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# Imaginatively Public: The English Experience of Art as Heritage Property

Joseph L. Sax\*

England was once hugely prosperous and possessed an extraordinary share of the world's great art. In the years following the French Revolution, political turmoil in Europe brought a number of superb works of art on the market, and English collectors avidly bought them.<sup>1</sup> Even earlier, young aristocrats returned to England from their grand tours with a keen appreciation of the aesthetic achievements of the continent and the means to acquire any works that pleased them.<sup>2</sup>

With few exceptions, these treasures entered the collections of individuals as their private property. In its scope, this was a unique experience in privatization, unlike both the past and the future.<sup>3</sup> In an earlier time, Europe's great art was generally publicly displayed in churches, public monuments, or held in royal and aristocratic collections where it was displayed to serve political purposes.<sup>4</sup> A

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1. One of the most famous was the Orleans collection. See FRANCIS HASKELL, *RE-DISCOVERIES IN ART: SOME ASPECTS OF TASTE, FASHION AND COLLECTING IN ENGLAND AND FRANCE* 39–45 (Cornell Paperbacks 1980) (1976).

2. “[I]n the late seventeenth century and even more in the eighteenth centuries, many noblemen spent long years in Italy, busily absorbed in the collection of works of art . . .” LAWRENCE STONE & JEANN C. FAWTIER STONE, *AN OPEN ELITE? ENGLAND 1540–1880*, at 320 (1984). English collectors owe much to the great seventeenth century collector and connoisseur Thomas Howard, Earl of Arundel, whose taste for classical antiquities and old master drawings was bold and pioneering. See 2 SUSAN PEARCE & KEN ARNOLD, *THE COLLECTOR'S VOICE: CRITICAL READINGS IN THE PRACTICE OF COLLECTING* 211 (Ashgate 2000). “The object [of Grand Tour] was to give young gentlemen good taste and social polish. Most men brought back some artwork and classical antiquities. As the eighteenth century progressed, the whole apparatus of the Tour developed into a major tourist industry.” *Id.*

3. Prior to the nineteenth century, almost all art collections in Germany were also private. A national museum was established in 1823. See Carmen Stonge, *Making Private Collections Public: Gustav Friedrich Waagen and the Royal Museum in Berlin*, 10 *J. HIST. OF COLLECTIONS* 61, 61–62 (1998). The Dutch were different in their own way. SIMON SCHAMA, *THE EMBARRASSMENT OF RICHES: AN INTERPRETATION OF DUTCH CULTURE IN THE GOLDEN AGE* 318 (1st ed. 1987).

4. See Hilliard T. Goldfarb, *Richelieu and Contemporary Art: 'Raison d'État' and Personal Taste*, in RICHELIEU, *ART AND POWER* 1, 1–45 (Hilliard Todd Goldfarb et al. eds., Montreal Museum of Fine Arts 2003) (recounting how art was used as a political instrument).

gallery of pictures was an indication of princely worth; nobles acquired such galleries to demonstrate their wealth, power, and dignity.<sup>5</sup> In the Middle Ages, the “site for works of art was . . . the church, that is, a public place, freely accessible to all who came and worshiped.”<sup>6</sup> On the European continent, in the latter part of the eighteenth century, the museum in its essentially modern form came into being. Much artwork that had resided in noble collections, and some that had been displayed in churches, was moved into a new sort of public setting viewed as national property. This new setting was part of the nation’s cultural patrimony and was made increasingly open to a broader public in accordance with Enlightenment values.<sup>7</sup>

Things proceeded quite differently in England. England did not possess the public religious art of Catholic Europe, nor were its artistic riches as concentrated in royal hands (especially after the dispersal of Charles I’s collection following his deposition in 1649).<sup>8</sup> Furthermore, England resisted the development of a national gallery of art like the Louvre when such institutions became the continental pattern.<sup>9</sup> Even after the National Gallery was finally authorized in 1824, it remained a minor factor in the art world for a considerable time; no adequate building was designated for the Gallery until the latter 1830s.<sup>10</sup> The British patricians who owned great private collections neither liked the idea of the state as a principal in the

5. 2 PEARCE & ARNOLD, *supra* note 2, at 42; ALMA S. WITTLIN, *THE MUSEUM: ITS HISTORY AND ITS TASKS IN EDUCATION* 23–24, 82 (Karl Mannheim ed. 1949).

