Museum's plan to sell art raises ethical concerns

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Art

When the auction house Christie's brought a work by Leonardo da Vinci through San Francisco for three days in October, it arrived with great fanfare and was met with long lines of viewers, on its way to being sold in New York for nearly half a billion dollars.

Much quieter was the tour stop in the Bay Area that same week of two paintings by Norman Rockwell, put on view by Sotheby's for a single day. Yet the tale behind that event could have more far-reaching effects on Americans' access to art, and on U.S. museums, than the spectacular Leonardo auction.

Recognized as among the artist's best works, the Rockwells were to be part of a series of sales of 40 works from a single collection, including

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Stephanie Zollshan / Berkshire Eagle

Demonstrators outside the Berkshire Museum in Pittsfield, Mass., last month protest the auctioning of 40 artworks, including two by Norman Rockwell.

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major pieces by Thomas Moran, Frederic Church, Henry Moore and others. The Rockwells alone were estimated to realize as much as $40 million; the other works could push the total well beyond $60 million.

Those paintings, however, never made it to the auction block. The reason? Unlike the privately owned Leonardo, the 40 works were consigned by a museum — the 114-year-old Berkshire Museum in Pittsfield, Mass. — and they comprise the core of its art collection.

They were offered for sale by the museum's trustees, following dubious procedures in making the decision to "deaccession," or officially remove, the works from its collection. Along the way, the trustees have ignored protests by museum supporters and defied standards accepted by virtually all art experts and professional associations, drawing condemnation and several lawsuits.

The struggle over the art's fate has been playing out since July in the small city of Pittsfield, population 42,846, but it has drawn global attention. One journalist estimates that some 4,000 articles about it have appeared in publications throughout the world.

Why? What does an arcane argument in a small corner of the Northeast mean to museum-goers in the San Francisco Bay Area and across the U.S.?

One might as well ask: What is the value of a work of art? Can a price tag be affixed to anything and everything? Or can we agree that some things should be, truly, priceless?

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Sotheby's downplayed its preview of the Berkshire Museum art in San Francisco. But if the auctioneers and the museum board thought they could fly under the radar until the checks were cashed, they were wrong.

The board's aim is to use auction proceeds to fund capital improvements, a larger endowment and what they call a "New Vision" that deems the institution's most marketable works of art "not essential to the museum's refreshed mission."

That plan flies in the face of widely accepted ethics guidelines, which require that any proceeds from sales of deaccessioned objects be used only in direct support of the collection. That is, generally, to improve the quality of a museum collection by buying better works or works in better condition — never to meet operating expenses or to renovate buildings.

In rapid order, a community group called Save the Art — Save Berkshire Museum popped up and regional arts leaders spoke out. The two national museum associations, the Association of Art Museum

Ben Garver / Berkshire Eagle

Berkshire Museum chief Van Shields, who is now on medical leave, announces a plan in July to sell major pieces of the collection to finance what he called a New Vision for the museum.

Directors and the American Alliance of Museums, condemned the plan. The Mass Cultural Council, a state agency, coaxed and threatened.

A group of museum members filed suit. They were quickly followed by Rockwell's heirs, who argued the artist donated his art to the museum, in 1958 and 1966, "hoping the people of the Berkshires would see it and enjoy it."

Museum director Van Shields, an architect of the plan who reportedly began speaking of "monetizing" the collection shortly after his arrival in 2011, left the museum on medical leave in October and has yet to return.

Finally, the Massachusetts attorney general's office, which, like California's, oversees laws governing charitable organizations, sought and won a Massachusetts Appeals Court injunction. It halts for now what it has called "the extraordinary step of selling 40 works of art that amount to substantially all of the value of (the museum's) fine art collection."

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The Berkshire Museum board has refused even to discuss what it sees as its exclusive right to decide the institution's future. Its alarming lack of transparency, ignorance of museum standards and utter disregard for the cultural heritage of its community have been clouded, in some quarters, by the argument that the collection sell-off is the only way it will avoid bankruptcy.

