

[141] Edward Wyatt, "An Art Donor Opts to Hold on to His Collection," *New York Times*, January 8, 2008, accessed March 30, 2011, http://www.nytimes.com/2008/01/08/arts/design/08muse.html?_r=1&ref=arts&pagewanted=print.

[142] Naomi Schaefer Riley, "We're In the Venture Philanthropy Business," *The Wall Street Journal*, August 28, 2009, accessed March 30, 2011, http://online.wsj.com/article/SB10001424052970204251404574342693 329347698.html.

to the BCMA seeing that one of the more influential donors decided not to donate art, even when the building bears name his name. Conversely, donors may see that the BCAM will not be solely devoted to all of the works owned by Broad all the time and, if donated, their works will have an opportunity to be seen in the galleries. In addition, works can still be loaned to the LACMA by Broad's foundation.

Meanwhile, despite Broad's historically strong patronage of both LACMA and Museum of Contemporary Art (MOCA) and public statements that he was not building his own museum, Broad is forging ahead with a 120,000-square-foot exhibition space of his own. The museum is set to be built down the street from the MOCA as part of a large-scale plan to revitalize downtown Los Angeles. In addition to paying the lease on a 2.5 acre parcel on Grand Avenue ($7.7 million for a 99-year lease), Broad is planning to pay for the construction of the building estimated to cost between $80 and $100 million. He also contributed $200 million to the museum's endowment to cover annual operating expenses.

Broad comes to any negotiating table with a strong hand. His personal fortune amassed through an international home-building firm and an insurance conglomerate is estimated at over $5 billion. His collection of paintings, sculptures and photographs, assembled over the past forty years, is considered by some to be one of the best in the nation. Does this mean that he can say one thing and do another? Knight says that Broad is a "highly successful businessman who exchanges project involvement for near-absolute control."[143] An individual with this amount of economic, social and political clout would see relinquishing control as an unquestionable request. Whether it is selecting a world-renowned architect, determining which museum his foundation will lend to, or building a museum of his own, Broad, it seems, expects the game to

[143] Christopher Knight, "Change of heart, change of fortune," *Los Angeles Times*, January 11, 2008, accessed March 30, 2011, http://articles.latimes.com/print/2008/jan/11/entertainment/et-critic11.

be played by his rules. In no means, is this meant to belittle the contributions Broad has made in the areas of education, science and the arts. He is a man characterized by great largess, but will ultimately act in a way that he determines as the best use of his time and extensive resources.

Broad personal motivations and the LACMA's understanding of these motivations appear to have been different in regards to the donation of works from his collection on several occasions. LACMA, whether they acted in a manner that tried to entice Broad to donate a portion of his collection to the museum or not, needs to be careful about giving almost free reign to any donor. The museum is accountable, to all members of the public, whether they are of financial and social means or not. Bending to the wishes of a single individual at the expense of institutional integrity can be a lapse in the museum's mandate to serve the public.

IV. Best Practices

Review of Professional Guidelines

Ethics and the legal system are often interdependent. The ideals of an ethical code can surpass the legal minimum set forth by society's regulatory body. Ethics intends to represent the highest standards for a profession and adhering to them is a means of ensuring integrity in a given field. In the museum profession, ethical codes establish the standard for actions that are acceptable within museological boundaries. Ethics cannot always be enforced as professional guidelines since they are not legal mandates. The American Association of Museums, the Association of Museum Directors, the International Council of Museums all have a codification of principles seen as fundamental and applicable to the museum community at large. All three texts documents offer guidance on the issue of collections management and, to a varying degree, the issue of donor restrictions.

American Association of Museums

The American Association of Museums (AAM) was founded in 1906 as a venue for those within the community of museum professionals to discuss standard practices and ethical issues related to the field. The AAM's first code of ethics, *Code of Ethics for Museum Works*, was published in 1925. Over the past eighty-five years, this policy has been amended and rewritten to respond to the evolution of the museum field and current challenges faced.[144] In the AAM's most recent edition of the *Code of Ethics*, a section is devoted to expected standards of care and development of the museum's collection. These overarching recommendations relate to the constraints and limitations faced by museums outlined previously in the paper. For example, AAM states museums should ensure that "collections in its custody are accounted for and

[144] King and Levin, *Ethics and the Visual* Arts, 4.

documented," "acquisition, disposal, and loan activities conform to its mission and public trust responsibilities," "access to the collections and related information is permitted and regulated," "collections-related activities promote the public good rather than individual financial gain." [145]

When a museum accepts a work into the collection, the AAM expects that the work will be properly documented and cared for. The museum should not accept works into the collection for which it cannot devote the appropriate resources for preservation and research. If a museum can accommodate ten more works in its current storage facility, but a donor insists that a collection in its entirety be taken, the museum must carefully deliberate the burden of accepting works past its current capacity. If a museum is not in a sound position to allot the necessary resources, accepting the works would be a disservice to the public. Museums are stewards of their collections for the public. AAM may perceive a museums' decision of accepting all fifty works as a breach of ethics if the museum cannot fulfill the duties of care and documentation; the museum must perform due diligence to evaluate the means available in the present and be realistic about identifying future needs of the institution.