6. IAIN PEARS, *THE DISCOVERY OF PAINTING: THE GROWTH OF INTEREST IN THE ARTS IN ENGLAND, 1680–1768*, at 179 (1988).

7. ANDREW MCCLELLAN, *INVENTING THE LOUVRE: ART, POLITICS, AND THE ORIGINS OF THE MODERN MUSEUM IN EIGHTEENTH CENTURY PARIS* 6 (1994). As an example of different statements about museum origins, “[i]n 170 BC Eumenes II created what was effectively a museum.” *THE EVOLUTION OF ENGLISH COLLECTING: RECEPTIONS OF ITALIAN ART IN THE TUDOR AND STUART PERIODS* 3 (Edward Chaney ed., 2003). It is also said that the fifteenth century Medici residence in Florence “was in reality the first museum of Europe.” FRANCIS HENRY TAYLOR, *THE TASTE OF ANGELS, A HISTORY OF ART COLLECTING FROM RAMSES TO NAPOLEON* 69 (1948). In any event, the notion that there should be a public museum holding a national collection was a much later idea.

8. Historians offer differing opinions about the accessibility of the English Royal collections during the eighteenth and early nineteenth centuries. *PALACES OF ART: ART GALLERIES IN BRITAIN 1790–1990*, at 67 (Giles Waterfield ed., 1992) (noting English Royal collections were “generously accessible”). *But see* JOHN BREWER, *THE PLEASURES OF THE IMAGINATION: ENGLISH CULTURE IN THE EIGHTEENTH CENTURY* 219 (1997) (stating “[n]or was it easy to see works of art in the royal collections”); PEARS, *supra* note 6, at 177 (stating that seeing paintings was not easy because of location and admission fees).

9. Peter Fullerton, *Patronage and Pedagogy: The British Institution in the Early Nineteenth Century*, 5 *ART HIST.* 59, 59 (1982) (“Agitation for a national collection of treasures in England was forestalled repeatedly . . .”).

10. DAVID ROBINSON, *SIR CHARLES EASTLAKE AND THE VICTORIAN ART WORLD* 292 (1978) (listing the National Gallery’s acquisitions during its first thirty years).

acquisition of art for the nation,<sup>11</sup> nor did they want a national gallery with its French revolutionary connotation of a “peoples’ museum”; this notion would propagate the idea that the nation’s art was being returned to the masses to whom it ultimately and inherently belonged.<sup>12</sup> Such principles were at odds with the profound commitment of the English elite, both then and now (as custodians of stately homes open to the public), to private property and the individualistic view of social life that underlies it.

The classic nineteenth century upper-class British view was expressed by Elizabeth Rigby, Lady Eastlake—respected connoisseur of art, translator of the leading work on English private collections, and wife of Charles Eastlake, a painter and trustee of the Royal Academy who later became the director of the National Gallery. Lady Eastlake responded to the view of Gustave Waagen, director of the Royal Picture Gallery in Berlin,<sup>13</sup> who had criticized the British Museum for being far behind continental museums in its collecting of old master drawings.<sup>14</sup> She replied:

We have something to say as regards this old complaint. A foreigner naturally . . . is accustomed to Governments who ostentatiously supply their subjects with such intellectual food . . . to a people as little

11. That view has not entirely died out. In December 2004, the prominent British collector Charles Saatchi was quoted in an interview saying, “[w]ithout the [ ] [private collectors], the art world would be run by the State, in a utopian world of apparatchik-approved, Culture-Ministry-sanctioned art.” *“I Primarily Buy Art to Show it Off”: Charles Saatchi Answers Questions on the Record for the First Time Ever*, THE ART NEWSPAPER NO. 153, Dec. 2004, at 29 [hereinafter *Charles Saatchi Interview*].

