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THE TAX CONSCIOUS ART PATRON AND THE FRENCH TAX LAW OF 1968

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The collectors and art patrons are united by two human traits that in the natural sphere of their activities often merge. One likes to imagine the first collector, at the dawn of human history picking up, while walking, two or three stones because of the attractive shape or colour which he to keep and to look at again and again with the same surprise, the same fascination of attraction, perhaps even the same pleasure or emotion as at the moment of discovering. Then follows the research for other stones for their shapes and colours.

Doubtless, the art patron makes his appearance later time although prior to the birth of the historic Gaius Maecenas, counsellor to Augustus, protector of poets and artists, who became the prototype of art patrons. For art patronage he supposes his stage of social development which permits distinction between artists and, therefore, aesthetic judgment ennobling the art patron to single out this or that painter or sculptor with the aim of assisting or promoting him.

However the attitude of collector and art patron gradually develop into contradicting motivations and feeling marked by opposite poles of egotism and altruism and by opposite

diametrical modes of behaviour, blind passion and enlightened choice.

The collectors generally look for works of art, but may also feel compulsion independent of knowledge and aesthetic judgment: collecting worthless objects such as tickets, buttons, labels. It happens that collectors gather, almost without discrimination, groups of objects, but there also selective collectors insisting on quality. There are on the other hand, pathologically voracious collectors buying any objects that strikes their fancy.

A certain kind of collector likes to discover an unprecedented theme of collection, and thus sharpen his passion by the thought of being the only one on the private hunting preserve. There are Don Juan collectors whose joy is to find the object, conquer it and deny its possession to others. There are possessive collectors with a secret and jealous passion: the most beautiful pieces of Jacob Epstein's collection were found after his death under his bed, carefully hidden: perhaps he did never look at them but he knew that they were in his possession. There are enthusiastic collectors who infect with their passion those they meet or invite. There are ostentatious collectors who constantly show with pride the pieces in their collections, and there are discreet almost humble collectors who seek excuses for their collection as if it were an illness. But for all of them the need to collect is an integral part of their personality and has become their reason and their mirror. All things considered, the gift of collection is a form of narcissism.

Does one become a collector by heredity or vanity or love of art or in search of profit?

There are all these with all their contradictions in the collector.



One quotes of American doctors advising their rich overworked businessmen patients to start a collection as the best of medical treatment. Though there are insinuations that those physicians are not without contact among certain art dealers. And antique dealers claimed in any case that a collector cannot die or only at the most advance age, for he must always seek out a picture, object or a piece of furniture missing from his collection.

The art patron generally is, and historically has been, inspired by a disinterested motive: the interest to help artists by his commission without being artistically active himself, he goes beyond mere financial support because he stimulates creation. He often exercises a choice, influences by his assistance the art and the taste of his time. He is a promoter.

The first art patrons were priests and rulers of Mesopotamia, Egypt and Crete who built temples and palaces filled with sculptures and decorated paintings. But this patronage, while the only means of livelihood for the artists in ancient society is not disinterested. For these buildings and works of art are witness to power and rite and often are the symbols so much that the principalities of Sumer and Akkad made prisoners the Gods whose idols they carried away and that the Roman military leaders considered works of art as spoils of war which they carried to Rome. The Emperors Augustus, Hadrian or Constantin meant to show their power by the colossal architecture which they favored. And the Roman patricians became art patrons mainly because it pleased and flattered their clients, extended influence and prepared and strengthened their political and social success.

In the Middle Ages, Charlemagne continued the tradition of state patronage of Byzantine monarchs, with both cultural and political aims, edifying and imperialist. In the romanesque era, the patronage

by ecclesiastic authorities secular or monastic, aims less at an image of authority if not the divine pomp on earth, than at the use of art for edification such as is illustrated by the 'poor man's Bible' in tympane and capitals. Doubtless Abbey Suger, promoting monumental sculptures, stained glass and treasury of Saint Denis Church is divided by the love of God which gives him his faith and by his passion for beauty which insures his eternal glory and notoriety for the present.

During the gothic period and early Renaissance, however art patronage tends to broaden sociably and to shed its political orientations. This new patronage is tied to development of towns and commerce and to the ascendancy of certain social groups, sometimes rather independent or political or ecclesiastical authorities. And if we still encounter pious commissions, chapels, tombs, high carvings, altar paintings rather than secular subjects, those who commission the artists are orders of knighthood, guilds, municipalities, families of nobles or burgesses. This is the time when the donor appears in the corner of altar pieces or frescoes, often with his wife in their rich brocades and jewels. The patron merges into public visibility and shows his vanity as much as his faith and his wish to benefit the arts. And does not patronage become an easy means of attracting social esteem and client's confidence by a display of one's fortune? It is no accident that two banking families gave commissions to Giotto.