In addition to caring for the object, the work and information regarding the work should be accessible. The *Code of Ethics* does not speak to a specific degree of accessibility. For example, if a work is stored in a facility off-site and maintained by a separate security company, scheduling time for an academic to visit works in the storage area might have to be coordinated weeks in advance. This assumes that a staff member of the institution has time, within performing his or her normal duties, to take a visiting professional to the facility. Once again, accepting works that full-time staff and colleagues within the field cannot gain access to might be considered a lapse in ethical responsibilities.

---

[145] American Association of Museum, *Code of Ethics* (2001), accessed November 1, 2010, http://www.aam-us.org/museumresources/ethics/coe.cfm.

AAM also suggests that museum be conscious of the financial gain of an individual at the expense of promoting the public good. Accepting a work into the collection could have residual benefits for the value of similar works by the same artist. A collector may want to donate some of the collection to a museum with the stipulation that those works are never to be sold. In effect, this could decrease the supply of art available by one artist on the open market. The collector could be in possession of a number of remaining works by the artist and has the option to put them up for sale on the secondary market at will. The museum must be cognizant of the motives of someone in a position to gain financially even when the act may appear altruistic and benevolent on the surface.

While none of the recommendations in the *Code of Ethics* explicitly address the issue of donor restrictions, the principles can be extrapolated to cover potential situations. The AAM's website does have a "Frequently Asked Questions" section which offers guidance to those looking to donate works to a museum. AAM shares the onus of making a responsible decision about the donating of a work with the donor. AAM encourages a potential donor to first conduct research to find a potential institution whose mission and collection relates to the object at hand. Furthermore:

> Donors ...should keep in mind that a museum incurs legal, social, and ethical obligations to provide proper physical storage, management, and care for the collections and associated documentation, as well as proper intellectual control. Collections are held in trust for the public (both present and future generations) and made accessible for their benefit. Because of these obligations and their financial impact, museums must be selective in what they add to their collections. A museum generally will accept an object only if it is free of all conditions and restrictions imposed by the donor.... Once an unrestricted title is transferred to the museum, the donor....relinquishes all rights to the object. The donor ....has no say as to when or how the object is exhibited. Future generations have no claim in asking that the object be returned to the family.[146]

[146] American Association of Museums, "Museums FAQ," accessed March 23, 2011, http://www.aam-us.org/aboutmuseums/abc.cfm#donate.

This section speaks to the responsibilities, constraints and subsequent general practices of the museum as something that the donor should be aware of when looking to donate a work to a museum. By not putting specific wording in the *Code of Ethics* section about restricted gifts, AAM allows for the museum to deliberate the application of ethical principles on a case-by-case basis and also puts the donor on notice to standard professional practices.

Association of Art Museum Directors

The AAM takes into consideration the practices for all different types of museums – science, natural history, art, etc. – and needs to be all-encompassing for the museum profession as a whole. The Association of Art Museum Directors (AAMD) deals exclusively with the governance of art museums. *Professional Practices in Art Museums*[147] serves as a resource and guide for those in leadership roles at art museums. Similar to the AAM's *Code of Ethics*, AAMD identifies development, preservation, conservation, documentation, study, presentation and explication as "cardinal responsibilities" of the collecting institution. More specifically, the document outlines the appropriate steps of the acquisition policy through purchase[148] and through gift or bequest. The AAMD recommends that the same process for acquisitions be followed with some additional considerations:

---

[147] *Professional Practices in Art Museums* was adopted by the membership of the Association of Art Museum Directors, June 1966; amended 1971, 1973, 1974, 1991, and 2001.

[148] Association of Art Museum Directors, *Professional Practices in Art Museums* (New York: Association of Art Museum Directors, 2001): "The director and the curatorial staff are responsible for identifying possible acquisitions made through purchase. No work of art may be considered for acquisition without the recommendation of the director. The board, as a whole or through an authorized committee, must approve all recommendations for acquisition through purchase. The board may grant authority to the director to approve purchases within prescribed limits; the director must report these purchases to the board," 9.

> A similar procedure should be followed for acquisitions made through gift and bequest; these should be unrestricted whenever possible. No work of art should be accepted or acquired with conditions that restrict or otherwise interfere with the museum's obligation to apply the most reliable scholarly and scientific information available to questions of attribution, dating, iconography, provenance, and related matters.[149]

AAMD puts the responsibility on the institution to be cautious when evaluating the restrictions associated with gifts of art. If the restrictions conflict with the museum's obligation to conduct research, they should not be accepted. However, this guideline does not address all the areas in which a restricted gift can be a burden to the museum. It does not account for the impact on curatorial discretion. For example, if a donated collection must be shown in its entirety in a specific location, this discounts for the integration with the rest of the museum's collection and limits the way in which the curatorial staff can interpret and present the holdings of the museum.

From time to time, the AAMD issues statements concerning aspects of the art museum profession, such as the role of the private collection in the growth of museum collections. *Art Museums, Private Collectors, and the Public Benefit*, a position paper from the AAMD, notes that more than ninety percent of art collections held in public trust in the United States was donated by private collectors. Recognizing the delicate balance between museums and donors, the AAMD realizes the importance of maintaining positive relationships with collectors for the benefit of the public. There is a need to foster these relationships because museums are dependent on the generosity of the private sector. However, generosity does not constitute authority or power over the operations of the institution. As a result, there may be situations in which the acceptance of a restricted gift from a donor might be perceived as an unwarranted interference with institutional authority.

