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Collections As Currency?

New Approaches to Art Museum's Deaccessioning Dilemmas

A Thesis

Presented to

The Faculty and the Honors Program

Of the University of San Diego

By

Juliana Marie Guerra

Art, Architecture and Art History

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A living museum must surely see itself as a locus of argument. A breathing art institution is not a lockup but a moveable feast.

— Andrew O'Hagan

Buy art, build a museum, put your name on it, let people in for free. That's as close as you get to immortality...

— Damien Hirst

Introduction

What is deaccessioning and why is it important? The very terminology surrounding this debate is unfamiliar. The Association of Art Museum Directors (AAMD) defines deaccessioning as “the process by which a work of art or other object, wholly or in part, is permanently removed from a museum’s collection,” most commonly via donation or sale.¹ Deaccessions have occurred quietly throughout the history of collecting, dating back to ancient times. Cultural institutions simply do not have the resources for endless acquisitions; from time to time, it is necessary to pare back their collections by eliminating works of inferior quality, copies, or objects they are unable to care for. In the 20th century, the “golden age” of art museums in the United States, this practice was largely kept out of the public eye. However, facing the unprecedented economic challenges of the 21st century, the deaccessioning practices of many museums have been thrust into the spotlight.

Modern museums were established to “collect, preserve, interpret and present works of art, and to inspire and educate the public.”² Keeping in mind this founding purpose, the American Alliance of Museums (AAM), another prominent professional association, also sets ethical guidelines for deaccessioning. Because museum collections are considered “cultural, not financial assets, to be held for the public benefit,” deaccessioning proceeds are traditionally restricted to acquisitions or “direct care” of collections.³ Utilizing proceeds for operational expenses is believed to erode public trust in cultural institutions and discourage future donors.

¹ *AAMD Policy on Deaccessioning*, Association of Art Museum Directors, June 9, 2010.

² Michael Govan, “The Art Museum Today, in Discussion,” *Future of the Art Museum Whitepaper*, Aspen Institute, May 13, 2013.

³ Sally Yerkovich, “Use of Funds from the Sale of Deaccessioned Objects: It’s a Matter of Ethics,” in *Is It Okay to Sell the Monet?*, ed. Julia Courtney (Lanham, Maryland: Rowman and Littlefield, 2018), 80.

But in today's ever-changing world, art museums are evolving, too. Numerous high-profile deaccessioning decisions in the past decade speak to the financial crises, demographic shifts and shrinking endowments museums are grappling with. The Covid-19 pandemic has undoubtedly exacerbated these challenges. Thus, many museums have begun to reevaluate deaccessioning as a means to achieve long-term financial sustainability and cultural relevance, by applying proceeds towards operational expenses and programming. While monetizing the collection is in no way illegal, it remains a highly controversial practice that can have detrimental consequences for institutions who get it wrong. In the past few years, several museums have been sanctioned by professional organizations for "inappropriate" uses of deaccessioning funds, believed to undermine a museum's charitable purpose and its obligations to the public.

At the same time, there has been a marked shift in attitudes toward deaccessioning in the field, brought about by recent events. Museums do not exist in a vacuum, and both the global pandemic and reckoning around racial injustice brought their vulnerabilities into sharp focus. Traditionally, art museums operated in a manner that was highly conservative, exclusive and opaque. Their struggle to remain socially relevant in the 21st century was reflected in reduced attendance, a much-needed revenue source to cushion budgetary shortfalls. Simultaneously, museums dealt with external economic crises, shrinking endowments and dilapidated facilities in dire need of upgrading. Deaccessioning emerged into the public consciousness as museums realized that their unexhibited collections might rescue them from dire financial straits. And for museums simply looking to upgrade their collections with limited funds to spare, deaccession also provided a ready source of capital to invest in new work by contemporary, diverse artists that appealed to younger generations. A booming art market certainly helped propel these decisions to the top of museum boardroom agendas.

Though deaccessioning may provide a necessary windfall to a struggling museum, on its own it is usually just a Band-aid fix. It is imperative to explore the root causes underlying the issues that lead to these decisions. The myriad challenges facing modern museums require creative solutions, which take into account both the short-term and long-term viability of the organization. After all, the artwork is the most precious “asset” a museum possesses; short-term liquidity issues must never outweigh a museum’s sacred responsibility to preserve its collection for future generations. This is not to say that deaccessions have no place in museum culture. Rather, if the past few years have taught the field anything, it is that museums need greater flexibility to do what is in the best interest of the institution and the community it serves. Acting proactively and transparently throughout this process is paramount and helps ensure that the primary, educational mission of public museums is preserved.

Part 1 of this thesis examines the foundations of American art museums. It defines their core purpose and functions and the ways in which these institutions shape culture. It traces the origins of deaccessioning practices in American museums, a key point of departure from their European predecessors. Part 2 explores the public’s relationship with art museums. It explicates the public trust doctrine, a legal principle commonly invoked in anti-deaccession arguments. It highlights a museum’s duties to the public as a non-profit entity and explains how deaccessions may be perceived as a violation of public trust. Part 3 delves into the art market, analyzing the financialization of fine art and the current market conditions that make deaccessions so tempting. Part 4 analyzes three salient influences on attitudes towards deaccessioning, (1) the professionalization of the field and codification of museum ethics, (2) the explosion of the art market and (3) calls to address systemic inequities. Part 5 is a case study of the Baltimore Museum of Art, which drew praise for its sales of works by white male artists to finance more

diverse acquisitions, and later inspired widespread criticism when it attempted to use deaccession funds to subsidize equity initiatives. Finally, in Part 6, I propose new approaches to the deaccessioning dilemma that prioritize proactive decision making and transparency. I advocate for ethical deaccessioning strategies thoughtfully aligned with curatorial and educational objectives, which can greatly enhance a museum's fiscal health, community relevance and its role as a steward of cultural treasures.

Part 1: Philosophical Foundations of Museums

An art museum's *raison d'être* derives from Enlightenment philosophy espousing democracy, order and reason. As Martin Gammon writes in *Deaccessioning and its Discontents*, a museum represents “an idealized version of our imperfect reality.” Within its walls exists a utopia of sorts, in which a myriad of objects, all hailing from different cultures, eras and histories, coexist “without antagonism or competition.” Museums provide respite and sanctuary from the chaos of everyday life; each is a “microcosm of an orderly universe of human craft and creativity.”⁴ Moreover, they are symbols of civic virtue, notes cultural critic James Panero, serving as “manifestations of private wealth transferred to the public trust.” Museums provide a “lesson in how individual hard work can become an expression of virtue” through charitable giving.⁵ Private philanthropy not only enables these institutions to fulfill their educational functions, but to ensure that the public is granted equitable access to civilization's greatest masterpieces.

The 18th century witnessed the formation of several major museums in Europe, including the British Museum in London and the Louvre in Paris, which would inspire similar

⁴ Martin Gammon, *Deaccessioning and Its Discontents* (Cambridge, MA: The MIT Press, 2018), 15.

⁵ James Panero, “Future Tense, VII: What's A Museum?” *The New Criterion* 30, no. 7 (March 2012), <https://newcriterion.com/issues/2012/3/future-tense-vii-whats-a-museum>.

developments in the United States in the following century. The year 1870 marked the creation of one of America's major encyclopedic museums, The Metropolitan Museum of Art. Its founding barely two decades after the Civil War had taken place was intended to usher in a new era of unity for the nation and solidify New York's status as a thriving cultural center to rival Europe's great cities. Speaking to the Union League Club in 1866, the Museum's quixotic founder John Jay described his vision for the Metropolitan as an "amply endowed, thoroughly constructed art institution, free alike from bungling government officials and from the control of a single individual."⁶ Jay's aspirations spurred the development of an entirely new museum model, built around private philanthropy. The founding of the Metropolitan thus set American museums on a radical new course, deviating significantly from their European ancestors.

An enterprising spirit and strong sense of idealism colored the early days of the American museum experiment. As Panero writes, the Metropolitan and its contemporaries "consciously emerged out of [an] ideal of self-governance" and a "belief that a virtuous people with a passion for the public good might create institutions in the public interest."⁷ As one of the world's first art museums free from governmental interference, the Metropolitan embodied the distinctly American values of individualism, free enterprise and self-determination. Its founders were wealthy industrialists rather than titled aristocrats. The Museum was a testament that through hard work, one could leave a lasting legacy, and as a result, its creation engendered an unprecedented level of philanthropic activity throughout the nation. With the benefactions of moneyed collectors gracing their walls, the Metropolitan and its peers, including the Museum of Fine Arts Boston and the Philadelphia Museum of Art, seemed to exemplify the merits of capitalism.

⁶ Panero, "Future Tense, VII: What's A Museum?"

⁷ Ibid.

There are several other crucial differences between American and European art museums worth illuminating. First pertains to access. Martin Gammon points out that British museums are similar to libraries in that their mandate involves “active access.” This means that patrons actually have the right to access all parts of the collection, even works kept in storage. In practice this means that the entire collection is apt to be put to use, at least potentially, at any time. American museums, on the other hand, are more closely aligned to a trust doctrine, which “entails passive conservation, retention and security.”⁸ Secondly, because American museums are independent from the state, they are considered to be “unencumbered by the burden of representing a national cultural patrimony.”⁹ This freedom allows for a great deal of liberty in formulating collection policies. The collections policies of museums outside of the United States tend to be far more stringent, as they are determined by government bodies. Such Ministries of Culture exist in many European nations, including France, Greece and Spain, as well in Japan, India, and other countries throughout the globe.

Autonomy has also had a salient influence on the development of deaccessioning policies and practices in American museums. In general, American museums take a more pragmatic stance on deaccessioning,¹⁰ considering financial needs, issues of redundancy and allowing for

⁸ Gammon, *Deaccessioning and Its Discontents*, 40.

⁹ Sue Chen, “Art Deaccessions and the Limits of Fiduciary Duty,” *Art Antiquity and Law* 14, no. 2 (June 2009): 108, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1001&=&context=studentpapers&=&sei-redir=1&referer=https%253A%252F%252Fwww.google.com%252Furl%253Fq%253Dhttps%253A%252F%252Fs%253A%252Fscholarship.law.duke.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1001%252526context%25253Dstudentpapers%2526sa%253DD%2526source%253Ddocs%2526ust%253D1649353097089774%2526usg%253DAOvVaw2Ywa0TsnweeDbbDc7KmxLb#search=%22https%3A%2F%2Fscholarship.law.duke.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1001%26context%3Dstudentpapers%22>.