12. The British Museum, founded in 1753, was originally established as a natural history collection and became a repository for antiquities. A.E. GUNTHER, *THE FOUNDERS OF SCIENCE AT THE BRITISH MUSEUM, 1753–1900*, at 158–59 (1980). It was not intended as an art museum, and it did not collect paintings. *Id.* It is said that the British Museum collects “with a view to history” rather than to art. ANTHONY BURTON, *VISION & ACCIDENT: THE STORY OF THE VICTORIA & ALBERT MUSEUM* 100 (1999).

13. Waagen was perhaps Europe’s leading art historian and “a progressive-thinking museum director.” Stonge, *supra* note 3, at 61. “He argued that art, and museums, should be accessible to the general public, not merely to artists, scholars or the wealthy.” *Id.* He was apparently not, however, the most scintillating companion. See HASKELL, *supra* note 1, at 206 n.113.

14. England has no centralized, dominant collection despite all the acquisitions made by its private citizens who have naturally retained them for their private enjoyment. What is the result? These riches are scattered through every country house; you have to travel through every county over hundreds of miles to see these fragmented collections; so that I can think of nothing less useful for Europe, or even for the arts of England, than what England already possesses.

Arthur MacGregor, *Collectors, Connoisseurs and Curators in the Victorian Age*, in A.W. FRANKS, *NINETEENTH-CENTURY COLLECTING AND THE BRITISH MUSEUM* 6, 8 (Marjorie Caygill & John Cherry eds., 1997) (quoting Quatremère de Quincy in 1796 and illustrating that Europeans commonly complained about the lack of a national, public collection).

encouraged as able to cater for themselves. But it is different with us . . . The question we should rather ask ourselves is, whether it be more advantageous to a people . . . that the taste for art and consequent patronage of it should spring from the Government or from the nation?—and there can be no hesitation as to the answer. With us, as we have shown, the taste of the country has had its root in private impulses . . . Shall we stigmatize a Government which has made individuals freer than itself?<sup>15</sup>

She goes on to say that a National Gallery is nonetheless desirable and that eventually the liberality of collectors will endow it appropriately<sup>16</sup> so that it reflects their tastes. In the meantime, however, and until such liberality revealed itself, a great deal of very great art reposed in private collections where it was held at the sole will of its owners.

No one at that time doubted that it was desirable for art to be seen,<sup>17</sup> at least by “people of quality.” So how did those like Lady Eastlake, who saw the private collector-connoisseur as a symbol of the English devotion to individual liberty, deal with the fact that all this great art was hanging on the walls of private homes rather than in public museums? The standard Victorian response was spelled out by another prominent art expert, Mrs. Anna Jameson, the author of a leading guide to the private galleries of London:

In referring to the vast number of first-rate pictures now in England, scattered through many houses and galleries . . . in remote country seats. . . shut up half the year—I have heard the wish expressed, that these treasures were assembled in one place—in one national gallery, easily and constantly accessible to all. I cannot say I sympathize with the wish . . . True, it is excruciating to see . . . how often some titled or untitled Goth, indifferent or negligent, has become the very unworthy depository of treasures which are, in some sort, a possession and glory to the whole civilized world . . . If instances of indifferent possessors are numerous, the churlish ones are very few indeed . . . The truth is, that every man who possesses beautiful and valuable pictures[] has a natural longing for sympathy in his possession—the wish that others should profit, should admire, perhaps envy. It is undoubtedly true, that should he choose to shut up his doors, he has the power and the right to do so. How far he is right to assert that right, is another question.<sup>18</sup>

She then explains that some great collectors have opened their houses to the general public with untoward results.

We can all remember the public days at the Grosvenor Gallery and Bridgewater House. We can all remember the loiterers and loungers,

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15. Lady Eastlake, *Review of Waagen, Treasures of Art in Great Britain*, 94 Q. REV. 467, 479–80 (1854).