---

[149] Ibid.

The AAMD put forth a series of questions to help institutions carefully evaluate potential benefits and disadvantages of accepting donations. Some of the rhetorical guidelines are:

> Are the collector's motives transparent and acceptable to the museum? Are there restrictive conditions on the loan or gift that place an undue burden on the museum? Is the collector an individual with a reputation of integrity whose involvement enhances the museum's program?[150]

The institution must be mindful of the donor's intention. The institution must consider if the donor stands to profit, financially or socially, from the donation. The AAMD's *Professional Practice in the Art Museum* strongly advises against accepting restricted gifts and says they should be unrestricted whenever possible. With these situations, it is prudent to take a position of cautious interest. Entering a situation in which a museum's integrity the museums could be compromised by honoring the wishes of a donor that is contrary to the overall good of the museum would not be prudent. It is better to decline a compromising gift than to find the institution engrossed in a possible legal battle or ethical dilemma. The last question recognizes the museum must be mindful of the donor's reputation. Being associated with a less than reputable donor can mar the image of the museum. The museum must protect its own interests as a benefactor of the public.

International Council of Museums

The International Council of Museum's *Code of Ethics for Museums* advocates for proper care, documentation and creation of a written collections management policy with provision for works in storage and on display. There is no specific language regarding the acceptance of

---

[150] Association of Art Museum Directors, "Art Museums, Private Collectors and the Public Benefit," (January 2007), accessed November 10, 2010, http://www.aamd.org/papers/documents/PrivateCollectors3.pdf.

donor restrictions,[151] but ICOM calls for a review of the conditions agreed upon when considering disposing of a work from the collection. ICOM says, "Where the original acquisition was subject to mandatory or other restrictions these conditions must be observed, unless it can be shown clearly that adherence to such restrictions is impossible or substantially detrimental to the institution and, if appropriate, relief may be sought through legal procedures."[152] ICOM recognizes the museum's right to seek relief through legal action when donor restrictions prove to be overly burdensome. This stance seems reactionary since ICOM offers no guidance of what to do when faced with the decision to accept or decline donors' wishes.

Recommendations for Current and Future Museum Professionals

Promote Transparency and Communication

After reviewing the guidelines set forth by AAM, AAMD and ICOM, it is recommended that in dealing with patrons museums and donations of art museums exercise transparency and communication throughout the entire process from consideration to acceptance. A museum must give special consideration before it can accept works of personal property such as art. The Museum of Modern Art (MoMA) recommends that an individual "considering donating a work of art to the Museum…should first contact a curator in the appropriate curatorial department to talk about the proposed gift."[153] The curator at any museum can serve as the immediate assessor

---

[151] The first iteration of the International Council of Museum's *Code of Professional Ethics* include specific language regarding the acceptance of donor restrictions: "Offers (of gifts) that are subject to special conditions may have to be rejected if the conditions proposed are judged to be contrary to the long-term interests of the museum and its public." § 3.5 (1986). This echoes the precautionary working of the AAMD's *Professional Practice in the Art Museum.*

[152] International Council of Museums, *Code of Ethics for Museums*, § 2.12 (2006), accessed November 3, 2010. http://icom.museum/ethics.html#intro.

[153] The Museum of Modern Art, "Tangible Personal Property," accessed March 14, 2011, http://www.moma.org/support/support_the_museum/planned_giving/property.

as to whether or not a work has a place in the purview of the museum's collection and if the museum would be interested in accepting the donation. The curator is not the only one responsible for the decision but as an individual with a great deal of knowledge about the collection, he or she may be the most suitable individual to make an initial assessment of the proposed gift or donation.

In discussing the donation of a work, the museum should be direct and honest with the donor about the institution's collections management policy and its criteria for selection and potential uses of the work. Some donors are board of trustee members or serve on the acquisition committees so they come to the table with a greater familiarity of the museum's internal processes. However, for those not privy to the inner workings of the museum and even as a refreshers for more seasoned donors, it is advantageous for the museum to make it clear that a work is of value to the museum and its public whether the work is on display or in storage. The museum must be realistic with donors and be diligent in illustrating the many different ways in which a donation can be of benefit to the institution. By engaging in a dialogue, museums can help donors understand that a work without donor restrictions puts the museum in a position to explore a greater number of future possibilities in exhibitions, programming and scholarly research.

Yet, the conversation between the museum and the donor should not be one way. Museums are in a unique position to better understand donors if they listen to their concerns and parse out their motivations for giving. Through first-hand discussion and active engagement, museums can determine why a donor might think that a restricted gift is an effective way to safeguard his or her interests. This discourse is a way for the museum and donors to establish common ground. The ultimate goal of their combined efforts is the advancement of the

institutional mission. Using that commonality as a spring board can help both sides to see that their interests are better served through an unrestricted gift.