This opened the way towards total individualisation, full of passion which, like all other values, determined during the Renaissance the phenomenon of art patronage. The patron-prince searches for the ancient past he admires but his activity also favors contemporary art and energizes the aesthetic trends of his time and even influences the theory of art. The Renaissance patron not only



develops human relationships and spiritual dialogs with the artists, but somehow even leads artistic production, taking the initiative by his commissions and criticizing by his directives. The Italian and Roman Patron is a prototype. He expresses his taste in the decoration of palaces and dwellings. He collects antiquities as well as contemporary paintings and sculptures. The entire town considers him as the arbiter of arts. His taste of knowledge and collector's passion are boundless. The Renaissance is the era when science cannot be separated from art and when in their "curiosity cabinets" lords and princes pile up the rareties of world. In family after family, town after town, art patrons make the artists shine. Art patronage takes form on the great human scale with the Duke of Berry and the Duke of Anjou, King Francis the First, the Emperor Maximilian, the Sforzas, the Montefeltros, the Estes, the Viscontis, the Medicis, the Gonzagues VI and others, this "lust for glory" mentioned by Burckhardt. Simultaneously a laudable humility before the glory of art: Charles V of Spain bending down to take up Titian's brush. For two centuries to come, the great art patronage led by rulers typified by Louis XIV, conquers all Europe, Prussia, Saxony, Bohemia, Austria, Poland, Portugal. In France, leadership of taste is delegated under the royal supervision to Le Brun and artistic production is politically organized by Colbert. But it is important to note that in all countries there arises an art patronage of national prestige. Everywhere royal collections began to open their doors to art lovers and even to the public. They turn into museums of which Vasari built the first in Florence in the middle of the sixteenth century. Thus, art patronage of Kings starts a great movement on a national scale.

At the same time private patronage has not vanished, far from it. Dilettante aristocrats, and enlightened amateurs, connoisseurs are both collectors and patrons: Count Caylus, Pierre Jean Mariette, Abbey de Marouilles, Lord Burlington, Jean de Julienne, the engraver of Watteau are examples. This is a long period of transformation. The rise of art criticism encourages patronage of living artist. Prosperous public auctions facilitate antiquities, curiosa of all kinds in the sixteenth century. The rise of easel paintings, later, that of still life and landscape has assured them, from the seventeenth century on a new rôle while they slowly intervened in the art market, between collector-patron and artist. For, the appearance of the bourgeois-trademen, the change in decoration of houses compared to the grand buildings and decorations of Kings had inevitably changed the relation between patron and collector. The artists lived no longer at the court of a patron-prince, remunerated by him, nor did they travel from palace to palace. They began to work in studios, financed and stimulated by merchant's commissions. In this closed economical bourgeois world, the patrons were rare. In protestant countries the end of ecclesiastic commissions favored the formation of collections even by men of rather modest means. For this new market, merchants promoted new kinds of painting: genre scenes for Dutch burghers of the seventeenth century, "vedute" of Venice or others places for the British of the eighteenth century. Thus the collector surpassed the patron, at least the patrician patron as known in antiquity or in the humanistic Renaissance: he who adorns the city while cultivating his own personality. The patronage of social and political rôle becomes the fonction of the sovereign.



Then nations become sovereign. During the French Revolution it has been decided that the collections would be as "in the public interest". And, thus, in 1793, the Louvre became the museum of the Republique. Everywhere the question arose now to transfer the King's artistic treasures to the people. The interlude of the Napoleonic era brings back the Roman system of the spoils of the war, but it is time to enrich the nation.

This nationalisation of the artistic patrimony results in the creation of a new type of patronage: the patronage by donation which consists of enriching the state museum and contributing to cultural expansion of the national collectivity. Certainly the art trade also changes with the evolution of customs. If Watteau in his Gersaint shop-sign had shown his worldly versatility and the privilege granted to a social art by curiosity, the famous letter by Hogarth on collector's behaviour denounces the dominance and trickery of dealers. The collector, however, no matter how egotistical, is thoroughly attached to his objects and cannot escape his desire to perpetuate his life's work through patronage by donation, so as to survive in the memory of mankind.