16. *Id.*

17. It would be interesting to know how artists thought about access, and whether working for patrons or for the market affected their view.

18. ANNA JAMESON, *COMPANION TO THE MOST CELEBRATED PRIVATE GALLERIES OF ART IN LONDON*, at xxxiii (London, Saunders & Otley 1844).

the vulgar starers, the gaping idlers, we used to meet there . . . Can we wonder that men of taste—Englishmen, who attach a feeling of sanctity to their homes—should hate the idea of being subjected to such vulgar intrusion, merely because they have a Raphael or a Rubens of celebrity?<sup>19</sup>

The solution, Mrs. Jameson explains, can be found in a distinctively English approach that avoids the overbearing statism of the Continent and yet also avoids submission to the mob and the loss of respect for private property. To her, the answer is quite simple: of course these collections should be open, but open only to those who are truly capable of appreciating them. As she put it,

I know not, for my own part, more than one or two isolated instances in which admission has been refused to an artist or a stranger who came properly introduced, or whose name was known. Such things, when they do occur, must be accidental, or if not, they ought to be denounced by opinion, like every other ungentlemanly act—and they are so.<sup>20</sup>

To a twenty-first century sensibility, such talk can only seem insufferably and willfully snobbish. Obviously, there were many people who may have wished to see the great art in British collections and who were in no sense to be thought of as “loiterers and loungers . . . vulgar starers [or] gaping idlers,”<sup>21</sup> and yet who might have more than a bit of trouble being “properly introduced” to, or have their names known by, the Duke of Devonshire or the Marquis of Westminster. The interesting thing about Mrs. Jameson’s comment, however, is not that it shows what a prig she is, but that she has something very striking to say about the nature of ownership. Unlike discourse today, which conceives of ownership as unbounded except to the extent it is constrained by government-imposed regulation, for her, as for Lady Eastlake, there is another dimension to ownership: a responsibility that those who possess certain kinds of property owe to the public, a duty that can only be enforced by what she calls “opinion,” but which is nonetheless centrally important in determining accessibility to great art. In the same passage quoted above, Mrs. Jameson describes the owner of great works of art as a “depository of treasures which are, in some sort, a possession and glory to the whole civilized world.”<sup>22</sup>

The notion of the “responsible owner,” constrained in the use of his property by public sentiment, is intriguing and suggests a dimension of proprietary entitlement (and its limits) that hardly ever appears in contemporary discourse about property. The way in which that idea functioned in England during the eighteenth and

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19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

nineteenth centuries, in a setting where the status of private property was perhaps at its all-time summit, should be revealing. What did it then mean to be the owner of “a Raphael or a Rubens of celebrity” in terms of providing some sort of public access to such treasures? How did the English grandees respond to the assertion that they would be considered churlish if they kept their collections locked away and inaccessible to the public (as that elastic concept was evolving)?<sup>23</sup> Such are the questions addressed in the following pages.

The history of access as a proprietary duty begins not in the London townhouses that Mrs. Jameson was discussing, nor with the fabulous art collections that were being accumulated in the last years of the eighteenth century. Rather, it begins in an earlier time and in the country. Although it is widely thought today that tourist visitation at stately homes is a product of the post-World War II era, confiscatory death duties, and unsustainable upkeep costs for great estates, in actuality its roots are much deeper. Centuries ago, great country estates were not private residences in the modern sense. Some were royal residences and, as such, were part and parcel of the display of greatness which confirmed a king’s or a nobleman’s position. Visitors, diplomats, and aristocrats were welcomed to admire their owners’ trappings of power and wealth.<sup>24</sup> Other great estates were at first a

headquarters from which land was administered and power organized . . . [and, like the royal estates,] a show-case, in which to exhibit and entertain supporters and good connections . . . an image maker, which projected an aura of glamour, mystery or success around its owner . . . Trophies in the hall, coats of arms over the chimney-pieces, books in the library and temples in the park could suggest that he was discriminating, intelligent, bred to rule[,] and brave.<sup>25</sup>

While families lived in these great houses, the estates were also public places; it was expected and desired that people come to see their display of wealth and taste. To be sure, they were not like modern homes.<sup>26</sup> These residences were enormous structures, and

23. The earliest importuning to make private collections more accessible was made on behalf of artists so they could learn from the work of earlier masters. *See, e.g.*, CECIL GOULD, *TROPHY OF CONQUEST: THE MUSÉE NAPOLEON AND THE CREATION OF THE LOUVRE* 19, 129 (1965); *see also infra* note 101.