Transparency and communication are not burdensome principles, but ideas that should be inherent in all aspects of the day-to-day operations of an art museum. When dealing with an external party such as a donor, these principles should be standard practices. Donors are members of the public, the same group that a museum is charged with serving. Donors are not only a source of financial and physical contributions, but they represent a group that has responded positively to a call to action. Their support demonstrates that an institution's mission has resonated with them. Building lasting relationships with people who believe in the perpetuity of that mission is a dynamic and challenging role. By being candid and frank with donors about the potential use of donated works, even if the work may spend time in storage or be eventually sold, shows a level of respect to the donors' role in augmenting the resources of the institution. Learning how to include people in the rationale used in the decision-making process creates an atmosphere of mutual respect and a shared investment in the success and growth of the institution.

However, there is a distinction between allowing donors to witness the implementation of the rationale used in the decision making process rather than being the executor of the decision. For example, a donor had been promised to make one of the most significant donations in terms of scope and size to the modern art department of a museum. The donor in the past had also given sizable financial contributions to the museum. When the donor found out a new curator for the department of modern art was hired without being consulted for his opinion, the donor wanted to revoke his promise of the gift to the museum.[154] He felt that his input should have

[154] An actual, tangential situation occurred at the University of Connecticut involving a monetary donation to the school's Athletic Department. Robert Burton, an honorary doctorate recipient and prolific donor, demanded the return of $3 million and the removal of his family's name from the football complex after the hiring of the University's new football coach. In a letter dated January 19th, 2011 to the school's director of athletics, Jeff Hathaway, Burton cited his discontent that his opinions were not considered in the selection process of the new

been considered because of the pending donation and his giving history to the museum. This puts the museum in a precarious situation. A charitable pledge is enforceable by law. The Association of Fundraising Professional's legal counsel, Perlman & Perlman, LLP, authored a document summarizing the legal issues involving unclaimed charitable pledges. The document states:

> Under traditional contract law principles, a charitable pledge is enforceable if it meets the requirements for a legally binding contract. There must be an agreement between the donor and the charity -- in effect, the donor must promise to make a gift and the charity must promise to accept it. The terms of the agreement must be clear and all conditions specified. There must be 'consideration' given in exchange for the pledge, which essentially means that the charity must agree to do something (or not do something) in exchange for the promised donation. [155]

Museums typically shy away from suing donors for uncollected pledges because it could generate negative publicity. Donors may see the museum as willing to resort to ligation to secure pledges, even when the donor and museum may no longer agree on what is in the best interest of the institution. This would set an unfavorable precedent in the eyes of potential donors. There are varying degrees of sensitivities at play, but ultimately the management and institutional decisions must be left in the hands of the museums staff, not those that possess significant private collections and are financially well-off. The museum would have to remain resolute in its hiring decision, even in the face of losing a donation. Allowing the donor to dictate employment processes would result in a case of interference institutional integrity. Donors can be the source of creative ideas and solutions that museum professionals might not have considered. However, implementing these suggestions should never be mandatory.

---

coach and he wanted to University to return his money. Despite Burton's demand, the University remained firm in the candidate selection. Only after Burton and his family meet with the University's Board of Trustee Chairman, Larry McHugh, in early February did Burton and the University agreed to move past their differences in the matter and Burton agreed to honor his $3 million pledge.

[155] Perlman & Perlman, LLP, "Legal Issues Related to Unfilled Charitable Pledges," *Association of Fundraising Professionals* (2008), accessed April 4, 2011, http://www.afpnet.org/Audiences/ReportsResearchDetail.cfm?ItemNumber=2684.

Donor Education Program

Donors may not understand the full extent to which museums are under strain to continue to operate in today's economic climate: general operating costs continue to rise; there is increased pressure to record and report measurable outcomes to funders; and then there are limitations to expand one's physical footprint and audience reached – these are just some of the obstacles faced by museums today. However, it is worthwhile to bring donors in on these conversations rather than assume they do not fully grasp the condition of the art world or are unsympathetic to the issues at hand. Museums can create a donor education program to make constituents aware of the challenges faced; in particular, museums limited purchasing power for new acquisitions, an introduction to the acquisitions process and an exploration of the resources needed to upkeep the current collection.

The class could be open to all members of the museum's public, not only those being courted as prospective donors of art work. Contributing and non-contributing constituents alike are vested in the success and future of the museums they support or frequent. A donor education class provides an opportunity to educate those in a position to give now; and it is an opportunity to be part of cultivation efforts for the future generation of donors. "People may not have the dollars in the beginning," said a trustee of the Boston Museum of Fine Arts, "but they need to be trained early on and exposed to what philanthropy is."[156] Cultivating relationships requires being in touch with people constantly, not just when the museum wants something or when the patron is ready to give. A donor education program focused on the acquisitions process can serve as a point of contact with savvy collectors, those beginning to build collections and non-collecting individuals with an interest in the inner workings of the museum. If a donor education program is in place, it can encourage participation from those on the cusp of giving and to those giving

[156] Garber, *Patronizing the Arts,* 119.

potential will be realized down the line. It shows that an institution is willing to be open with all constituents whether they are major donors or have yet to make a financial contribution.