¹⁰ Chen, “Art Deaccessions and the Limits of Fiduciary Duty,” 108.

curatorial discretion.¹¹ Thus, their policies tend to be more flexible. In fact, deaccessions were extremely common during the infancy of many major museums, whose initial focus was on growth and accumulating as many works as possible. Refining their unique curatorial visions required weeding out superfluous objects later down the line.¹² The exception is the National Gallery of Art in Washington D.C., which was created to preserve the cultural heritage of the United States and has always enjoyed a privileged status. Though it was founded with private funding from Paul Mellon, it receives a large part of its budget from Congress. Much like the majority of Europe's state-run museums, the National Gallery prohibits deaccessioning altogether. As the Museum's director Kaywin Feldman states, "It was part of our founding idea that we would be so careful about the works that we brought into the collection [because] they would remain here in perpetuity."¹³

...

"I like to think that by providing and preserving examples of beauty, museums foster a greater sense of caring in the world and urge their visitors to undergo a radical decentering before the work of art" writes scholar and museum director James Cuno.¹⁴ Art museums enhance our lives by showcasing human creativity, educating visitors about the history of art and elucidating the diversity of the human experience as expressed through visual culture. Modern museums fulfill their purpose through four core functions: collecting, preserving, interpreting

¹¹ Gammon, *Deaccessioning and Its Discontents*, 129.

¹² Ibid.

¹³ Rob Brunner, "The Washingtonian Interview: National Gallery of Art Director Kaywin Feldman," *Washingtonian*, Washingtonian Media Inc., July 31, 2021, <https://www.washingtonian.com/2021/07/13/the-washingtonian-interview-national-gallery-of-art-director-kaywin-feldman/>.

¹⁴ James Cuno, "The Object of Art Museums," in *Whose Muse? Art Museums and the Public Trust*, ed. James Cuno (Princeton, NJ: Princeton University Press, 2004), 50.

and presenting works of art. These activities are “at the heart of a museum’s service to its community and to the public.”¹⁵ As the custodians of some of the world’s greatest masterpieces, museums play an immense role in molding our collective cultural heritage. Society bestows an undeniable power upon these institutions by entrusting art and artifacts in their care to preserve and protect for future generations. When an object is accessioned into a museum’s collection, it is automatically elevated to a place of heightened significance.

The process of accession has several important implications. For artists, and living artists in particular, having their work acquired by a museum can help springboard their career, drive up the market value of their pieces and solidify their place in the art historical canon. Furthermore, museum accession establishes an indisputable link in the object’s chain of provenance.

Provenance is critical as it enables curators and scholars to trace the movements of an artwork over time. The accession number assigned to a work is a key identifying feature that can be used to determine rightful ownership.¹⁶ Additionally, if questions of an object's authenticity ever arise, having a record that it was once part of a museum’s collection can prove invaluable in resolving such disputes.

Part 2: Museums and the Public Trust

It is widely appreciated that works in museum collections are held in trust for the public good. From preserving and protecting great works of art to providing educational programming to communities, the myriad roles museums fulfill are all indisputable boons to the public. Yet by virtue of serving as custodians of some of the world’s greatest masterpieces, museums have an

¹⁵ Chen, “Art Deaccessions and the Limits of Fiduciary Duty,” 113.

¹⁶ Darlene A Bialowski, “When Out of the Book Won’t Do: Next Steps in Resolving Deaccessioning Conundrums,” in *Is It Okay to Sell the Monet?*, ed. Julia Courtney (Lanham, Maryland: Rowman and Littlefield, 2018), 57.

implicit duty to the public, and are thus subject to intense public scrutiny. Museums are a “locus of public trust,” writes Glenn Lowry, director of the Museum of Modern Art in New York.¹⁷ It is crucial, he insists, that they recognize their “moral authority derives from the trust the public invests in them,” as long as the public believes these institutions are continuing to act in its best interest.¹⁸

The relationship between these two entities can quickly become fraught if the public believes that museums are somehow neglecting their civic responsibilities, by jeopardizing access to the collection. These perceptions tend to be exacerbated by the fact that most individuals are unaware of the unglamorous realities of budget shortfalls, aging facilities and institutional politics museums face. Brian L. Frye, associate professor at the University of Kentucky College of Law, likens art museums to the “aristocrats of the charitable sector, with all the virtues and vices of the aristocracy.” At their best, they are “glorious examples of the finest in cultural expression,” yet they are all too prone to financial weaknesses.¹⁹ For many museums, their financial distress is self-inflicted, a consequence of over-ambitious growth despite a lack of community buy-in. Instances of deaccession are taken as direct corroborations of these vulnerabilities, which explains why the most frequently raised objection to this practice is that by selling art, museums are violating their duties to the “public trust.”

It is important to distinguish the more casual meaning of the term “public trust” as Lowry employs it with the statutory definition of this phrase. A legal concept dating back to the Roman

¹⁷ Glenn D Lowry, “A Deontological Approach to Art Museums and the Public Trust,” in *Whose Muse? Art Museums and the Public Trust*, ed. James Cuno (Princeton, NJ: Princeton University Press, 2004), 143.

¹⁸ Lowry, “A Deontological Approach to Art Museums and the Public Trust,” 146.

¹⁹ Brian L Frye, “Against Deaccessioning Rules,” *Creighton Law Review* 53 (2020): 461, http://dspace.creighton.edu:8080/xmlui/bitstream/handle/10504/127622/CLR_53-3_Frye.pdf?sequence=1&isAllowed=y.

Empire, the public trust doctrine holds that under the auspices of natural law, air, running water, the sea and its shores are “common property of all.”²⁰ Though it is often invoked in disputes involving cultural property, it has yet to be successfully applied in this context. Frye makes clear in *Creighton Law Review* that “no court has ever applied the public trust doctrine to an art museum; no court has ever found that an art museum owned a work in the public trust; and, no court has ever held that the sale of an artwork violated the public trust.”²¹ So while auctioning off works in the collection may very well violate the public’s trust in the *institution*, from a legal standpoint it does not actually violate the public trust doctrine. Nevertheless, the linkage between art museums and the public trust has been extremely influential in framing society’s views around the issue of deaccessioning.

To date, state’s Attorneys General have upheld the legality of deaccessioning for purposes beyond acquiring more art, as museum collections fall beyond the scope of the public trust doctrine. In setting ethical standards for the field, the Association of Art Museum Directors (AAMD) and the American Alliance of Museums (AAM) are cognizant of this limitation. Beyond imposing sanctions, there is no legal recourse to punish museums who violate the deaccessioning policies established by these organizations.²² Attempting to exploit the public trust doctrine to criticize deaccessioning decisions may also involve a fundamental contradiction. As Frye points out, AAMD and AAM guidelines permit deaccessioning for the purpose of obtaining more artwork, but not to cover operational or programming expenses. This, Frye

²⁰ Frye, “Against Deaccessioning Rules,” 475.

²¹ Ibid, 477.

²² Mark S Gold, “Monetizing the Collection: The Intersection of Law, Ethics, and Trustee Prerogative.” in *Is It Okay to Sell the Monet?*, ed. Julia Courtney (Lanham, Maryland: Rowman and Littlefield, 2018), 92.

writes, “is fundamentally incompatible with the public trust doctrine, which is an absolute rule.”²³ Economist Michael Rushton concurs, emphasizing the futility of this line of argument. “‘Museums’ permanent collections belong to all of us” is not true in any meaningful sense,” he writes, “Nonprofit museums are independent entities, and I have no claim on their works, any more than I have claims on the assets of any other organization.”²⁴

Still, some argue that a version of the public trust doctrine should exist to limit the rights of anyone who is in possession of a “cultural treasure.” Joseph L. Sax, who was professor at Boalt Hall School of Law at UC Berkeley and the author of *Playing Darts With a Rembrandt*, argues that museums should view themselves as a “fortunate, if provisional trustee, having no rights to deprive others who value the objects as much as they do themselves.”²⁵ Thus, in Sax’s view, museum’s ownership rights over their collections should be strictly limited, which in turn limits their authority over collections management policies, including the ability to sell works. James Cuno, President of the Getty Trust in Los Angeles, takes a similarly strong stance on this issue. “Cultural property,” he stated in an essay for *Foreign Affairs*, “should be recognized for what it is: the legacy of humankind and not of the modern nation state.”²⁶ No single individual, institution or nation should be able to lay claim to an artistic masterpiece. Thus, for museums,

²³ Frye, “Against Deaccessioning Rules,” 477.

²⁴ Michael Rushton, “Is There an Ethical Case against Deaccessioning by Museums? Updated.” *For What It's Worth* (blog), March 20, 2018, <https://www.artsjournal.com/worth/2018/03/is-there-an-ethical-case-against-deaccessioning-by-museums/>.

²⁵ Frye, “Against Deaccessioning Rules,” 478.

²⁶ James Cuno, “Culture War: The Case Against Repatriating Museum Artifacts,” *Foreign Affairs*, Council on Foreign Relations, November 2014, https://www.foreignaffairs.com/articles/africa/culture-war?check_logged_in=1&utm_medium=promo_email&utm_source=lo_flows&utm_campaign=registered_user_welcome&utm_term=email_1&utm_content=20220322.

preserving the intactness of the collection and the public's ability to access it should be of the utmost importance. In Cuno's view, art museums are nothing if not a "public trust." "The public has entrusted in us the authority and responsibility to select, preserve, and provide its access to works of art that can enhance, even change, people's lives," he writes, "And in turn, we have agreed to dedicate all of our resources...to this purpose."²⁷ Unregulated deaccessioning could compromise this important civic obligation.

Ultimately, though not covered by the public trust doctrine, the law consistently recognizes that museum collections are "cultural, not financial assets, to be held for the public benefit."²⁸ This is reflected through the advantages these institutions enjoy in the United States tax code. Museums are designated as nonprofit organizations by the Internal Revenue Service section 501(c)(3), which exempts them from federal income tax.²⁹ The reasoning behind this designation is simple - alleviating the burden of income tax allows charitable institutions to focus on their service to the public good.³⁰ The special tax status of nonprofits has several important implications. First and foremost, it is meant to encourage charitable giving through providing an indirect subsidy to donors via tax write-offs.³¹ Secondly, it has shaped the accounting standards

²⁷ Cuno, "The Object of Art Museums," 73.

²⁸ Yerkovich, "Use of Funds from the Sale of Deaccessioned Objects," 80.

²⁹ Don Fullerton, "Tax Policy Toward Art Museums," in *The Economics of Art Museums*, ed. Martin Feldstein (University of Chicago Press, 1991), 195.