24. ADRIAN TINNISWOOD, *A HISTORY OF COUNTRY HOUSE VISITING: FIVE CENTURIES OF TOURISM AND TASTE* 10 (1989).

25. MARK GIROUARD, *LIFE IN THE ENGLISH COUNTRY HOUSE: A SOCIAL AND ARCHITECTURAL HISTORY* 3 (1978).

26. “Because so many owners were absent in the summer months . . . visiting could be carried on with considerable freedom at that time of the year.” PETER MANDLER, *THE FALL AND RISE OF THE STATELY HOME* 9 (1997).

By the early eighteenth century, the routine of the elite was to leave the country and come to London in November or December after the best of the

their public spaces were remote from living quarters. The estates (and their furnishings, collections, libraries, etc.) were not open to the mass public in the sense of a modern public museum, but neither were they private in the modern sense that they were open only to invited social acquaintances.

As early as the sixteenth century, changes in visitation began that evolved in stages into tourism as we think of it today. After the dissolution of the monasteries and the destruction of shrines in the mid-1500s, the remaining palaces and aristocratic mansions became places for the wealthy to visit—not for business or political purposes as had been the case in earlier times, but to see them for their aesthetic and historical import. Country house visiting became a fashionable activity for the upper classes.

This interest was also stimulated by the growth of scientific interests and the presence of collections, then known as “cabinets of curiosities,” generated by that interest.<sup>27</sup> As a result, the great estates began to see a much broadened range of visitors. “[M]apmakers and geographers, chroniclers and antiquaries,” who were “engaged in systematic exploration of the history and antiquities of the country,” were a sort of early tourist, and then

foreigners, mainly from the protestant states of Germany and Middle Europe . . . young men . . . [who] came here either on diplomatic or quasi-diplomatic missions, or part of a general ‘Grand Tour’ of Europe, completing their educations in much the same way that the English aristocrat would travel to France and Italy a hundred years later.<sup>28</sup>

By the seventeenth century, early versions of guidebooks began to appear.<sup>29</sup>

In this earlier period, art was not very abundant or very important in the great houses, and visitation focused on antiquities, architectural features, and the cabinets of curiosities that then dominated collections. They may have contained the remains of a great medieval abbey, an ancient ruin like Stonehenge, wonderful furnishings and notable antiquities, and a magnificent setting with splendid gardens. All these attractions generated a practice of openness. In what seems to have been a less than self-conscious

hunting was over, to participate in the social whirl of the season, which lasted from then to April. They would . . . return home only in June.

STONE & STONE, *supra* note 2, at 326.

27. TINNISWOOD, *supra* note 24, at 54. By 1580, the top floor of the Uffizi was opened as a showplace for the art and scientific curiosities collected by Francisco I in Italy. *Id.* In the ensuing decades, a number of such scientific collections became explicitly public, and English tourists abroad brought news of such opportunities home with them. *Id.* at 55.

28. *Id.* at 30–33.

29. *Id.* at 40.

transition, the traditional opening of great estates to promote the political and economic interest of the nobility metamorphosed into a more passive acceptance of visiting strangers who appeared—sometimes with letters of introduction, sometimes not—and expected to be admitted. The significant change was that there were now people who came to see the place and the things collected there, rather than to see the owner.