Never mind that such an analysis has been discredited by outside financial experts; let's take it at face value. Is there ever a time when it might be appropriate to shed a few objects to save the institution?

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day that Rodin's "Thinker," which has graced the entry court since the first days of the museum, was too valuable to keep when the roof was leaking? If SFMOMA wished to sell off Matisse's "Femme au Chapeau" to prevent layoffs in a difficult year?

I asked the major collecting museums in the region for their deaccession policies. Most have strong guidelines. (The new director of the Cantor Arts Center at Stanford University reported that her museum has a written policy that "follows and affirms the guidelines for best practices as described by AAM and AAMD," but for some reason would not share the document.)

All the policies provided carefully define what objects might be considered for deaccession, and require the advice of professional curatorial staff. The Fine Arts Museums of San Francisco, outlining common standards, says such recommendations must be "based upon the lack of merit or changed circumstances of the object with regard to its physical condition, identity, or irrelevance to the collection."

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Much of the debate about the Berkshire Museum, and the topic of deaccessions by community-based museums in general, revolves around a key question: To whom does the collection belong? In a strictly legal sense, that can vary.

The Asian Art Museum and the Fine Arts Museums (the de Young and the Legion of Honor) are, technically, agencies of the city and county and their art, with some minor exceptions, is government property. The Oakland Museum of California was, says Director Lori Fogarty, "a city department until 2011 and transitioned to independent governance in 2011, although the city still owns the collection and the facilities."

Works held by the UC Berkeley Art Museum and Pacific Film Archives legally belong to the regents of the University of California. The San Francisco Museum of Modern Art and the San Jose Museum of Art are private, nonprofit entities that own the art directly, overseen by their boards of trustees; their structure is most like the Berkshire's.

Regardless of legal ownership, however, there is a real sense in which these collections belong to all of us. These institutions exist for the benefit of the public, and they subsist through public support, whether directly with government dollars, through tax deductions for their donors, or both.

The law can be unclear on the particulars, but there is little doubt that, ethically, museums hold works of significant cultural value in the public trust. Indeed, cultural value, as opposed to market value, is the only worth of the objects in museum collections. The best institutions, including all the ones I surveyed, do not report in their financial statements any monetary value at all for their art collections.

Regardless of an auctioneer's or collector's interest, a work that can't be sold is essentially worthless.

Worthless, that is, in monetary terms. Some might even argue that a collection of fragile, space-occupying objects is more like a liability. As SFMOMA told me, encapsulating the gist of every collections policy I examined, "we do not carry our collection as an asset, on the underlying assumption that we will care for it in perpetuity."

There are practical reasons, too, for museums not to peddle works to raise money for operations and maintenance. One is that potential future donors might very well think twice if they know their beloved objects could be sold off at any time, for any reason. Even more important: A policy that allowed a board to jettison art rather than give or get the resources needed to run the museum would be a great temptation for the lazy trustee.

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In 2009 the late Michael Rush, who was director of the Rose Museum at Brandeis University, told me of a risky plan to get the attention of the university administration by having the Rose collection appraised. Sure enough, when the school's then-president saw the number — $350 million to $400 million — he promptly announced the closure of the museum and a plan to sell the art to support "the students, the faculty and core academic mission."

That decision was eventually reversed, but only after two years of litigation and the end of the Brandeis careers of both director and president.

Not every deaccession controversy has worked out so well, however, and there is every reason to be concerned about what precedent might be set in Pittsfield. That is why a lawyer for the Berkshire Eagle, a newspaper fighting the museum board for access to information on its decision-making, put the local issue in broader terms.

"This case is part of a national controversy," Jeffrey J. Pyle said in a filing, "over the circumstances under which museums should be able to deprive the public of access to works of art by selling them at auction to the highest bidder."

Meanwhile, lest we become complacent about our own museums, we might keep one more fact in mind regarding the Berkshire debacle. That museum had written policies, too, as stringent as the best anywhere. When the board decided to move forward with the sale of art, they simply voted to change the policy — a full month after executing a confidential consignment agreement with Sotheby's.

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