Implementation strategies may change from museum to museum, but the idea remains the same. A donor education class is an opportunity to inform and educate the public about the aims, purposes, and aspirations of the museum in regarding to collection development. The class could be taught by a variety of museum staff members including curators, registrars, development professionals or the director.[157] Topics covered could include an overview of the acquisition process by a member of the acquisition committee or a curator, a tour of the onsite storage facilities by the registrar, and a review of the current iteration of the tax code policy by a member of the development staff. An on-site behind-the-scenes visit would show donors tangible evidence that their gifts are making a difference. A tour of the storage facilities or conservation lab may invite donors to imagine how a potential gift may benefit the institution.

Steven H. Miller agrees that including a tour of the storage facilities is an excellent educational opportunity. He says that doing so can, "show them [donors] what's going on; to help them [donors] understand that storage does not mean oblivion."[158] Displaying works are not the only reason that museum exists, but rather museums are what Miller refers to as "three-dimensional libraries." Museums are indicators of the past, present and the future; works in storage play a large role in allowing museums to exists in all three dimensions simultaneously.

Alexandra Schwartz notes that having donors understand how the process of utilizing the collection through research and making the works available to the public in ways other than display is important to explaining that all works in the collection can have a meaningful

---

[157] Meeting the director at a smaller institution may not be uncommon, but at middle and large scale museums day-to-day visitors meeting the director may happen infrequently or never.

[158] Steven H. Miller (Adjunct Professor, Seton Hall University and former Director, Morris Museum in New Jersey), in discussion with the author, April 7, 2011.

impact.[159] She cites the book, *Modern Women: Women Artists at The Museum of Modern Art*,[160] as a prime example of a museum diligently mining the collection and making new discoveries. The publication had humble begins; a dedicated intern took low resolution works, basic images, of all works by female artists in the collection. The research for the book was a strong effort to determine what MoMA had in its collection by female artists and how that related to the consensus of art history. In 2010, the project grew from a publication to a series of new collection installations and programming initiatives highlighting the works of women artists. Internally, this helped the staff realize the full breath of the resources at hand. Externally, certain works gained recognition and a renewed sense of appreciation developed for artists such as Howardena Pindell, a painter and mixed media artist. Even though a number of the works featured in the book and subsequent exhibitions had not been on display in a number of years, decades or ever, the collection can be a means of connecting the public to artist and movements in a new way through research and publication.

While overall operations of the museum can be discussed, the more nuanced message for the program can be the importance of the role of the curator in creating an environment for inquisitive looking, sharpening perspectives, raising visual literacy and widening perspectives through new connections and contrasts. Works that do not have donor restrictions allows for the making and remaking of the world encountered with the museum galleries. Each story told within the museum is an opportunity for the public to have a new and meaningful experience with the works in the collection.

---

[159] Alexandra Schwartz (Curator of Contemporary Art, Montclair Art Museum in New Jersey and former Curatorial Assistant, Department of Drawings at the Museum of Modern Art), in discussion with the author, April 5, 2011.

[160] Schwartz served as co-editor of *Modern Women: Women Artists at The Museum of Modern Art*.

V. Conclusion

Art museums are asked to balance public expectations with institutional needs in their day-to-day management and long-term strategic planning. It is expected that museums will behave in a way that is consistent with the responsibility and trust invested in them by society and codified by privileges they receive as non-profits. Today's museum environment has become increasingly complicated as it has to respond to increased competition, changing social values, and diminished financial resources; the strain of which can tempt museums to stretch the boundaries of accepted museological practices. The last several decades have seen a drastic rise in prices of modern and contemporary art. Museums have become heavily reliant on the benevolence of collectors and patrons to aid in the growth of their collections. A gift of art can have substantial benefits to the museum, but museums should be diligent in their decision making and should not accept gifts blindly, no matter how generous donors may appear.

A seemingly attractive offer of works of art does not excuse the institution from making decisions judiciously. The museum must consider a variety of factors before accepting the gift, especially if the donor wishes to attach restrictions to the work. Can the museum allot physical and human resources to the care for the new works? Are these works that vastly increase the museum's depth and representation of a particular artist or arts movement? Will donor restrictions impede curatorial discretion and exploration of new intellectual frameworks? What is the previous nature of the patron's relationship with the institution? Is the museum only accepting the work as a means to please the donor and curry potential favor for later monetary contributions or donations of property? Does acceptance of the gift augment the collector's social standing at the expense of the museum's reputation? What are the reasons the patron has

chosen to give to a particular institution? In weighing the potential options, the museum should be considerate of donors' benevolence, but vested in maintaining the institution's integrity.

Museum collections management policies often have a provision that recommends against accepting gifts with restrictions or any conditional gifts. However, there have been instances when museums acquiesce to a donor's stipulations. Often, the passage of time has revealed these situations as unduly restrictive, like the John G. Johnson Collection at the Philadelphia Museum of Art or the acceptance of donor restrictions has drawn public and professional criticism, like the Wendy and Emery Reves Collection at the Dallas Museum of Art. American museums owe the vast majority of their art collections to gifts from private collectors. Since the nineteenth century, collectors such as J.P. Morgan, Solomon Guggenheim, Gertrude Vanderbilt Whitney and generations of Rockefellers have donated their art collectors. Private philanthropy has been long interwoven in the fabric of American art museums. Currently, museums are at a juncture where they cannot compete with the purchasing power of private individuals. Therefore, the onus is on museums to act in a manner that augments the collection and acknowledges the concerns and interests of donors.