³⁰ Elisha Muir, "Museums and the Tax Code: A Fraught Friendship" (Thesis, Rochester Institute of Technology, 2019), 13-14, <https://scholarworks.rit.edu/cgi/viewcontent.cgi?article=11292&context=theses&seid=1&referer=https%253A%252F%252Fwww.google.com%252Furl%253Fq%253Dhttps%253A%252F%252Fs%252Fscholarworks.rit.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%25253D11292%252526context%25253Dtheses%2526sa%253DD%2526source%253Ddocs%2526ust%253D1649353948263611%2526usg%253DAOvVaw1FcIv4Vh3b0AXQXWm51YBB#search=%22https%3A%2F%2Fscholarworks.rit.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D11292%26context%3Dtheses%2>.

³¹ Muir, "Museums and the Tax Code: A Fraught Friendship," 6.

museums must adhere to. Under Financial Accounting Standards Board (FASB) rules, a museum is not required to disclose the value of its collection in its financial statements. This provision came about through an agreement with the AAM and the AAMD, which recognizes that museum collections are held for “public exhibition, education or research, in furtherance of public service, and thus need not be capitalized.”³² Allowing museums to draw freely on their collection as a readily accessible financial resource conflicts with this accounting standard. If used to generate revenue, the collection should instead be listed as an “asset” on the balance sheet. FASB regulations thus reinforce AAMD and AAM’s deaccessioning policies, which prohibit the use of deaccession funds for any purpose besides acquisitions and “direct care” of the collection.³³ “Were museums able to sell their collections to balance the budget,” Duke Law’s Sue Chen contends, “they would relinquish their basic role as cultural custodians and become little more than art and antiques dealers with non-profit status.”³⁴

The benefits of a museum’s non-profit status also flow to donors. In the United States, individuals can claim a tax deduction for charitable contributions. This provision has been in place since the mid-19th century, and it helps explain why philanthropic activity is so uniquely robust in the United States compared to the rest of the world.³⁵ Naturally, those who face the highest tax burden, and thus stand to benefit most handsomely from deductions, are the wealthiest members of society. An unintended consequence, therefore, is that the wealthy wield a

³² Lori Breslauer and Sarah Ebel, “Making the Case: FASB’s Accounting Standards Should Be Realigned With AAM’s Long-Standing Guidance on the Use of Sale Proceeds,” in *Is It Okay to Sell the Monet?*, ed. Julia Courtney (Lanham, Maryland: Rowman and Littlefield, 2018), 85.

³³ Yerkovich, “Use of Funds from the Sale of Deaccessioned Objects,” 82.

³⁴ Chen, “Art Deaccessions and the Limits of Fiduciary Duty,” 113.

³⁵ Muir, “Museums and the Tax Code: A Fraught Friendship,” 7-8.

disproportionate degree of power in determining which types of institutions thrive and which do not.³⁶ For donors in possession of valuable art collections, gifts “in kind” to museums afford them the same tax benefits as monetary donations. Additionally, by gifting works that have increased in value since they were originally acquired, donors can avoid paying capital gains tax on the appreciation.³⁷ Of course, there are also numerous intangible benefits enjoyed by museum benefactors that are worth acknowledging, including social prestige and the establishment of one’s donor legacy.

The many ways in which wealthy individuals benefit from this system has unsurprisingly drawn criticism. Some argue that the current tax structures incentivize museums to cater to wealthy shareholders and “not necessarily the general public who comprise the larger community.”³⁸ They may also exert a substantial influence on the composition of museum boards, which tends to skew towards a greater number of wealthy philanthropists.³⁹ This may preclude museums from recruiting a socio-economically diverse board that accurately represents the community it serves. Finally, some contend that the tax benefits of acquiring fine art largely reinforce the exclusivity of the art market. According to Frye, collectors are willing to pay astronomical prices for art not only because it “increases their social standing” but also for lucrative “investment and task benefits.”⁴⁰ Owning fine art is out of reach for all except the

³⁶ Muir, “Museums and the Tax Code: A Fraught Friendship,” 7-8.

³⁷ Fullerton, “Tax Policy Toward Art Museums,” 195.

³⁸ Muir, “Museums and the Tax Code: A Fraught Friendship,” 9.

³⁹ Michael O’Hare, “Museums Can Change -- Will They?,” in *Is It Okay to Sell the Monet?*, ed. Julia Courtney (Lanham, Maryland: Rowman and Littlefield, 2018), 31.

⁴⁰ Frye, “Against Deaccessioning Rules,” 483.

ultrawealthy, including most small and midsize museums. This results in museums having to court moneyed donors to obtain the most desirable works that are otherwise unavailable to audiences beyond a privileged few.

Part 3: The Museum and The Marketplace

External market conditions exert an undeniable influence on museum's deaccession policies and practices. In order to fully flesh out the motivations behind these decisions, it is critical to examine the economic forces at play in the art world. This section aims to provide readers with a brief primer on the complex and ever-evolving art market. Beginning in the late 20th century to the present day, the art market has undergone a period of incredible growth, which shows no signs of slowing. This growth, which can be attributed in part to a continuous "increase in total worldwide wealth," has spurred a dramatic increase in the price of fine art.⁴¹ The increasing financialization of the art market is also interlinked with the exorbitant prices in the market today. As economic historian David Ormrod points out, periods of "economic growth and prosperity tend to provide the most favorable environment for investment in the arts," which helps explain why speculation and investment in the art market has taken off over the past few years.⁴² The relatively recent proliferation of fine-art focused investment funds leaves no question that art has emerged as an alternative asset class. Comparing returns in the art market to those in equities, Christophe Spaenjers, William Goetzmann and Elena Manonova found that "by some measures, art beats even the exuberantly recovering equity markets from mid-century

⁴¹ Belma Öztürkcal and Asli Togan-Egrican, "The Role of Art Investment as a Hedge or Safe Haven," *EconomistsTalkArt.org* (blog), January 21, 2020, <https://economiststalkart.org/2020/01/21/the-role-of-art-investment-as-a-hedge-or-safe-haven/>.

⁴² David Ormrod, "Art and Its Markets," *The Economic History Review* 52, no. 3 (1999): 545, <http://www.jstor.org/stable/2599144>.

forward.”⁴³ Still, there is no strong consensus about whether fine art actually outperforms other asset classes on a consistent basis. Rather, there is more robust evidence indicating that it has diversification benefits, especially in times of economic upheaval.⁴⁴

Auction houses have capitalized on the transformation of the art market by re-inventing themselves as “luxury goods companies rather than simple intermediaries,” according to Spaenjers et. al. Auctions, once considered mundane events, have transformed themselves into glamorous spectacles that function as an “arena for social competition” and media attention. The frequency at which record prices have been achieved for works at auction over the past few decades tells “a tale of social aspiration,” with the über-rich using a “highly visible acquisition as a social entrée.”⁴⁵

High auction prices are a siren song for museums considering a deaccession sale. As prices continue to climb, the exclusivity of the art market increases too. As a result, even major museums are getting priced out by ultra-rich collectors and savvy investors. This predicament is exacerbated by the “expanding uniformity of taste” among buyers, which exerts a strong upward force on the price of works “considered important” by public institutions and private individuals alike.⁴⁶ The fierce competition surrounding an increasingly narrow set of artists and artworks makes it far more difficult for non-profit institutions with limited funds to acquire works of high

⁴³ Christophe Spaenjers, William N Goetzmann, and Elena Mamonova, “A History of the Art Market in 35 Record-Breaking Sales,” *EconomistsTalkArt.org* (blog), June 28, 2016, <https://economiststalkart.org/2016/06/28/a-history-of-the-art-market-in-35-record-breaking-sales/>.

⁴⁴ Öztürkkal and Togan-Egrican, “The Role of Art Investment as a Hedge or Safe Haven.”

⁴⁵ Spaenjers et. al., “A History of the Art Market in 35 Record-Breaking Sales.”

⁴⁶ William N Goetzmann, “Accounting for Taste: Art and the Financial Markets Over Three Centuries,” *The American Economic Review* 83, no. 5 (1993): 1375, <http://www.jstor.org/stable/2117568>.

quality.⁴⁷ Therefore, museums may need to consider deaccessioning as part of their overall acquisition strategy.

Furthermore, with the rising market value of certain artworks, the opportunity costs of holding these works in storage are rising too.⁴⁸ Deaccession can be a lifeline for museums facing existential financial shortfalls, yet it remains a controversial choice. The Berkshire Museum, a museum of art, natural science and anthropology in Pittsfield, Massachusetts, contended with this dilemma back in 2017. This beloved community museum drew widespread condemnation when its Board decided to sell forty paintings, including its iconic Norman Rockwell painting, *Shuffleton's Barbershop* (1950), in order to save the museum from permanent closure. The proceeds realized from the sale of the single Rockwell painting, which had been languishing in storage for years, would curtail the museum's dire financial deficit. Despite public outcry and AAMD censure, the Board held firm. Of his decision to sell the Rockwell painting, Berkshire Museum Board of Trustees President Ethan Klepetar wrote:

The art market is a funny market where subjective interpretations and unpredictable trends amongst the extremely wealthy can completely change the value of an object that has not significantly changed over several decades or centuries... That 'blind lottery' [Marcel Duchamp had spoken of] suddenly made Rockwell paintings worth a fortune⁴⁹...If selling [*Shuffleton's Barbershop*] meant we had another 50 million dollars to

⁴⁷ Chen, "Art Deaccessions and the Limits of Fiduciary Duty," 110.

⁴⁸ Wendy Dickieson, "The Deaccession Dilemma: Themes in the American Debate about Art Museum Deaccessions," *Theory and Practice* 1 (2018), https://articles.themuseumscholar.org/2018/06/15/tp_vol1dickieson/.