An enormous economical social upheaval both of the industrial and capitalist society of the nineteenth century, revived art patronage and definitively established the succession to the sovereigns. However, the prosperous middle classes do not consider art as a necessity, and are glad to leave it to public institutions to take care of it. But certain captains of industry and prominent bankers rediscover the spirit of ostentation and often despotism that animated the lords of the Renaissance. If they consider art collecting as a social asset they also know how to serve art honestly and often leave the objects they were able to gather,

sometimes thanks to competent dealers, to museums that often are the very residences: Guimet, Camondo, Jacquemart-André, Marmottan, Cognac-Jay.

However the aesthetic currents of the century worsen the relations of artists with official salons and with buyers of mediocrity who support insignificant paintings: "I despise patrons", Courbet would say. This judgment is doubtless exaggerated, for the battle of impressionism is earned with certain collectors all of whose donations were not refused by the state under pressure from academics and who rediscover the humanistic values and this interested spirit of Renaissance patrons: Chocquet custom's official, Caillebotte rich amateur, the bariton Faure, the backer Murer, the doctor Gachet, Hoschédé owner of a popular store. Hommage is also due to the type of intelligent art dealer like Durand-Rueil who supports avant-garde artists.

But all this turmoil of art and patronage and specially the regret of the bourgeoisie to have mistaken their direction of art will put into competition in the twentieth century the present type of dealer-patron and profit-minded collector. In fact, dealers have taken over the patron's rôle in the artist's destiny: the contractual system binding painters and sculptors to them. Possibly it improves their living standard compared to that of the impressionist whose letters by Monet and Van Gogh testify their precarious social position. But this form of financial aid no longer has any connection with the disinterested element of patronage. This patronage of profit, with its methods of publicity and its invitation to gambling held out to the public substitutes its strictly commercial values for the defects of last century's collectors who were ostentatious more often than calculating.



The new money conscious collector, carefully cultivated by certain dealers now pays tribute to the narrow spirit of that part of middle classes who laughed at impressionist and cubist exhibitions. He is afraid to be left out and to miss a good speculation. As certain expressive forms of our contemporary art are far from reassuring to him, it is not difficult to understand his uneasy state of mind, torn between the hope of future gain and the fear of deceiving himself or being deceived by well-organised brain-washing.

This historical overview shows that collecting and being a patron have always existed and often coexisted in the same person. To-day however, patronage seems to decrease in quality and quantity while, on the other hand, wiser discrimination of cultural knowledge has led to an expansion in number of collections, particularly of small and medium sizes.

This becomes clear, if one analyses the respective positions of collector and patron. One can progress from the first to the second of these rôles by changing one's scales of value, going beyond individual behaviour to achieve a social attitude. Thus, if the collector's motive seems to spring from a rather simple coexistence of the need to possess and the will to organize, the roots of patronage are found in a complex psychology that varies with historical context.

We can thus put forwards the thesis that one is born a collector but becomes an art patron. However the cause that sets in motion the patron of the arts is not always the same. It surfaces at two moments:

- 1) either at any time of life when the collector feels the need altruistic or vain, to aid the artists whose works he likes or to make a gift of his collection to the community;

2) or at the time of advancing age and approaching death, when the collector ponders the fate of his collection and considers presenting it to the community.

The major determining factor or psychology behind art patronage is altruism; for, whatever other elements may exist, it is the moving force. The second motive is a certain pride in success; not only social success evidenced by the monetary value of the collection but success in aesthetic judgment, that is: the aesthetic value of the objects collected. In addition, there is a warm emotional state: his love for "his" collection, the feeling for the objects of his desire, passionately wanted, hunted and discovered, saved from alternative destinies to come into an entity which is unique and possesses a quasi-human personality which makes it beloved by the collector. This is frequently the reason why the donor feels obliged to dictate imperiously that his collection be kept entire and intact such as he has loved it: thus certain patrons have created admirable "frozen" museums as in the case of the Wallace collection in London and the Gulbenkian Foundation in Lisbon.

Nevertheless the transition from collectorship to the decision of a patron to offer his collection to the national patrimony represents a real psychological debate which the state should understand more thoroughly if patrons are to be encouraged. For the will of the future donor weakens, contradicts itself, resolves in qualms, runs into obstacles, encounters a series of risks that at first seems intolerable to him.

1) having to give up possession is the first thought-provoking resistance to donation. The chance of keeping life-time use is a consoling solution that the state does well to propose to the donor.