There are instances where the museum's integrity and donor restrictions can co-exist. The partnership between the Fisher family and the San Francisco Museum of Modern Art appears to be a successful marrying of the interests of both the museum and the donor. Donald Fisher was vocal about wanting his collection to be seen by the public, whether in a newly built museum or as a gift to an established museum. For SFMOMA to obtain the collection and for Fisher to have his collection on display, a creative solution was agreed upon that served the best interests of the involved parties. The Fisher family was asked to contribute to the new construction and endowment for the continued support of the collection, helping with the

increased financial expenses incurred by accepting a collection of over 1,000 works and expanding the museum's physical footprint. The new wing would not be devoted solely to the Fisher Collection, but rather SFMOMA's current holdings and future holdings will hang side by side with the newly acquired collection. Being able to fully integrate works from both, the Fisher collection and the museum's permanent collection, will allow for advances in current scholarship and new interpretive plans to flourish. Perhaps, most importantly, is the opportunity for the heirs of Donald and Doris Fisher and the present museum leadership to reevaluate the terms of the partnership in the future. The downfall of many instances of accepting donor restrictions is the inability to predict the future climate of the museum's financial standings and institutional direction. By including a provision to reassess the partnership, it anticipates the possibility of changing needs and limitations of the museum. If the museum accepts donor restrictions, it is the responsibility of the museum to come to an agreement which is an acceptable conjunction of public and private interests, while simultaneously addressing the short-term needs of the institution and planning for the future.

American art museums represent a large, heterogeneous set of individuals and organizations engaged in the presentation, preservation and education of the world's cultural heritage. Because of the decentralization and varying make-up of art museums, it is difficult to propose a solution that would be applicable in all situations to museums of different scopes and sizes. However, institutions should consider each proposed instance of donor restrictions on a case-by-case basis in an attempt to avoid the pitfalls of those before them. While donor restrictions should be avoided, there are instances in which open communication and transparency of an arrangement can ensure both the museum's and the donor's interests are safeguarded. At minimum, the museum and donors should be engaged in a discussion that the

focuses on the strengthening of the museum as the ultimate goal. By establishing the advancement of the museum as the common denominator, the development of a creative solution for the transfer of private property is possible.

Bibliography

A Life of Collecting: Victor and Sally Ganz. Edited by Michael Fitzgerald. New York: Christies, 1997.

American Association of Museums. *Code of Ethics*. 2000. Accessed November 1, 2010. http://www.aam-us.org/museumresources/ethics/coe.cfm.

———. "Museums FAQ." Accessed March 23, 2011, http://www.aam-us.org/aboutmuseums/abc.cfm#donate.

"Art: John G. Johnson's Art." *Time*. November, 10, 1941. Accessed April 3, 2011. http://www.time.com/time/printout/0,8816,851423,00.html.

Association of Art Museum Directors. "Art Museums, Private Collectors and the Public Benefit." January 2007. Accessed November 10, 2010. http://www.aamd.org/papers/documents/PrivateCollectors3.pdf.

———. *Professional Practices in Art Museums*. New York: Association of Art Museum Directors, 2001.

Baker, Kenneth. "Art For Our Sake / Plan: 100,000 square feet for works that have mostly been seen by art world." *San Francisco Chronicle* video. 7:07. August 2007. Accessed April 3, 2011. http://www.sfgate.com/cgi-bin/object/article?f=/c/a/2007/08/08/MNVJREV8S2.DTL&o=0.

Behrman, CHECK! S.N. *Duveen*. New York: The Little Bookroom, 1951.

Benezra, Neil. "Foreword." In *Calder to Warhol: Introducing the Fisher Collection*, 12-15. San Francisco: San Francisco Museum of Modern Art, 2010.

Bourdieu, Pierre. *Distinction: A Social Critique of the Judgment of Taste*. Cambridge: Harvard University Press, 1984.

Bryant, Jr., Keith L. "The Art Museum as Personal Statement: The Southwest Experience." *Great Plains Quarterly* (1989): 100-117.

Burt, Nathaniel. *Palaces for the People*. Boston: Little, Brown and Company, 1977.

Curtis, Cathy. "Outerbridge Works to Be Sold." *Los Angeles Times*. February 1, 1996. Accessed March 1, 2011. http://articles.latimes.com/print/1996-02-01/entertainment/ca-31223_1_laguna-art-museum-collection.

———. "2 Museums Might Have Bought Outerbridge Works." *Los Angeles Times*. February 2, 1996. Accessed March 1, 2011. http://articles.latimes.com/print/1996-02-02/entertainment/ca-31643_1_permanent-collection.

Danziger, Danny. *Museum: Behind the Scenes at the Metropolitan Museum of Art.* New York: Penguin Books, 2007.

Dubin, Zan. "Outerbridge Photos Sold For $753,000." *Los Angeles Times.* October 4, 1996. Accessed March 1, 2011. http://articles.latimes.com/1996-10-04/local/me 50481_1_ outerbridge-photos-sold.