⁴⁹ Ethan Klepetar, "Where It Happens: The Perspective of a Museum Trustee," in *Collections and Deaccessioning: Towards a New Reality*, ed. Stefanie S Jandl and Mark S Gold (Cambridge, MA: MuseumsEtc Ltd, 2021), 396.

ensure Pittsfield would have an amazing community museum for generations to come, I thought it was worth it.⁵⁰

As the Berkshire Museum case illustrates, many vulnerable museums today tend to look to the most valuable objects in their collection first when developing a deaccession strategy. This tendency is at odds with the traditional view of deaccessioning as a tool for culling duplicates, fakes, or works no longer deemed relevant to public display. In this new environment, works considered “blue-chip,” a term borrowed from the stock market, make especially attractive candidates. “Blue-chip” art consistently fetches a high price at auction and appreciates in value over time.⁵¹ Currently, 20th-century Expressionism is the reigning “blue-chip” style.⁵² Because of the high cost of bringing works to auction, profitability is a major factor in determining whether or not a deaccession sale will be worthwhile. This helps explain why representatives from Christie’s and Sotheby’s report a large influx in the past few years of museums wanting to sell works valued at over \$10 million.⁵³ Moreover, museum lots tend to fare especially well at auction. Time and time again, records reveal that museum provenance “often yields superlative prices” in the market, which underscores the role of “museum curatorship in promoting quality” and scarcity.⁵⁴ As museums and the marketplace become more and more intertwined, the deaccessioning question becomes increasingly complex.

⁵⁰ Klepetar, “Where It Happens: The Perspective of a Museum Trustee,” 398.

⁵¹ Guy Ovadia, “One of a Kind: What Is Blue-Chip Art and Should You Invest in It?” Money Made, March 3, 2022, <https://moneymade.io/learn/article/what-is-blue-chip-art>.

⁵² Spaenjers et. al., “A History of the Art Market in 35 Record-Breaking Sales.”

⁵³ Nina del Rio, Michael Shapiro and Allison Whiting, “Ask the Auction House,” presented at Syracuse University’s Virtual *Deaccessioning After 2020* Symposium, March 17-19, 2021.

⁵⁴ Gammon, *Deaccessioning and Its Discontents*, 273.

Part 4: Perspectives in the Debate

In order to analyze the myriad perspectives in the deaccessioning debate, one must first consider the key actors involved in these decisions. Art museums are public, nonprofit institutions that serve a broad array of constituencies. They are nothing if not for the people who sustain them, including those members of the public for whom they represent the only reliable access to works of enduring aesthetic significance. A museum's success is contingent on cooperation and collaboration between its administrators, benefactors and the visiting public. Here, I briefly explore the four key voices involved in the formulation and execution of museum policy, including policy on collections and deaccessioning.

The Board of Trustees serves as the institutions' primary governing body. Museum boards are typically composed of individuals from a business background, who are often sought out not just for their corporate acumen but their personal art collections.⁵⁵ They oversee the management of the museum, ensuring that this is “consistent with its mission and obligations to the public.”⁵⁶ Trustees have a fiduciary responsibility to the organization they serve, which encompasses the twin duties of due care and obedience. Due care mandates that they execute their duties “in good faith and in a manner [they] reasonably believe to be in the best interests” of the institution. The duty of obedience is the obligation to prioritize the “specific mission of the organization” in every action or policy decision.⁵⁷ In light of these responsibilities, trustees must adhere to the following steps in setting policy: “making proper investigations, using sufficient safeguards, complying with internal procedures, considering expert advice where appropriate,

⁵⁵ Chen, “Art Deaccessions and the Limits of Fiduciary Duty,” 117-118.

⁵⁶ Yerkovich, “Use of Funds from the Sale of Deaccessioned Objects,” 80.

⁵⁷ Gold, “Monetizing the Collection,” 93.

and generally exercising ordinary skill, care, and caution.”⁵⁸ The Board is the ultimate decision-maker for the museum, and thus has the final word, and responsibility, when it comes to issues like deaccessioning. Since their loyalty runs to the institution itself rather than individual works in the collection, “objects that could be monetized for the benefit of the museum” cannot be donated or sold for below market value.⁵⁹ In practice, this means that Boards will often choose public auction as the best means for disposing of art since they view the open marketplace as the best, most transparent means of realizing maximum values for their collection. Occasionally, a museum’s mission statement can afford the Board some leeway in contentious deaccessioning decisions by “expanding the boundaries of ‘best interest to the institution’ to encompass decisions and acts that are seemingly not.”⁶⁰

The Executive Director reports to the Board of Trustees. The Director is responsible for the administration of the museum. They oversee every facet of the institution, from acquisitions and exhibitions to financial management. They are instrumental in developing and implementing the museum’s strategic vision. These individuals typically have extensive backgrounds in the art world and are selected for their visionary leadership along with their ability to “elicit donations from members of the public and corporate supporters.”⁶¹ Additionally, many Directors are also

⁵⁸ Chen, “Art Deaccessions and the Limits of Fiduciary Duty,” 122.

⁵⁹ Mark S Gold and Stefanie S Jandl, “Keeping Deaccessioned Objects in the Public Domain: Legal and Practical Issues,” in *Is It Okay to Sell the Monet?*, ed. Julia Courtney (Lanham, Maryland: Rowman and Littlefield, 2018), 38.

⁶⁰ Gold and Jandl, “Keeping Deaccessioned Objects in the Public Domain,” 38.

⁶¹ Jennifer L White, “When It’s OK to Sell the Monet: A Trustee-Fiduciary-Duty Framework for Analyzing the Deaccessioning of Art to Meet Museum Operating Expenses,” *Michigan Law Review* 94, no. 4 (1996): 1061, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2066&=&context=mlr&=&sei-redir=1&referer=https%253A%252F%252Fwww.google.com%252Furl%253Fq%253Dhttps%253A%252F%252Frepository.law.umich.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%25253D2066%252526context%25253Dmlr%2526sa%253DD%2526source%253Ddocs%2526ust%253D1652738027358047%2526usg%253DAOvVaw06bvsMb1nSGurESpSoc6A1#search=%22https%3A%2F%2Frepository.law.umich.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D2066%26context%3Dmlr%22>.

members of professional organizations like the AAM and AAMD. Unlike Board members, who are held to a trust standard, a Directors' fiduciary duty aligns more closely with the "business judgment rule." Under this more lenient standard, Duke Law's Sue Chen writes that they must "inform [themselves] of all material information that is reasonably available to them" so they can "act on an informed basis."⁶² While trustees may be held liable for a breach of duty,⁶³ the Director "may be indemnified if they acted in good faith and in reasonable belief the action was in the corporation's best interest."⁶⁴ In many instances of crisis-motivated deaccessioning, the fiduciary standards applied to the Board and the Director conflict. Directors tend to be more strongly committed to AAMD and AAM guidelines, while the museum's survival takes precedence for the Board, even if it means drawing on the collection to cover operational costs.

Collectors tend to be wealthier private citizens who have amassed fine art either through purchase or inheritance. Some collect purely for enjoyment, while others may be motivated by financial or investment purposes, as previously detailed. As museums are increasingly outpriced by the art market, cultivating strong relationships with these potential donors is of the utmost importance and tends to occupy a significant amount of the museum Director's time. The ability to access masterpieces held in private hands can truly make or break the quality of the collection as a whole. Thus, museums need to be mindful of donor relationships when establishing deaccession policies. Finally, public interest groups provide an important check on the Board and Director's powers. Although museum collections are ultimately held for the public good, unlike

⁶² Chen, "Art Deaccessions and the Limits of Fiduciary Duty," 120.

⁶³ Ibid, 123.

⁶⁴ Ibid, 121.

the shareholders of a public company, the general public cannot “monitor and control effectively the conduct of museum directors.”⁶⁵ Interest groups, however, may use all available media channels to express their dissatisfaction or disapproval of a Director or Board member’s actions. Public opinion factors heavily in deaccessioning decisions, especially those involving high-profile works. Yet for many museums, their service to the community extends beyond simply providing access to art; programming and education are also important components. Determining the appropriate allocation of financial resources to the collection and programming is a continual challenge, but finding the right balance is crucial. If its offerings are no longer relevant or if its actions betray the public’s trust, a museum will be doomed to fail.

At the heart of the deaccessioning debate lies three key issues the museum world has contended with over the past few decades. These include (1) the professionalization of the field and codification of ethics, (2) the explosion of the art market and (3) calls to address systemic inequity through diversification of volunteers, staff, programs, and attendance. These issues are at the forefront of museum governance, administration and policy today, and were further magnified by the Covid-19 pandemic. Their confluence has spurred a radical transformation in approaches to deaccessioning and appropriate use of proceeds. What was previously a routine aspect of collections maintenance has emerged as a hot-button issue in the field. As economic and social pressures increase the complexity of museum operations, the lines between what’s considered ethical and unethical in deaccessioning are blurred.

(1) Professionalization of the Field

The professionalization of the field over the past half-century has reshaped the social function of art museums. Within that time frame, museums have undergone a seismic shift from

⁶⁵ White, “When It’s OK to Sell the Monet,” 1055.

“being about something” to “being for somebody.”⁶⁶ This newfound emphasis on audience experience has wide-ranging implications for museums, with one major benefit being greater accessibility and transparency. Previously, art museums were entangled with elitism and exclusivity, housed in “private spaces” accessible only to wealthy, educated men.⁶⁷ The field’s glaring lack of diversity was evident in the vast majority of collections, which catered to a very narrow set of Eurocentric tastes and narratives. Furthermore, colonialist attitudes played a significant role in shaping many museum’s acquisitions and collecting policies. All aspects of museum operations were incredibly opaque.

Art museums gradually opened up their doors over the early to mid-20th century, but their staffs, boards and collections still remained decidedly homogenous. A museum’s functionality was relatively straightforward, “focused primarily inward on the growth, care, and study of its collection.”⁶⁸ In an essay for the UNESCO magazine *Museum International*, Kenneth Hudson explicates the institution's passivity:

[A museum] existed, it had a building, it had collections and a staff to look after them. It was reasonably adequately financed, and its visitors, usually not numerous, came to look, to wonder and to admire what was set before them. They were in no sense partners in the enterprise. The museum's prime responsibility was to its collections, not its visitors.⁶⁹

⁶⁶ Panero, “Future Tense, VII: What's A Museum?”

⁶⁷ Elizabeth Rodini, “A Brief History of the Art Museum,” Khan Academy, Khan Academy, accessed May 17, 2022, <https://www.khanacademy.org/humanities/approaches-to-art-history/tools-for-understanding-museums/museums-in-history/a/a-brief-history-of-the-art-museum-edit>.

⁶⁸ Stephen E Weil, “From Being about Something to Being for Somebody: The Ongoing Transformation of the American Museum,” *Daedalus* 128, no. 3 (1999): 229, <http://www.jstor.org/stable/20027573>.

⁶⁹ Weil, “From Being About Something to Being for Somebody,” 232.