- 2) having to lose ownership creates reluctance depriving his family and heirs of the financial value of his collection which presents less of a problem to a rich patron than in the case where the collection is the bulk of the estate of a collector not otherwise affluent, or in the case where his heirs love the objects as much as he does and feel frustrated by the intended gift.
- 3) having to disperse the collection is often the collector's major worry: the knowledge that the pieces in his collection will be scattered among museums or rooms of a museum at the will of state authorities. The nature of certain collections makes fragmentation unthinkable.
- 4) having to lose identity if in the absence of financial means and exceptional size of a collection worthy of his special museums, the donor's name will rapidly fade from the memory of mankind for whom it was destined.

Each of these risks creates different psychological obstacles deterring the collector from becoming a patron. It seems most desirable that modern governments, in addition to the usual incentive grant to patrons, take into account these problems of different nature of value so that solutions may be found.

If patronage by donations becomes less frequent to day it is mainly that the prices of pictures, sculptures and art objects have reached enormous levels beyond the monetary reach of individuals. A donation means therefore impoverishing considerably the estate and few immense fortunes permit such gifts without serious consequences. Furthermore moral values have declined and generosity and altruism have become rare. Materialism attributes to the collection a rôle to play in the protection of the estate-particularly against inflation. Finally here still

exists a certain distrust of the state which, therefore, should undertake to create incentives for art patronage. In practice two kinds of measures can be adopted: the first ones are psychological incentives, the second in the field of taxation offset or diminish the shrinkage of the estate caused by the gift. Several major countries have adopted such measures. France did it in its law of the 31st of December 1968, attempting by legislation to strikes a balance between the advantage granted to the donor and the enrichment of the nation's artistic resources. But has France done enough?

Law of the 31st of December 1968

The title of the 31st of December 1968 aims at the conservation of the national artistic heritage but a reading of the report presented to parliament, the declarations of the minister and subsequent applications show a certain confusion and some contradictions. For the author of the report the purpose was to avoid exporting abroad ancient works of art for, he considers the works by artists of yesterday as irreplaceable whereas the export of contemporary replaceable works does not cause irreparable loss to our national resources. In practice, however, the government have fortunately made no distinctions between works of French and foreign artists nor between the works of the past and our time. The sole criteria have been quality and interest to our national collections. The recent exhibition at the Louvre: "Defence of the National Patrimony", assembled five years of donations in payment of estate duty and included paintings by Filippino Lippi, Rubens and Goya as well as several pictures by Poliakoff.

Thus, seems established that the law aims to conserve, by appropriate means, the national artistic resources located in France, regardless of the kind of work or the period, provided that they are of



interest to the national collections. In recent practice, especially the acceptance of a large number of works by Picasso in payment of estate duty proves the point.

As to the reason invoked before parliament those advanced by the authors of the committee report have less merit than those of the ministry. In fact not only the export of art works - called "flight abroad" by the report - should be prevented but the minister is correct in taking into consideration the diminishing private art resources and the "thirst for purchases by French and foreign collectors", this phenomenon leads the government to wish to keep its art works of great artistic value and to place them at the disposal of the public. However, no one overlooks the fact that the moderate sums available to the government for this purpose lead them to persuade private individuals to make donation of work of art.

Certainly besides state purchases through dealers or directly from collectors such as the acquisitions of Georges de la Tour: "The card cheater with the ace of diamonds", the state may buy in public auctions by using its preventive right. But apart from the fact that this right is disliked by dealers and collectors, no bargains exist in that market and the state remain confronted by its lack of funds.

The presentation before parliament attacks the insufficiency of funds available in the past to stimulate art patronage-transfer tax exemptions for gifts of art works to public institutions are of no advantage to the donor since it is the public beneficiary who realises the savings under French legislation which makes transfers taxable to buyers or donee further, deductions of charitable contributions from income subject to income tax is limited to 0,50 % of income, a ridiculously low maximum, and restricted to gifts made to a very limited list of charitable public institutions such as the Foundation of France of the Red Cross.

The legislative intent has therefore been to involve the private art patron and to give him financial incentive instead of the mere satisfaction of an altruistic and generous act. To day benevolence is no more sufficient as a motive for art patronage. French law has, thus, taken its inspiration from the legislation of certain other countries, in particular the United States, considering the effect of tax concessions that can be given to donors and has gambled on this type of motivation in order to ensure the preservation of national art treasures.