Duncan, Carol. *Civilizing Rituals: Inside Public Art Museums.* London: Routledge, 1995.

Fleischer, Leonard. "Private-Sector Giving to the Arts: Strategies For Survival, Guidelines for Growth." *Monograph.* Washington, D.C.: Americans for the Arts, 2006.

Fox, Daniel M. *Engines of Culture: Philanthropy and Art Museums.* New Brunswick: Transaction Publishers, 1995.

Fox, Howard N. "The Right to Be Wrong." In *Collecting the New*, 15-28. Edited by Bruce Altshuler. Princeton: Princeton University Press, 2005.

Fullerton, Don. "Tax Policy Toward Art Museums." In *The Economics of Art Museums*, 195-236. Edited by Martin Feldstein. Chicago: The University of Chicago Press (1991).

Garber, Marjorie. *Patronizing the Arts.* Princeton: Princeton University Press, 2002.

Garrels, Gary. "Introducing the Fisher Collection." In *Calder to Warhol: Introducing the Fisher Collection*, 17-23. San Francisco: San Francisco Museum of Modern Art, 2010.

Grace, Kay and Alan L. Wendroff. *High Impact Philanthropy: How Donors, Boards, and Nonprofit Organizations can Transform Communities.* New York: John Wiley & Sons, Inc., 2001.

Haden-Guest, Anthony. *True Colors: The Real Life of the Art World.* New York: Atlantic Monthly Press: 1996.

Havens, John J. and Paul G. Schervish. "Why the $41 Trillion Wealth Transfer Estimate is Still Valid: A Review of Challenges and Questions." *The Journal of Gift Planning* 7, no. 1 (January 2003): 11-45, 47-50.

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

In re Girard's Estate, 386 Pa. 548, 127 A.2d 287, 288 (1956), reversed by *Commonwealth of Pennsylvania v. Board of Directors*, 353 U.S. 230 (1957), rehearing denied *Commonwealth of Pennsylvania v. Board of Directors of the City Trusts of the City of Philadelphia*, 353 U.S. 989 (1957).

International Council of Museums. *Code of Ethics for Museums*. 2006. Accessed November 3, 2010. http://icom.museum/ethics.html#intro.

King, Elaine A., and Gail Levin. *Ethics and the Visual Arts*. New York: Allworth Press, 2006.

Kino, Carol. "Private Collection Becomes Very Public." *New York Times*. June 2, 2010. Accessed March 24, 2011. http://www.nytimes.com/2010/06/06/arts/design/06fisher.html.

Knight, Christopher. "Change of heart, change of fortune." *Los Angeles Times*. January 11, 2008. Accessed March 30, 2011. http://articles.latimes.com/print/2008/jan/11/entertainment/et-critic11.

———. "A Most Misguided Mission." *Los Angeles Times*. February 8, 1996. Accessed March 1, 2011. http://articles.latimes.com/print/1996-02-08/entertainment/ca-33454_1_laguna-art-museum.

Kramer, Hilton. "Manner of Displaying Works Raises Vital Questions." *New York Times*. May 14, 1975.

Levine, Aaron and Josh Baer. "Ultra-Rich Collectors Help Keep Art Market Afloat." Interviewed by Elizabeth Blair. *National Public Radio*. Podcast audio. June 25, 2008. Accessed April 3, 2011. http://www.npr.org/player/v2/mediaPlayer.html? action=1 &t=1&islist=false&id=91864488&m=91868730.

Lowry, Glenn D. "A Deontological Approach to Art Museums and the Public Trust." In *Whose Museum? Art Museums and the Public Trust*, 129-150. Edited by James Cuno. Princeton: Princeton University Press, 2004.

Malaro, Marie C. *Museum Governance: Mission, Ethics, Policy*. Washington: Smithsonian Institution Press, 1994.

McClellan, Andrew. *The Art Museum: From Boullée to Bilbao*. Berkeley: University of California Press, 2008.

McKinley, Jesse. "Founders of the Gap Now Plan a Museum." *New York Times*. August 8, 2007. Accessed March 24, 2011. http://www.nytimes.com/2007/08/08/arts/design/08coll.html.

Meyer, Karl E., "The Deaccessioning Controversy." In *The Plundered Past*, 50-54. New York: Atheneum Publishers, 1973.

Miller, Steven H. "Selling Items from Museum Collections." In *A Deaccession Reader*, 51-61. Edited by Stephen E. Weil. Washington, D.C.: American Association of Museums, 1997.

Muchnic, Suzanne. "The Art of Giving In to a Giver." *Los Angeles Times*. August 23, 2004. Accessed April 2, 2011. http://articles.latimes.com/print/2004/aug/23/business/fi-broad23.

The Museum of Modern Art. "Tangible Personal Property." Accessed March 14, 2011. http://www.moma.org/support/support_the_museum/planned_giving/property.

Nevius, C.W. "Only S.F. would snub gift of world-class museum." *San Francisco Chronicle*. July 4, 2009. Accessed March 24, 2011. http://articles.sfgate.com/2009-07-04/bay-area/17217029_1_presidio-bowling-alley-army-base.