According to the Smithsonian's Stephen Weil, the American Alliance of Museums renewed its attention to public service and education beginning in the early 1970's. In 1984, education was deemed a "primary purpose" of art museums.⁷⁰ In May 1991, the AAM adopted the position paper "Education and Equity" as part of its official policy.⁷¹ This document was drafted by museum educators and highlights the centrality of education to a museum's public service role. At the same time, its institutional accreditation policy underwent a shift in scope from the "institutional care of collections" to the "programmatic use of collections."⁷² The AAM's 1997 accreditation handbook provides clear evidence of this shift. Its "areas of inquiry" include "whether the 'museum effectively involves its audiences in developing public programs and exhibitions'" and whether it evaluates these "in terms of their audience impact."⁷³

The AAM's development of deaccession policies coincided with these policy changes. In 1991, the AAM established its *Code of Ethics for Museums*. Edward H. Able, then the Executive Director of the AAM, hailed this as the "strongest step the museum community has ever taken to guarantee to the public... that the ethic of public service is the bedrock of museum operations."⁷⁴ The *Code* contained a provision stating that the

disposal of collections through sale, trade, or research activities is solely for the advancement of the museum's mission. Proceeds from the sale of non-living collections are to be used consistent with the established standards of the museum's discipline, but in

⁷⁰ Weil, "From Being About Something to Being for Somebody," 234-35.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Yerkovich, "Use of Funds from the Sale of Deaccessioned Objects," 78.

no event shall they be used for anything other than the acquisition or direct care of collections.⁷⁵

Though somewhat of a vague term, “direct care” is intended to refer to conservation activities, an essential component of the stewardship of oftentimes fragile collections. The use of deaccession funds for operating costs or as a “stopgap” for a financial crisis has long been strictly prohibited.⁷⁶

These official policy documents helped codify the ethical standards museums must abide by. These ethics ultimately derive from a museum’s fundamental purpose, which the AAM considers public service and education. Regarding deaccessioning guidelines, AAM’s Accreditation Commission Chair Burt Logan stated in 2014 that, “Even people unfamiliar with museum standards intuitively understand that museums hold collections in the public trust and that collections are not financial assets to be used to make up for financial shortfalls.”⁷⁷ With professional standards now governing deaccessioning, there is far greater rigidity and oversight in these decisions, as museums that violate AAM code face direct recourse in the form of sanctions.

With this reorientation towards public service and education, Weil likens modern museums to a “social-enterprise” model. This framework offers a new way of evaluating institutional success with a greater emphasis on bottom line outcomes. In the case of a not-for-profit institution such as an art museum, the “bottom line” consists of *measurable* outcomes, impacts and results. In the social-enterprise model, Weil writes, “the ability to achieve an

⁷⁵ Yerkovich, “Use of Funds from the Sale of Deaccessioned Objects,” 78.

⁷⁶ Ibid, 79.

⁷⁷ Ibid.

intended bottom line is what distinguishes organizational success from organizational failure.”⁷⁸

“The American museum is under pressure to make public service its principal concern” writes Weil, and the “nature of the public service it [is] expected to provide” consists of “demonstrably effective programs that make a positive difference in the quality of individual and communal lives.”⁷⁹ As a result, museums have poured their resources into education and community outreach. The past few decades have also seen a marked increase in the number of Directors whose background is in museum education.

As art museums grapple with this new, community-centric role, some worry that they have strayed too far. James Panero laments the “creeping professionalism” in the museum field and overemphasis on programming and visitor experience. “By emphasizing the visitor,” Panero writes, “museums now risk forsaking the visited and their own cultural importance.”⁸⁰ I spoke to Malcolm Warner, Ph.D., former director of the Laguna Art Museum to gather his thoughts on this new landscape. Though Warner believes that the ultimate purpose of an art museum is to “facilitate the enjoyment of art on a one-on-one basis,” he sees great value in educational programs as an “adjunct to enjoyment.” There appears to be a wide consensus in the field that educational programming enhances the collection, rather than detracts from it. But as a museum’s offerings to the public expand, the challenge becomes how to best prioritize its limited resources.

As Weil points out, museums in the 21st century catering to a diverse public have shifted “from a ‘selling’ mode to a ‘marketing’ one.” In the marketing mode, “their efforts are

⁷⁸ Weil, “From Being about Something to Being for Somebody,” 240.

⁷⁹ Ibid, 243.

⁸⁰ Panero, “Future Tense, VII: What's A Museum?”

concentrated on first trying to discover and then attempting to satisfy [the] public's needs and interests."⁸¹ This shift poses a clear threat to the primacy of the collection. Some skeptics feel that the professionalization of the field "precipitated a disgraceful turn towards commodification" in museum culture.⁸² They fear that "the collection might no longer serve as the museum's *raison d'être* but merely as one of its resources," to be deployed towards programming or operations.⁸³ The recent case of Newfields (formerly the Indianapolis Museum of Art) illustrates this worry. This would constitute an egregious violation of a museum's duty as a cultural custodian entrusted with protecting the world's masterpieces from the public's fleeting whims and fickle tastes. Interestingly, the AAM's deaccessioning policy aligns more closely with this conservative position. Yet herein lies a contradiction: AAM ethics prohibit the use of deaccession funds for any purpose besides acquisitions and direct care, thereby reinforcing the centrality of the collection, while simultaneously amplifying programming and education as key components of a museum's public service. This further begs the question: At what point does adherence to AAM deaccessioning rules hinder a museum's ability to serve its public through its community-oriented programming? With more and more museums facing unprecedented financial challenges, this question becomes especially salient. If a museum faces the threat of closure, but deaccession can provide a way out, then what is the "ethical" choice? After all, a museum can no longer serve its community if it no longer exists. As Michigan Law's Jennifer L. White writes, "Surely the public cannot be served best by a policy in which one interest - the art itself - is allowed to prevail *absolutely* over the very important interest of providing public access

⁸¹ Weil, "From Being about Something to Being for Somebody," 233.

⁸² Gammon, *Deaccessioning and Its Discontents*, xiv.

⁸³ Weil, "From Being about Something to Being for Somebody," 230.

to the art through the maintenance of museums as healthy institutions.”⁸⁴ Mark S. Gold, a prominent art law attorney and author, echoes White, asserting that “There is no stronger case for the use of the proceeds of deaccessioning [for purposes beyond acquisitions and direct care] than when the survival of the museum hangs in the balance.”⁸⁵ Even some Directors, who tend to be the most rigid when it comes to deaccessioning decisions, are willing to make exceptions in a true crisis situation. “I’m okay with a museum even selling off an important work if it’s an existential crisis and they’re going to go out of business otherwise,” Warner affirms.

(2) Market Conditions

Art market conditions pose an additional challenge for museums with limited budgets. As detailed in the previous section, the commodification of fine art has led to an unprecedented level of competition between museums and private collectors. For many museums lacking the funds to upgrade their collections, deaccession may be a viable fundraising strategy.⁸⁶ To some, this is a no-brainer. “Big museums have long refused to recognize their unexhibited collections of duplicates and minors as a financial resource,” writes Michael O’Hare, a Harvard-trained architect and engineer who researches cultural and environmental policy. “As a consequence, they are wasting value by keeping these works hidden.”⁸⁷ Certainly, art is more liquid today than ever before, thanks to 21st century technology. Online bidding has greatly accelerated and

⁸⁴ White, “When It’s OK to Sell the Monet,” 1065.

⁸⁵ Gold, “Monetizing the Collection,” 95.

⁸⁶ Kara Wheeler, “Sparkling Institutional Change: Deaccessioning at the Baltimore Museum of Art,” in *Collections and Deaccessioning: Case Studies*, ed. Stefanie S Jandl and Mark S Gold (Cambridge, MA: MuseumsEtc Ltd, 2021), 172.

⁸⁷ O’Hare, “Museums Can Change -- Will They?,” 17.

simplified the auction process, by enabling auction houses to reach a global audience. But many are uncomfortable with the increasing interconnectedness of museums and the marketplace.

Though there are certainly higher opportunity costs to holding art in storage today, the reality is not quite as straightforward. Martin Gammon, president of the Pergamon Art Group, an art advisory and valuation firm serving both institutional and private clients, is quick to point out flaws in this reasoning. “Confidential assessments of the art collection’s insurance value for actuarial purposes cannot simply be translated into a benchmark of what such objects might actually yield in the public auction markets,” writes Gammon in an article entitled “The Mirage of Riches in Museum Vaults.” “Part of the problem with using these valuations as a rationale for administrative action resides in an insufficient recognition of the actual market forces that affect auction prices, and the unacknowledged role museum collections play in guaranteeing scarcity.” Because scarcity is how fine art derives its value, the demand for a particular artist is often predicated on the belief that their work will be held in a museum collection for perpetuity. “If museums broadly adopted O’Hare’s gambit and sought to cash in on their purported riches, they would paradoxically trigger a catastrophic collapse of the markets” Gammon says, not to mention “abrogate the terms of their charitable purpose.”⁸⁸

If a museum does indeed decide to integrate deaccessions into its overall acquisition strategy, market forces usually shape its collecting priorities, too. “Financial pressures may lead a museum to conclude it is no longer feasible to collect across all periods and that its limited funds are better used to improve the quality of a collection with a narrower focus,” writes legal scholar Sue Chen.⁸⁹ Given the current climate, the majority of new acquisitions are motivated in

⁸⁸ Martin Gammon, “The Mirage of Riches in Museum's Vaults,” *Pergamon Blog*, March 29, 2018, <https://www.pergamonart.com/blog>.

⁸⁹ Chen, “Art Deaccessions and the Limits of Fiduciary Duty,” 111.

no small part by socioeconomic factors. With attendance down even pre-pandemic, art museums need to find ways to stay relevant in order to survive. Attracting a younger, more diverse audience is key. With this goal in mind, many museums today are prioritizing contemporary art by diverse artists that often speaks to a social-justice agenda. Warner recognizes another connection, albeit more subtle, between deaccessions and the rise in contemporary art collecting. More frequent deaccessioning is “part and parcel of the shift towards contemporary [art]” he says. “If deaccessioning is part of the culture... you don't have to worry as much about being stuck with something that's not so good... You can buy things and reckon that 20 years from now, we can get rid of it if the artist turns out not to have been important.” Still, there is an inherent risk that in bending to the market's - and the public's - whims, museums risk sacrificing “important artworks acquired by distinguished predecessors to bankroll acquisitions of works of the moment.”⁹⁰

Furthermore, deaccession can stoke fears that once transferred to private hands, civilization's great masterpieces will be lost forever. This fear, Martin Gammon explains, stems from an anti-elitist sentiment, “depicting private collectors as bad actors who are inherently self-serving, enjoy unchecked privilege and power, and infiltrate the art market... [to accumulate] cultural objects for their secluded and exclusive delectation.”⁹¹ “Deaccession has served to expose [this] prejudice,” Gammon continues, as the public “would rather insulate museum objects from the pollution of art commerce.”⁹²

⁹⁰ Lee Rosenbaum, “Obtuse in Syracuse: How the University's Deaccession Symposium Got Compromised by Conflicts of Interest,” *CultureGrrl* (blog), March 26, 2021, <https://www.artsjournal.com/culturegrrl/2021/03/obtuse-in-syracuse-how-the-universitys-deaccession-symposium-got-compromised-by-conflicts-of-interest.html>.