It is worth noting that the law is limited to movable property. The reason for excluding real estate is independent of the great artistic or historical value of real property and of the need to preserve this national patrimony and even of the danger of export (we need only to think of cloisters dismantled stone by stone). The reason, instead, is sad and sordid: the state already burdended by its historic monuments is unwilling to risk the cost of repairs and maintenance of buildings it may receive as donations. This provokes thought as private fortunes shrink, as admitted by the minister; what will become of these castles, ancient buildings and gardens that make the charm of France as much as the great protected monuments of the past?

The law of the 31st of december 1968 institutes two kinds of tax incentives to art patrons:

- 1) exception for transfer tax, due upon transfer of title to property
- 2) possibility of paying inheritance tax in art works

#### Transfer Tax

In a case of regular donation of art works to the nation, no tax advantage can be granted by the grateful government since in France no tax is payable by the donor.



In the contrary case, if the gift to the state is made by a new owner of a work of art, there exists a liability to transfer tax from which exemptions can be granted:

- 1) in the case of purchase of work of art at public auction  
(there are no taxes in France on private sales)
- 2) in the case of a donee receiving a work of art from a private donor.
- 3) the case of acquisitions of a work of art by inheritance.
- 4) in case of receipt of a bequest under the testament of another person.

In such cases the recipient becoming the legal owner of a work of art, under the conditions mentioned, may be exempted from transfer or other taxes if a donation is made to the state.

The donation must take place within certain time limits. This provision gives time for decision and does not require for decision the owner of the work of art to become a benefactor immediately; or financial and sentimental factors included may be weighed, all reasons may be considered. This time for thought is equal to the registration period for the transfer or the period for filing an estate tax return... This means one month from the date of a gift received or six months from the date of death of a decedent in France or one year if death occurred abroad. The buyer at auction, not being subject to registration, must declare his intended donation at the time of bid.

So far, the situation is normal in that an individual having become owner of a Rembrandt or of the Madame Pompadour's bed and having presented it to the nation, logically pays no tax based on his temporary ownership just as the state pays no tax on its final ownership.

This important provision is embodied in paragraph 2 of article 1 reserving use. This permits the owner to enjoy the Rembrandt, given to the state, in his home or collection during his life with the same rights as an owner except for the right of sale. Better still, he may stipulate continued life-time use by his spouse to take effect after his death.

Going further the law provides for the case when art work forms part of a building for historical or artistic reasons such as a palace or a ceiling painted by Tiepolo or the wood panels in the study of a great Renaissance writer; or the statues in an historical park or Japanese prints in the house at Giverny forming the aesthetic background to the life of Monet. For the term "part of" must be widely interpreted to apply not only to works that would be damaged but also to those that would lose most of their meaning if removed from the framework of real estate location.

Thus, in the case of an artwork that is "part of" a building, the owner may reserve its use to all successive persons who will own the building without time limit even beyond the ninety-nine year limit of the traditional long-term proprietary leasehold.

However the following conditions must be satisfied:

- 1) the works must be kept in the building.
- 2) the public must be given access.

No detailed legal definition is given for the concept of access. The author of the committee report to the legislature emphasized the purpose of the law as "committing the objects of great interest to be seen inside their natural background". At the second note of the law, the debate centered on public access to art works belonging to corporations, and the minister finally declared that the committee, on acceptance of gifts to the state, would decide the conditions of public access.



However the law provides sanctions for violation of the undertaking to grant public access to works donated to the state. Such a violation terminates the right of use and the works must immediately be handed over to the state subject a fine of Fr. 1,000 per day of delay. The severity of the sanctions shows the importance attributed by the law to the right to the public access to works donated to the nation.

Finally mention must be made of the rights of the government authorities. First they may refuse a proposed donation. Requests for acceptance are submitted to an interministerial tripartite commission consisting of representatives of the Prime Minister, the Minister of Finance and the Minister of Education. The commission gives its opinion on:

- 1) the artistic interest of the proposed objects,
- 2) their value.

The first opinion dealing with artistic interest is a rather delicate matter implying aesthetic judgments subject to all dangers of official taste. For, the commission consists of representatives of ministers other than the Minister of Culture. One hopes that the decree of the 10th of November 1970 fixing the conditions of acceptance would be amended to include a state museum curator representing his minister and even representative of art criticism possibly designated by AICA. Thus the commission could better appreciate the needs of public collection and benefit from expert advice on aesthetics.

The second opinion is even more delicate: the attribution by the commission of a value to the art work in case of a purchase at auction, the answer seems simple but not so under other conditions. The parliamentary report taking cognizance of the difficulties hazarded a digression into art criticism by emphasizing the trend of

modern art to ignore the "imitation of nature" and to consider as a work of art an object that, in the past would have been taken for a joke. This leads the report to the conclusion, perhaps more evident than its premisses, than the state would act against its interest if it adhered too closely to present price levels. This attitude is realistic since it justifiably takes into account the disproportioning effect that interested parties may exert on public sales.