Noble, Joseph Veach. "Museum Manifesto." *Museum News* 48, no. 8 (April 1970): 27-32.

O'Hagan, John William. "Art Museums: Collections, Deaccessioning and Donations." *Journal of Cultural Economics* 22 (1998): 197-207.

Perlman & Perlman, LLP. "Legal Issues Related to Unfilled Charitable Pledges." *Association of Fundraising Professionals*. 2008. Accessed April 4, 2011. http://www.afpnet.org/Audiences/ReportsResearchDetail.cfm?ItemNumber=2684.

Philadelphia Museum of Modern Art. "The John G. Johnson Collection." Accessed April 3, 2011. http://www.philamuseum.org/information/45-231-27.html.

Reif, Rita. "50 Painting to Be Sold From Tremaine Estate." *New York Times*. June 7, 1991. Accessed March 23, 2011. http://www.nytimes.com/1991/06/07/arts/50-paintings-to-be-sold-from-tremaine-estate.html.

Richardson, Donna and Gwen Chapman. "What some Recent Research tells us about Planned Giving (Legacy Marketing) in North America." *International Journal of Voluntary Sector Marketing* 10 (2005): 33-41.

Riley, Naomi Schaefer. "We're In the Venture Philanthropy Business." *The Wall Street Journal*. August 28, 2009. Accessed March 30, 2011. http://online.wsj.com/article/SB10001424052970204251404574342693329347698.html.

Rosenbaum, Lee. "L.A. Story with Broad and Piano." *Wall Street Journal*. February 20, 2008. Accessed March 24, 2011. http://online.wsj.com/article/SB120346534895278441.html.

Ryder, Katherine. "How High Can the Art Market Go?" *The Wall Street Journal*. February 17, 2011. Accessed March 1, 2011. http://blogs.wsj.com/scene/2011/02/17/how-high-can-the-art-market-go/.

Salamon, Lester M. "The Resilient Sector: The State of Nonprofit America." In *The State of Nonprofit America*, 3-61. Edited by Lester M. Salamon. Washington, D.C., Brookings Institution Press, 2002.

San Francisco Museum of Modern Art. "Our Expansion: The Fisher Collection." Accessed December 15, 2010. http://www.sfmoma.org/pages/expansion_fisher_collection.

———. "SFMOMA Announces Pioneering Partnership to Share Fisher Collection with the Public." September 25, 2009. Accessed December 15, 2010. http://www.sfmoma.org/press/releases/news/823.

———. "SFMOMA Raises $250 Million Expansion and Endowment." February 4, 2010. Accessed December, 2010. http://www.sfmoma.org/press/releases/news/834.

Sare, John. "Art For Whose Sake? An Analysis of Restricted Gifts to Museums." *Journal of Visual Law and Arts* 13 (1988-1989): 377-395.

Sax, Joseph L. *Playing Darts with a Rembrandt: Private and Public Rights in Cultural Treasures.* Ann Arbor: The University of Michigan Press, 2002.

Schervish, Paul G., John Haven and Albert Keith Whitaker. "Leaving a Legacy of Care." *Philanthropy* 20, no. 1 (2006): 11-13.

Sherman, Thomas B. "Art and Taxes." *The Sunday Review*. July 7, 1956.

Stebbins, Jr., Theodore E., "The Museum's Collection." In *The Economics of Art Museums*, 13-17. Edited by Martin Feldstein. Chicago: The University of Chicago Press, 1991.

Stone, Ann. "Treasures in the Basement? An Analysis of Collection Utilization in Art Museums." PhD diss., RAND, 2002.

Storr, Robert. "To Have and to Hold." In *Collecting the New*, 29-40. Edited by Bruce Altshuler. Princeton: Princeton University Press, 2005.

Taylor, Francis Henry. *The Taste of Angels: A History of Collecting from Ramses to Napoleon.* Boston: Little, Brown & Co., 1948.

Thompson, Don. *The $12 Million Stuffed Shark: The Curious Economics of Contemporary Art.* New York: Macmillan, 2008.

Thornton, Sarah. *Seven Days in the Art World.* New York: W.W. Norton & Company, 2008.

Upton, John. "Museum Lets Down Public, Donors." *Los Angeles Times*. March 2, 1996. Accessed March 1, 2011. http://articles.latimes.com/print/1996-03-02/entertainment/ca-42363_1_outerbridge-collection-laguna-art-museum-paul-outerbridge.

Weil, Stephen E. *Beauty and the Beasts: On Museums, Art, the Law, and the Market.* Washington, D.C.: Smithsonian Press, 1983.

———. *A Cabinet of Curiosities: Inquiries into Museums and their Prospects.* Washington, D.C.: Smithsonian Press, 1995.

———. *Rethinking the Museum and other Meditations.* Washington, D.C.: Smithsonian Press, 1990.

Wyatt, Edward. "An Art Donor Opts to Hold on to His Collection." *New York Times*. January 8, 2008. Accessed March 30, 2011. http://www.nytimes.com/2008/01/08/arts/design/08muse.html.

Wyszomirski, Margaret J. "Arts and Culture." In *The State of Nonprofit America*, 187-218. Edited by Lester M. Salamon. Washington, D.C., Brookings Institution Press, 2002.