⁹¹ Gammon, *Deaccessioning and Its Discontents*, 240.

⁹² *Ibid*, 234.

This helps explain why these decisions often generate such intense public backlash, since they are viewed as a “betrayal of the public trust.”⁹³ However, in Gammon’s view, such intense fears are usually unwarranted. It is important to keep in mind that the vast majority of American museums would not exist if not for mutually beneficial partnerships with private collectors. Private collectors, Gammon emphasizes, are “the catalyzing instrument that funds museum collections with exceptional works of the highest quality.”⁹⁴ Moreover, since market forces have proven highly effective at “promoting quality and demoting mediocrity,”⁹⁵ he believes there is a strong likelihood that objects worthy of museum accession will eventually find their way back to “our common patrimony.”⁹⁶ Still, it is unknown, and unproven, that the current generation of wealthy collectors will follow the example of past donors to public institutions. Indeed, there is significant evidence to suggest that self-aggrandizing collectors may opt to create vanity museums—think of The Broad in Los Angeles—rather than contribute works to existing institutions in their hometowns.

The reality is that “every new accession implicates every prior accession in a force field of comparative inferences about relevance and coherence from the collection as a whole,” writes Gammon. This can either “enhance the thematic vein in which an object resides, or potentially move it towards obsolescence as other concerns take precedence in the evolving narrative of the museum’s mission and objectives.”⁹⁷ It is true that museums cannot be expected to “bear the

⁹³ Gammon, *Deaccessioning and Its Discontents*, 234.

⁹⁴ *Ibid*, 243.

⁹⁵ *Ibid*, 237.

⁹⁶ *Ibid*, 247-48.

⁹⁷ *Ibid*, 53.

infinite weight of objects in perpetuity.”⁹⁸ In today’s ever-evolving world, museums need the flexibility to evolve their collections in order to best serve their communities. Therefore, the relationship between museums and the marketplace can be symbiotic, facilitating shrewd deaccessioning decisions that advance both a museum’s financial interests and curatorial objectives.

(3) Calls for Equity

The past few years have been marked by social tumult, brought on by a global pandemic and intensified by a societal reckoning around racial injustice. As we approach the two-year anniversary of George Floyd’s murder, observe the highest Covid-19 mortality rates in Black and brown communities, and witness an uptick in violence against Asian-Americans, issues of equity remain at the forefront of everyone’s minds. Calls for government, businesses and social institutions to examine their role in reinforcing systemic inequalities and white supremacy have reached a fever-pitch. Once buzzwords, equity and diversity are now paramount. Art museums, widely accused of promoting exclusionary, colonialist practices, face intense external and internal scrutiny, forcing them to grapple with their role in promoting and sustaining inequities through their collecting and operating activities. Museums, having in the past been reactionary and slow to change, hindered by bureaucracy and conservatism, are now taking unprecedented action towards meaningful change. Many view deaccessions as a vital resource that will help make this change financially viable.

Over the past two decades, the public’s expectations around the museum-going experience have transformed fundamentally. “I guess you could argue that museums have taken

⁹⁸ Adam Glick and Amy Whitaker, “Object Impermanence: Ethics, Endowments and Deaccessioning,” in *Collections and Deaccessioning: Towards a New Reality*, ed. Stefanie S Jandl and Mark S Gold (Cambridge, MA: MuseumsEtc Ltd, 2021), 46.

the place of churches!” Malcolm Warner quips. The AAM’s Center for the Future of Museums found that younger generations want “interactive, immersive and participatory activities” from museums. “They want to be more than outside observers looking in,” the report states.⁹⁹ Sandra Jackson-Dumont, director of the Lucas Museum of Narrative Art, expressed a similar sentiment in a recent interview. “[People are seeking] educational, transporting experiences [from museums] with which they can engage and respond. They also are attracted to more social and community-creating activities.”¹⁰⁰ When participatory and inclusive experiences are expected, issues of equity inevitably arise. Though these issues have been a focus of closed-door conversations in museums for the better part of the past decade, the events of 2020 catapulted them into the spotlight as the public demanded authentic, substantive action.

As “locus of public trust,” writes MoMA director Glenn Lowry, museums must “accommodate the interests and needs of the most elite and privileged members of society with those of its most marginalized and disadvantaged.”¹⁰¹ Many have neglected this duty for far too long. The numbers do not lie: a 2008 study conducted by the American Alliance of Museums found that whites comprised nearly 80% of museum visitors. A 2017 AAM survey revealed that approximately half of all boards of trustees were completely white, and a study the following year indicated that 84% of museum leadership, curators, conservators and educators were also

⁹⁹ Betty Farrell and Maria Medvedeva, *Demographic Transformation and the Future of Museums* (The AAM Press, American Association of Museums, 2010), 14, <https://www.aam-us.org/wp-content/uploads/2017/12/Demographic-Change-and-the-Future-of-Museums.pdf>.

¹⁰⁰ Donna Walker-Kuhne, “On the Frontlines of Fighting for Diversity and Inclusion: An Interview with Sandra Jackson-Dumont,” Walker Communications Group, Walker Communications Group International, 2021, <https://walkercommunicationsgroup.com/2017/08/13/on-the-frontlines-of-fighting-for-diversity-and-inclusion-an-interview-with-sandra-jackson-dumont/>.

¹⁰¹ Lowry, “A Deontological Approach to Art Museums and the Public Trust,” 144.

non-Hispanic white.¹⁰² This disconnect is rooted in the founding of many art museums by exorbitantly wealthy white males and the philanthropic structure that exists in American museum culture, which fosters an overreliance on wealthy donors. When museums “cater to and are mainly funded and governed by a few powerful people in the community,” an arts drain effect occurs because the museum is perceived as exclusive, elitist and unwelcoming.¹⁰³ This breeds a vicious cycle, especially since museum-going habits are typically established in childhood.¹⁰⁴ “I knew [the museum] wasn’t a space for me because a lot of people I saw didn’t look like me or my parents,” recalls Rosa Rodriguez-Williams, who was recently appointed senior director of belonging and inclusion at the Museum of Fine Arts Boston.¹⁰⁵ A 2017 report published by AAM’s Center for the Future of Museums provides further evidence of the importance of representation. It found that minorities are far more likely to visit museums if they saw themselves represented in the staff, the audience and the art itself.¹⁰⁶

Art museum’s typical donor base is shrinking, due to shifting demographics in the United States, on track to become a majority-minority nation by 2050.¹⁰⁷ Because it is more important

¹⁰² Nancy Kenney, “Exclusive Survey: What Progress Have US Museums Made on Diversity, After A Year of Racial Reckoning?” The Art Newspaper, The Art Newspaper, May 25, 2021, <https://www.theartnewspaper.com/2021/05/25/exclusive-survey-what-progress-have-us-museums-made-on-diversity-after-a-year-of-racial-reckoning>.

¹⁰³ Yuha Jung, “From Snobby to Sustainable: Moving Museum Fundraising from Select Elitist Contributions to Diverse Community Participation,” *EconomistsTalkArt.org* (blog), February 21, 2017, <https://economiststalkart.org/2017/02/21/from-snobby-to-sustainable-moving-museum-fundraising-from-select-elitist-contributions-to-diverse-community-participation/>.

¹⁰⁴ Farrell and Medvedeva, *Demographic Transformation and the Future of Museums*, 13.

¹⁰⁵ Kenney, “Exclusive Survey: What Progress Have US Museums Made on Diversity, After A Year of Racial Reckoning?”

¹⁰⁶ Farrell and Medvedeva, *Demographic Transformation and the Future of Museums*, 14.

¹⁰⁷ Jung, “From Snobby to Sustainable.”

than ever to bring in visitors, museums simply cannot afford to overlook issues of equity. “Art museums in the United States are in a really funny position,” explains Fred Wilson, a Black painter, sculptor, printmaker, and installation artist whose practice deals largely with contemporary race relations. “They need to court the elite for financial support but, at the same time, they also try to speak to ‘the street,’” says Wilson, “And so art museums have this dual personality.”¹⁰⁸ Wilson speaks to a common dilemma in the museum world - the challenge of remaining socially relevant, while upholding long standing donor relationships. In addition to their collecting, exhibiting, conserving and educating roles, museums have also now embraced the role of entertainer and activist with varying degrees of hesitancy. “Museums need to be politically engaged but the danger of activism is that it can be seen as a brand,” notes Wilson, which can be polarizing.¹⁰⁹ This dilemma plays out in many deaccessioning decisions. For example, utilizing deaccession funds to acquire an object by a living artist of color may draw visitors, but at the same time it may alienate the donor of the deaccessioned work or their descendants.

When it comes to using deaccessions to support equity initiatives, museum professionals typically fall into one of three categories. First is the most conservative, which clings to the 20th century attitude that a museum’s ultimate responsibility is to preserve its collection for posterity. Next are moderates, who support a pragmatic approach to capitalizing unexhibited works and using these funds to add diversity to the collection. The final subset are progressives who believe a museum’s foremost service is to its community and it is obliged to pursue a social-justice agenda through whatever means necessary. These individuals feel that deaccession methods must

¹⁰⁸ Janet Marstine, “Museologically Speaking: an interview with Fred Wilson,” in *Museums, Equality and Social Justice*, ed. Richard Sandell and Eithne Nightingale (New York, NY: Routledge, 2012), 39.