Thus the decree requires the commission to set the value for tax exemptions of the art work. This is a novel concept committing, according to the parliamentary report for the work not to be appraised but simply accepted as the counterpart of a certain sum. Hence the commission is free to make an evaluation above or below market value for the work or a similar work. This shows the very delicate point of the commissions's opinion: this body acts as court of appeal of the Drouot Auction Room. This supreme authority can be unreservedly accepted only if the commission consists of competent and independent members; hence the need to reform its membership criteria.

The interministerial commission only gives its opinion, but final acceptance is decided by the Minister of Finance. Thus the government may refuse the gift or impose special conditions, particularly as to maintenance and security. Naturally the art patron has the right to refuse the conditions of state acceptance and to keep his work of art subject to the payment of the regular taxes within a month.

Equal attention must be given to patronage by legal entities governed by important provisions of the law of the 31st of December 1968, arising from the remarkable under-development of legal entities in our society.



Certain types of association and collective bodies assume cultural rôles to-day by commissioning artists and writers or by decorating their professional quarters with works of art. Generally this involves contemporary art but may also extend to traditional art. A real estate corporation may order a large painting for the entrance to its building, or a statue for its garden. Banks begin to form the habit of exhibiting tapestries and paintings and sometimes assemble real art collections. Thus a Belgian bank has recently formed a remarkable collection of African sculptures. Furthermore the offices of managers and employees of business corporations, their lobbies, and public spaces of all sorts of commercial entities or non-profit organisations, may be adorned with art works, usually contemporary and nothing prevents a bank or successful corporation from acquiring a Corot or a Renoir.

The legislator, therefore, wants to encourage corporate art patronage to take advantage of numerous social and economic trends. The government have realized that the time of rich patrons, princes, industrialists, merchants, has gone for ever. The parliamentary report stated that big corporations are particularly able to assume the rôle of patronage badly needed by our nation.

The law, therefore, allows a corporation to donate to the state a work of art of which it reserved itself the use under certain conditions:

- 1) the use terminates with the dissolution of the corporation by expiration of its charter or by voluntary or judicial liquidation. In such event the work of art reverts immediately to the government subject to a daily fine of one thousand Francs in case of delay.

2) the maximum period of beneficiary use is twenty-five years.

These two conditions apply to works not visible to the public such as a Renoir in the "Conseil d'Administration" room or a Picasso in the managing director's office, but if the work of art is "accessible to the public" no time limit applies as long as the corporation continues in existence.

But what is meant by "accessible to the public" ? Must the works be exhibited in special quarters like a formal museum freely open to the public or in offices or premises open to the public on request or a certain fixed weekday? If not, the provisions of the law would remain a dead letter and would enable corporation, in the words of the parliamentary report to acquire without taxes trappings of their prestige. The minister replied to this delicate question that the commission on acceptance would determine the conditions of public access to the works of art in question.

A twofold problem has still to be resolved:

- 1) the need for reform of the membership of the acceptance commission by the addition of persons museologically and aesthetically qualified who are capable of proposing terms of presentation, access, visits and curatorship of state property.
- 2) the need for supervision, not provided by the law, of compliance with conditions laid down by the commission: continuing the opening of the premises to the public, the exhibition of all stipulated works etc...

Will it become necessary to create a force of inspectors for the corporations devoting themselves to art patronage?

Certainly the law of 1968 has a positive side: the attempt to create a tradition of new art patrons acting as successors to the princes of yore. But this is a mere beginning and the road lies still ahead. For, the financial advantage granted is not of the scale



required by present economic conditions. In fact the law applies only to art purchases at auctions by large corporations. For corporations hardly ever inherit or receive bequest of art works. More positive incentives are needed. First, to inform the public of the museum or exhibitions which they have organised. This free publicity would certainly constitute an incentive. To go further in the tax area, we should not limit tax exemption to the purchase but permit their treatment as capital assets eligible for depreciation for tax purposes, either totally or partially and possibly over an extended period. Thus the government would profitably enrich the national heritage. One has but to consider the enormous price of a Da Vinci, a Rembrandt which after twenty-five years would revert to the state after having been a means of publicity for a bank, thanks to a system permitting the state to contribute only partially to the purchases over a period long enough to make the government contribution a negligible burden.

#### Inheritance Taxes

Article 2 of the law of the 31st of December 1968 contains an exceptional tax concession, the right of someone who inherits or receive a bequest or gift to pay transfer tax not in cash as is usual for obligations towards the state, but in kind by abandoning a work of art.

This legal provision aims at stimulating the growth of the artistic patrimony. In practice it often happens that the heirs of the collector are forced to sell certain works, often the best, to pay inheritance tax. Hence the risk of export of works of art of great value which the state lacks the funds to acquire by outbidding foreigners at auctions. This form of inheritance tax settlement cannot, like donation, involve a right of use. For it represents a payment with immediate transfer to the state of title to the

work but for the heir it presents advantages:

- 1) avoidance of cash outlay permitting to retain a large part or the majority of the inherited works.
- 2) avoidance of a collapse of market prices that might have resulted from a private or public sale of a large group of works of a certain artist or category of works. It was evidently in the interest of Picasso's heirs to maintain the price of the master's paintings by transferring to the government an important group of his works. It is very difficult to imagine the precipitous decline of market prices that would result from public sale of a group of extremely rare works that have practically ceased to exist on the market.
- 3) in giving the right to pay estate duties in this way, not only on that of a collector, the law does not discriminate and permits a collector to transfer to the state works of art in payment of transfer taxes due, for examples on the inheritance of real estate from an uncle. This provision gives recognition to the equal value of art and money for payment to the public treasury.

There still remains the condition that the payment in kind must be approved by the interministerial commission of acceptance established by the decree of the 10th of November 1970. With its drawback such as the determination of settlement values of the work of art which is not necessarily the same as its cost or present market or auction value. It would be likely for the commission in establishing settlement values to take into account the normal auction price after deducting sales commissions and experts's fees payable by the heir and possibly to make what in such cases the British Government call: "a concession" in the form of a 25 % rebate.



In this manner, the law of the 31st of December 1968 reflects the modern approach of profit-minded art patronage which recognizes that, to-day, altruism and even vanity are no longer sufficient to produce patrons as arose out of the humanistic society of the period from the XVth to the XVIIIth century and out of the triumphant industrial bourgeoisie of the XIXth century. The law of 1968 established the financial incentives on several levels:

- 1) monetary gain, by granting exemption from taxes on purchases or inheritance in cases of donation to the state.
- 2) pleasure by keeping the right to enjoy for one's life time and that one's spouse and descendants a painting or sculpture without payment of tax on a purchase of a work donated to the state.
- 3) art patronage by extending it from individuals to legal entities.

However it must be recognized that the French Government has refused to adopt the system of the deduction from taxable income that, for instance, exists in the United States. The parliamentary report and the minister took specific exception to the American example although it has considerably, even spectacularly, increased the cultural endowment of the United States. This system permits the deduction from taxable income of the cash purchase price or value of works donated by the government up to 20 % or sometimes 30 % of individual income and 5 % of corporate taxable income. As in France, the value taken into account is the market value, not the cost of the work. Before 1965 it was even possible in the United States to keep the use of the work while to-day it must immediately be turned over to the government. It is well known how this form of patronage has found favor among American

industrialists and businessmen and how the enrichment flooding the museums has long justified this approach. However the American tax authorities have become less generous and have changed the trend of their tax policy in view of abuses and art speculation which resulted from the original tax policy.

These are the reasons adduced in parliament at the presentation of the committee report and by the minister who, in addition to the abuses mentioned, stated that such tax legislation could be offered only by a very rich country without vital need to replenish its coffers. An additional argument was advanced to the effect that it would be socially undesirable to lighten the burden of the richest tax payers who, by art donation, would escape the highest tax brackets.

Still the question remains open. Tax exemption certainly stimulates patronage but gives a bonus to the rich. Perhaps we should re-examine the American system which gives the initiative for tax exemption to the patron whose privilege may lead to abuse. Everything would change if tax exemption was in the opposite sense, to be initiated by the government without being focused on the rich. One could easily conceive a system where the government decides to buy a picture of enormous value, say a Rembrandt or an important collection and announces the opening of a national subscription to which every contribution, large or small, would be deductible from taxable income of individuals or corporations up to a maximum percentage. It is proven, by recent example, how successful can be subscriptions for the purchase of a work of national importance in Britain even without tax advantage. Certainly the procedure should be reserved for exceptional objects and its use should be sufficiently spaced to avoid that the public tire of such appeals.