¹⁰⁹ Marstine, “Museologically Speaking: an interview with Fred Wilson,” 41.

be “compensatory and reparatory” - not just additive.¹¹⁰ This includes “confronting the legacy” of how objects entered the collection in the first place.¹¹¹ Deaccession may be an impetus for museums to “investigate the ways [they] define objects,” the ways they “consult with groups of people represented in [the] collection” and the ways they “handle, display and create narratives around objects.”¹¹² It may also be used as a method to proactively repatriate objects of indigenous origin that were unethically pilfered from their rightful owners.¹¹³

Equity justifications for deaccessioning can be especially controversial when the funds are applied towards programming or operational expenses, such as increasing staff salaries, providing anti-bias training or endowing a diversity and inclusion directorship. One potential consequence is compromising donor relationships. I spoke to Tom Gildred, a local businessman whose family has long served on the board of the San Diego Museum of Art, as he now does. For Gildred, a key responsibility of a trustee is “to help to protect those [who] have come before us...and make sure that the museum's not doing something that would be potentially against their will or intent.” “I do think museums are businesses at the end of the day...[and] a charity,” Gildred tells me. Donors are important stakeholders, whose interests need to be accounted for, too. “I'm just trying to figure out how much charity we can afford...The idea of, well, we're going to sell some of our collection to be able to afford to do more charity, I'm in opposition.” Gildred alludes to the second risk of this deaccessioning strategy, that such action is beyond the

¹¹⁰ Christopher Bedford, “The Evolving Role of Collections in Serving the Museum’s Mission,” presented at Syracuse University’s Virtual *Deaccessioning After 2020* Symposium, March 17-19, 2021.

¹¹¹ Akeia de Barros Gomes and Elizabeth James-Perry, “Museums in the Time of Covid and BLM: Proactive Repatriation” in *Collections and Deaccessioning: Towards a New Reality*, ed. Stefanie S Jandl and Mark S Gold (Cambridge, MA: MuseumsEtc Ltd, 2021), 238.

¹¹² de Barros Gomes and James-Perry, “Museums in the Time of Covid and BLM,” 243.

¹¹³ Ibid, 236.

scope of a museum's charitable purpose. Malcolm Warner is somewhat skeptical of equity justifications for this very reason. "The job of a museum is to pluck masterpieces... and put them up there for the public," Warner contends, "Let the art schools work on social justice by bringing in more students from minorities, that's where it can really make a difference."

On the flipside, many museum professionals around the world embrace a broader view of a museum's social responsibility. "Museums need to stand firm, with individuals and diverse communities around the world, against prejudice, stereotype and inequality. We are not islands of pure research and conservation ... but dynamic forums for justice in the global contemporary" states Dr. Viv Golding, former chair of the International Council of Museums (ICOM) Committee for Museums and Collections of Ethnography.¹¹⁴ Milene Chiovatto, former chair of the ICOM International Committee for Education and Cultural Action, echoes Golding's view. A museum, according to Chiovatto, "must incorporate in its operational mode what we want society to be... [they] must be open to everybody and promote equal access to opportunities."¹¹⁵ Putting these ideas into practice, New York University's Amy Whittaker advocates that museums rethink their asset management strategies post-changes to deaccession guidelines in 2020. In an article entitled "Reconsidering People as the Institution: Empathy, Pay Equity, and Deaccessioning as Key Leadership Strategies in Art Museums," Whittaker writes that museums should "think of themselves as portfolio managers among different asset classes." Buildings, people and "intangibles such as public trust and goodwill" should all be included in a museum's "asset base," in addition to the artwork. In taking this approach, "artworks can be thought of

¹¹⁴ "Seven Inspirational Quotes from Female Leaders in Museums," International Council of Museums, International Council of Museums, March 7, 2018, <https://icom.museum/en/news/seven-inspirational-quotes-from-female-leaders-in-museums-2/>.

¹¹⁵ "Seven Inspirational Quotes from Female Leaders in Museums."

more holistically as part of the ecosystem of an art museum's activities and priorities."¹¹⁶ Thus, museums should have the flexibility to utilize deaccession proceeds to invest in their staff and create experiences that truly resonate with visitors. These activities all add value to the community and are worthwhile investments in a museum's future.

The question of how museums should approach equity and diversity issues is incredibly complex. "Demographic, social, technological, and economic shifts have transformed the world into an interconnected and democratized information exchange," Jackson-Dumont explains. "These shifts are compelling museums to solve unfamiliar problems and offer new answers to old challenges."¹¹⁷ In light of the current climate, institutional change is clearly necessitated both from a business standpoint as well as an ethical one. Deaccession can be a powerful tool to achieve greater equity and representation, but it must be wielded judiciously. If such actions are taken too hastily or reactively, efforts to diversify may be seen as forced, leading to a loss of confidence among both donors and the public. Instead, these endeavors should be integrated into a museum's long-term strategy. As Fred Wilson emphasizes, a holistic, proactive approach to "embedding diversity and social justice" throughout the institution is ultimately most effective. Rather than rely solely on deaccessions, museums should focus on "diversifying their revenue sources" and "communicating their values to the community" to bolster their financial health.¹¹⁸ As a result, museums will be better positioned to advance their social justice goals as well as care for their current collections. Though urgent calls for change can breed a hardline, radical

¹¹⁶ Amy Whitaker, "Reconsidering People as the Institution: Empathy, Pay Equity, and Deaccessioning as Key Leadership Strategies in Art Museums," *Curator The Museum Journal* 64, no. 2 (May 1, 2021): 253–68, <https://onlinelibrary.wiley.com/doi/10.1111/cura.12420>.

¹¹⁷ Walker-Kuhne, "On the Frontlines of Fighting for Diversity and Inclusion."

¹¹⁸ Marstine, "Museologically Speaking: an interview with Fred Wilson," 39-40.

approach, I firmly believe that a museum's service to its community and its collection need not be mutually exclusive.

Part 5: Case Study – The Baltimore Museum of Art

In recent years, the Baltimore Museum of Art has drawn national attention for its radical approach to social justice, via its bold and unapologetic deaccessioning strategy. This case is unique in that it is a sort of bellwether for public sentiment around deaccessions, illustrating the crossroads at which the museum community has lately found itself. Their desire to be more socially progressive is often at odds with their financial reality and deeply ingrained conservatism around the ways in which funds are obtained and allocated. As was the case for the Baltimore Museum in 2020, this conservatism remains a major hurdle in funding ambitious diversity, equity and inclusion initiatives.

The Baltimore Museum of Art (BMA) was founded in 1914, as part of the city's revitalization effort after a catastrophic fire in 1904. Having begun with a single painting, it now boasts a collection of over 95,000 objects, including the world's largest public holdings of works by Henri Matisse. The museum's core collection of modernist works by Matisse, Picasso, Cézanne, Monet, Gauguin, Courbet and Degas was bequeathed in the late 1940's by Dr. Claribel and Miss Etta Cone. Born into an affluent German-Jewish family, the Cone sisters traveled extensively throughout Europe, befriending Gertrude Stein and Henri Matisse in Paris. Together, they amassed one of the largest modern art collections in the United States. Though courted by several major museums, the sisters were adamant that their collection remain in their home of Baltimore after their deaths.¹¹⁹ Despite its incredible quality and breadth, the BMA's collection

¹¹⁹ "Collecting Matisse and Modern Masters: The Cone Sisters of Baltimore Premieres at the Jewish Museum in New York May 6," Jewish Museum, The Jewish Museum, April 5, 2011, <https://thejewishmuseum.org/press/press-release/cone-release>.

was lacking in diversity - less than a decade ago, 92% of the artists represented were male. Additionally, the institution itself was quite homogenous. There were no senior leaders or curators of color, and its Board of Trustees was 82% white, even though the population of Baltimore is over 60% Black.¹²⁰

In 2018, the Museum launched its “New Vision,” focused on diversity, equity and inclusion goals, such as “increasing and diversifying audiences, acquiring and presenting a nationally significant post-WWII African American art collection, diversifying exhibitions and public programs, and diversifying the Board and staff to effect systemic change across the institution.” Its 2018 annual report provides further details about this bold new initiative:

The BMA intends to become a leading, replicable model for community engagement through collecting and interpreting underrepresented art and artists. This new vision, mission, and strategic plan represent an extension of the historical character of the BMA as a risk-taking, forward-thinking, and bold arts institution with a deep commitment to serving its constituents...It is the unwavering vision of The Baltimore Museum of Art to be the most relevant publicly engaged museum in the United States and a dynamic model for all others.¹²¹

In conjunction with the launch of its New Vision, the BMA announced its plan to deaccession seven works by white male artists (Andy Warhol, Robert Rauschenberg, Franz Kline) to finance acquisitions by women artists and artists of color. With these funds, the museum was able to purchase 95 works by 82 artists from underrepresented backgrounds,

¹²⁰ Bedford, “The Evolving Role of Collections in Serving the Museum’s Mission.”

¹²¹ 2018 Annual Report, Baltimore, MD: Baltimore Museum of Art, 2018, https://cdn.artbma.org/2021/09/28172831/BMA_Annual-Report_FY18-1-1.pdf.

including Lynette Yiadom-Boakye, Jack Whitten, Wangechi Mutu, Amy Sherald, Njideka Akunyili Crosby, Wang Qingsong, Adam Pendleton and Chuck Ramirez.¹²² This decision was well within established AAM and AAMD deaccession guidelines and was widely applauded by members of the field and the public alike.

At the onset of the Covid-19 pandemic in 2020, the AAM and the AAMD temporarily suspended sanctions on museums for deaccessioning rule violations. This was intended to reduce financial burdens on museums forced to close indefinitely, permitting deaccession funds to be used as a stopgap since most other revenue streams (admissions, gift shop, cafés, etc.) had been cut off. Museums around the country seized this opportunity to shore up their finances and avert a liquidity crisis. At that point, the Baltimore Museum was planning a second sale, motivated in no small part by the societal reckoning following George Floyd's tragic death. The role played by cultural institutions in reinforcing systemic inequity was at the forefront of everyone's minds, and the Baltimore Museum had good reason to ramp up its DEI efforts. This time around, the BMA was planning to auction off three blue-chip paintings: Andy Warhol's *The Last Supper* (1986), Clyfford Still's *1957-G* (1957) and Brice Marden's *3* (1987-1988). Together, these works were expected to bring in at least \$65 million, all of which would go towards new acquisitions, as well as improving pay equity and free admission to special exhibitions.¹²³ However, the sale was canceled at the very last minute due to widespread pushback.

Opposition to the BMA's proposed sale was fierce, even from individuals close to the institution. Eleven former trustees signed an open letter alleging that the Baltimore Museum

¹²² Bedford, "The Evolving Role of Collections in Serving the Museum's Mission."