The French Government have also refused to extend the system of tax exemption to donations to local communities, particularly municipalities. The author of the committee report deplored this before parliament alleging that "collectors often prefer to enrich the museums of their town rather than add to the reserves of the Louvre already filled with thousand of works of art". But the government, as stated by the minister, did not want to cater to what they called "provincial preoccupations"; and one supposes that he feels blind acceptance could be given to collections without interest, or of doubtful interest, by municipalities motivated by local considerations. Still the minister expressly declared that if a donation was made in favor of a provincial museum, the state would make every effort to respect this condition, a policy which in practice, seems to have been observed. But there again, it would be desirable that when such contributions is offered, the municipalities should be heard by the commissions of acceptance who should consider local needs. There are small unknown collections that make the charm of some provincial museums.

One could still also take further steps towards tax incentives. For instance, by partial payment of tax with art works, provided that it be done in annual instalments of relatively small amounts in relation to the total tax. For the state this would mean financing the purchase by practical instalments of small annual amounts, naturally without interest.

One could also conceive acceptance by the government in advance of art objects in payment of future inheritance tax. This system in spite of the serious problem caused by inflation would enable the collector to take part in the planning of tax benefits granted to his heirs as patrons in accordance with article 2 of the law of 1968.

However the major room for improvement of the law lies in the direction of permitting art objects to be deducted from taxable income while safeguarding the interests of the inflation, the public treasury and justice in taxation.

There still remain psychological measures to be adopted in order to stimulate art patronage. The image of the government tarnished in the collectors' eyes, needs to be refurbished; it has suffered because of the government's means of coercion: pre-emptive rights, prohibition of export entry in the inventory of personal property, wealth tax on art objects.

The government must show a certain imagination. There is first the question of publicity for donations which flatters generous contributors. Art critics and the press have their part to play which they are not always doing. (If the press was only inclined to give to a collection one hundredth of the publicity it gives to Beaubourg!)

But the first effort in public relations should be to acquaint the public with the terms of the law granting centimes to art patrons. Another kind of publicity would be by means of exhibitions in the capital town and even circulating. The government seems to begin making efforts in this direction. Two exhibitions have recently been organised: one in the Louvre showing works accepted by the State in lieu of inheritance taxes from 1972 to 1977, and the other in the Orangerie of the Pierre Levy collection, a donation accepted by the state on behalf of the city of Troyes.

A single measure easy to apply, would be to adopt internationally a compulsory label of special design and colour to be placed on pictures frames. This would somewhat counterbalance the effect of dispersion: the museum visitor could immediately identify the donor by, reading, for example, a red label. This would be less haphazard than present inscriptions and more impressive than a marble tablet at the museum entrance.



We are again faced by the problem of dispersion. There is noticeable a certain official trend towards presenting some collections in their entirety, to preserve a particular background or to demonstrate the special importance of its unity. Reuniting the former Campana collection in Avignon and the forthcoming installation of Picasso's donation in the town house of the Marais are examples.

This is an important point which has impeded-potential contributions. Dispersion is one of the most serious obstacles to patronage by donation. There are, after all, collections that could be exhibited as units in provincial museums. At least could one not conceive the founding of a national museum of private collection? This approach would avoid the education-oriented museum installation and would pay tribute to the spirit of diversity and the charm of confrontation between arts, styles and cultures. As long as the collections are of great artistic worth. All means of presentation would be used to avoid the need for vast space: for example a selection of works from a giving collection or a joint exhibit of collections united by a common theme on a particular art form. But at least such approaches would reactivate psychologically certain patrons. We have already mentioned the similar potential offered by corporate museums and their rôle in society.

In the course of the debate of the law of 1968, the French Government have often stressed their lack of funds, especially for art purchases or budgetary insufficiencies to justify its refusal to enact effective tax exemption. Is it no time to promote a sort of public art patronage ?

For instance a special surcharge on certain artistic postage stamps applied to the purchase of an exceptional work of art or a public subscription entitling contributions to free admission to museums. Also one has never thought of the special situation of post cards manufacturers who pay royalties for the publication of the face of an actress or a pop singer, but who are not required by the state to pay for reproducing the cathedral of Strasbourg which is maintained at public expense. Certainly a citizen cannot be prevented from photographing a public monument but it is fair to ask for a royalty if a photograph yields commercial profit, so as to make a contribution to the state budget for fine arts.

In concluding we can say that ideas for restimulation and incentives to patronage must be contributed not only by politicians but by all art professionals. And that it would take international cooperation to improve and unify legislation dealing with patronage so that art works would be better preserved and shown more effectively to the public.

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