¹²³ Alex Greenberger, "Baltimore Museum Deaccessioning Controversy, Explained: Why a Plan to Sell \$65 M. in Art Ignited Debate," ARTnews, Art Media LLC, October 28, 2020, <https://www.artnews.com/art-news/news/baltimore-museum-deaccessioning-controversy-explained-1234575222/>.

eschewed proper due diligence procedures and called for an investigation by the state's Attorney General.¹²⁴ The sale was also criticized by professional organizations. AAMD president, and Director of the St. Louis Museum of Art, Brent Benjamin expressed concern that despite relaxed pandemic guidelines, the BMA's actions went too far. "I recognize that many of our institutions have long-term needs—or ambitious goals—that could be supported, in part, by taking advantage of these resolutions to sell art," Benjamin wrote. "But however serious those long-term needs or meritorious those goals, the current position of AAMD is that the funds for those must not come from the sale of deaccessioned art."¹²⁵ Critics were quick to condemn the Baltimore Museum as well. *The Los Angeles Times'* outspoken art critic Christopher Knight called the sale "an ethical breach big enough to drive a truck through."¹²⁶ Martin Gammon felt it was "uniquely egregious" since all three works have major cultural value. "[It is] simply grotesque for the BMA to profess that losing this pioneering work [Marden's 3] ... will somehow be recompensed by the small clutch of Minimalist etchings left in storage," wrote Gammon in an op-ed for *The Art Newspaper*.¹²⁷

Others were concerned about the precedent the sale would have set had it gone through, even though the goals behind it were laudable. Because the museum was not in apparent

¹²⁴ Greenberger, "Baltimore Museum Deaccessioning Controversy, Explained."

¹²⁵ Alex Greenberger, "Baltimore Museum of Art Calls Off Controversial Deaccession Plan Hours Before Sale," ARTnews, Art Media LLC, October 28, 2020, <https://www.artnews.com/art-news/news/baltimore-museum-of-art-deaccession-called-off-sothebys-1234575295/>.

¹²⁶ Christopher Knight, "Baltimore Museum of Art Uses COVID as Cover to Sell a Warhol. Floodgates Open," Los Angeles Times, Los Angeles Times, October 19, 2020, https://www.latimes.com/entertainment-arts/story/2020-10-19/baltimore-museum-art-auction-andy-warhol-last-supper?_amp=true.

¹²⁷ Martin Gammon, "'Uniquely Egregious': The Disturbing Precedent of the Baltimore Museum of Art's Deaccessioning Plan," *The Art Newspaper*, The Art Newspaper, October 7, 2020, <https://www.theartnewspaper.com/2020/10/07/uniquely-egregious-the-disturbing-precedent-of-the-baltimore-museum-of-arts-deaccessioning-plan>.

financial distress, many felt the sale was gratuitous, especially since the works were not redundant or low-quality. Rather, they were hallmarks of the collection. Cara Ober, editor-in-chief of BmoreArt, a Baltimore-based arts and culture website, maintains that “there is no discernible reason to sell off valuable cultural assets for mission-driven action items that could be achieved through traditional fundraising methods.” She goes on to point out how the “collection could beckon with a seemingly limitless store of resources for new initiatives and projects that may be more urgent than a protected public archive of cultural objects.” But it is a slippery slope, and once a museum starts selling off its artworks, “especially in the name of paying your employees a decent salary or serving as a beacon for diversity and equity in an elitist, homogeneous art world, where do you draw the line?” Ober’s article is also critical of the sale’s haste and its lack of transparency. Because deaccessions can “sow dissent and undermine public trust in museum leadership... [they] should be undertaken with the utmost caution” she writes. “Had this deaccessioning process been more deliberate and publicly inclusive, it could have shielded the museum from hostile reactions and instead cultivated public trust and support.”¹²⁸

Even so, the Museum’s former director and architect of its New Vision, Christopher Bedford, stood by his decision. In a talk given at Syracuse University’s Deaccessioning After 2020 conference in March 2021, he emphasized that “museums exist to serve communities,” and it is their responsibility to “tell more accurate and complete histories of art.” He called out museum collections as the “literal manifestation of privilege,” stressing that diversification

¹²⁸ Cara Ober, “What We Can Learn From The BMA’s Recent Deaccessioning Announcement” BmoreArt, BmoreArt, October 19, 2020, <https://bmoreart.com/2020/10/what-we-can-learn-from-the-bmas-recent-deaccessioning-announcement.html>.

methods must be “compensatory and reparatory, not just additive.”¹²⁹ “I personally think that the risk of irrelevance that comes from inaction is far riskier than making a bold move to advance a new future,” he expressed in a subsequent interview.¹³⁰ BMA curators Katy Siegel and Asma Naeem further defended their museum’s decision. Writing in *The Art Newspaper*, Siegel and Naeem contended that “deaccessioning is not a judgment about individual art objects, but an assessment of *context*, the way they function in a collection.” Their goal is to bring “artists into *relation* with each other,” illuminating their social context to “make history fairer, more accurate and more meaningful in the present.” They emphasized how the 2020 sale was in line with the Museum’s DEI efforts over the past three years and its future goals. Finally, they addressed criticism about the sale’s lack of financial justification, “It is because the museum is not in financial straits that it is able to ... free up funds for the steps necessary to enact our fundamental mission.”¹³¹ In February of 2022, Bedford was appointed Director of the San Francisco Museum of Modern Art. The search for his successor is still underway, so it remains to be seen whether the new director will embrace the BMA’s commitment to social justice as adamantly and unflinchingly as Bedford did in his tenure.

The Baltimore Museum of Art remains one of the most significant deaccession controversies in recent memory. It raises salient questions about the relevance of AAM and AAMD deaccession guidelines, the public’s influence on deaccessioning decisions and ultimately the social function of art museums in the modern world. The BMA may have been the

¹²⁹ Bedford, “The Evolving Role of Collections in Serving the Museum’s Mission.”

¹³⁰ Stefanie S Jandl and Mark S Gold, eds., “Christopher Bedford” in *Collections and Deaccessioning: Conversations With Museum Directors* (Cambridge, MA: MuseumsEtc Ltd, 2021), 69.

¹³¹ Asma Naeem and Katy Siegel, “Baltimore Museum of Art Curators Respond to Deaccessioning Criticism,” *The Art Newspaper*, *The Art Newspaper*, October 13, 2020, <https://www.theartnewspaper.com/2020/10/13/baltimore-museum-of-art-curators-respond-to-deaccessioning-criticism>.

first institution to grapple with these questions in a highly publicized way, but it certainly will not be the last. Similar events will surely transpire in the coming years, and we will see whether or not they lead to fundamental change in the field.

Part 6: New Approaches & Conclusion

In a 1962 essay entitled *Art as Art*, Ad Reinhardt, one of the foremost artists of the Minimalist movement, writes:

A museum is a treasure house and a tomb, not a counting-house or amusement center. A museum that becomes an art curator's personal monument or an art-collector-sanctifying establishment or an art-history-manufacturing plant or an artist's market block is a disgrace. Any disturbance of a true museum's soundlessness, timelessness, airlessness, and lifelessness is a disrespect.¹³²

Over the past sixty years, the museum world has transformed in innumerable ways. The art museums of the 21st century hardly resemble a “tomb,” and whether intentionally or not, many do indeed act as an “art-collector-sanctifying establishment” and an “artist's market block.” The global pandemic tested the field's resilience in countless ways, making it clear that in order to survive *and* thrive, these institutions need to be oriented to the future. In today's dynamic, complex, and ever-changing world, the rigid structures and bureaucracies that once governed museums will soon be relics of the past.

Modern museums are walking a fine line between progressive ideals and entrenched institutional norms. What they need are pragmatic, balanced strategies to support their financial, cultural and social obligations. I aim to reframe deaccessioning from an ethical quagmire to a

¹³² Ad Reinhardt, “Art-as-Art,” in *Art in America: 1945-1970*, ed. Jed Perl (New York, NY: Literary Classics of the United States, Inc., 2014), 406.

shrewd curatorial and operational strategy. In order to be successful, these decisions must be transparent and proactive.

Despite society's increasing interconnectedness, the deaccession process still remains shrouded in secrecy. More often than not, the public is kept in the dark about these decisions until the moment the artwork is unveiled at auction. Unsurprisingly, this reinforces skepticism and distrust in cultural institutions. The artworks held in a museum are a source of pride for the local community, so the sale of a beloved object is understandably perceived as a betrayal of trust. The deaccession process should be fully transparent, allowing critics, other museum professionals and the general public to weigh in at every stage. Of course, this will take time. However, publicizing these decisions can provide museums with invaluable insight as to whether or not the work is truly worthy of deaccession. If the museum is in a tight spot financially, it also gives the community time to fundraise. Additionally, it would behoove museums to be more transparent about the end goal of the deaccession. Generally, people feel much better about giving something up if they are excited about what they are getting in return! Museums might want to consider organizing an exhibition of works on the "wish list" that they plan to purchase with deaccession funds. Dr. Sally Yard, professor of art history at the University of San Diego, fondly recalls a similar show held at the Guggenheim Museum in the 1970's. Although the museum did not indicate whether it was planning to use deaccession funds to support its desired acquisitions, Yard remains impressed with the ingenuity of this exhibition to this day. Transparency is absolutely critical in order to reduce dissonance in deaccessioning decisions and mitigate negative press coverage. Including the public in these decisions bolsters trust in the institution, leading to mutually beneficial outcomes for museums and their constituents.

Moreover, museums need to proactively integrate their deaccession strategy with educational and curatorial goals. These decisions must be aligned with a museum's mission and long-term vision and must always give deference to donor intent. Especially with the donor base shrinking, honoring these preexisting relationships is critical. I do believe that museums should uphold established ethical codes and avoid using deaccession funds for operating expenses, except in extremely limited crisis situations. If it can turn to its collection for a bailout, I am concerned that the institution will be less prudent in its handling of its finances and more likely to overstretch its resources. It is the Board of Trustees' duty to ensure that the museum is operating efficiently, so that it need not dip into the collection it is responsible for preserving and protecting for future generations.

Equity and diversity initiatives must be proactively incorporated into every aspect of a museum's operations, from its hiring and recruitment practices to the art on its walls. Only when this occurs can meaningful institutional change be achieved. Deaccessioning may be used to facilitate these goals, but it must be executed in a purposeful, contemplative and deliberate manner.

Above all, we must always remember that every work of art has a valuable story to tell. While all museums benefit from greater racial and gender diversity, simply auctioning off the past in an impulsive, unreflective way is never the answer. One of the most important contributions museums offer to society is their breadth. They provide context and facilitate conversations about pertinent issues, both past and present, even when it is uncomfortable. Along the way, they inspire us with the wonders of human creativity. No matter how thorny the deaccession dilemma may be; how flawed and fallible even the most esteemed art museums are, may we never forget their invaluable gifts.

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