By the eighteenth century, the situation was such that “[s]ome owners were less forthcoming than others, but most allowed some sort of access at least to ladies and gentlemen . . . [N]o gentleman or lady seems to have had any difficulty in seeing any country seat which took his or her fancy, so long as the owners were away, which they often were.”<sup>30</sup> The elite seem to have drifted into a position of accepting a certain responsibility to make their property accessible. There is little, if anything, to suggest, however, that estate owners thought of themselves as trustees or stewards, or that they conceived of the things they owned as objects of national patrimony or heritage. Those notions were yet to be born.<sup>31</sup>

By the latter part of the century, however, one can find writings urging owners to make their collections accessible.<sup>32</sup> A leading guidebook of that time contained the following passage (the author is

30. STONE & STONE, *supra* note 2, at 327–28; see also G.E. MINGAY, ENGLISH LANDED SOCIETY IN THE EIGHTEENTH CENTURY 211 (1963) (“It became a popular excursion with the local gentry and travelers to visit great houses and view their splendours. This was often done without seeking prior permission, and strangers were seldom refused admission.”).

31. The first (1641–1707) Duke of Devonshire’s acquisitions “were made for private pleasure, to be shared only with the few like-minded friends who would appreciate them.” NICOLAS BARKER, THE DEVONSHIRE INHERITANCE: FIVE CENTURIES OF COLLECTING AT CHATSWORTH 30 (2003). By the mid-eighteenth century, however, Chatsworth was already open to visitors on Mondays, “public day.” *Id.* at 54. Further, “the sixth duke [1790–1858] . . . wanted to pass on his knowledge to others . . . He liked showing visitors around Chatsworth.” *Id.* at 24, 54. The eleventh Duke, who died in May 2004, said, “I . . . have been delighted to lend works of art to many exhibitions over the years, as I believe my inheritance should be shared with as wide an audience as possible.” CHATSWORTH VISITOR’S BROCHURE (2003). See also 1 DANIEL DEFOE, A TOUR THROUGH ENGLAND AND WALES 193–96 (J.M. Dent & Sons Ltd. 1948) (1928) (giving a detailed description of a 1724 visit to Wilton House, the seat of the Earl of Pembroke who was “a great collector of fine paintings”).

32. In 1767, Thomas Martyn, the professor of Botany at Cambridge, wrote,

[t]he polite arts are rising in Britain, and call for the fostering hand of the rich and powerful: one certain way of advancing them, is to give all possible opportunities to those who make them their study, to contemplate the works of the best masters . . . It ought to be acknowledged with gratitude, that many of the collections of the great, are ever open to the inspection of the curious . . .

THOMAS MARTYN, THE ENGLISH CONNOISSEUR, at iv (Gregg Int’l Publishers Ltd. 1968) (1767).

speaking of the much-visited ruin of Fountain Abbey, which the current owner was "improving"):

A legal right the proprietor unquestionably has to deform his ruin, as he pleases. But though he fear no indictment in the king's bench, he must expect a very severe prosecution in the court of taste. The refined code of this court does not consider an elegant ruin as a man's *property*, on which he may exercise at will the irregular sallies of a wanton imagination; but as a deposit, of which he is only the guardian, for the amusement and admiration of posterity.<sup>33</sup>

This notion was not, of course, original with the author;<sup>34</sup> indeed it had its origin in classical antiquity.<sup>35</sup>

As collections grew and more people were able to travel for leisure, it was inevitable that interest in seeing those collections would expand and that at some point tension would arise between the private interests of the owner and the desire for access of an ever-increasing public that could not call on the old tradition of hospitality.<sup>36</sup> This changed situation presented a distinctively

33. 2 WILLIAM GILPIN, *OBSERVATIONS ON THE MOUNTAINS AND LAKES OF CUMBERLAND AND WESTMORLAND* 188 (The Richmond Pub. Co. 1973) (1786). Notwithstanding Gilpin's dismay, eighteenth century collectors were apparently a good deal more ready to "improve" antiquities than anyone could imagine today. See 2 PEARCE & ARNOLD, *supra* note 2, at 208. Henry Blundell, a prominent collector of ancient sculptures, described the remaking of an ancient statue of Hermaphrodite: "The figure was unnatural and very disgusting to the sight; but by means of a little castration and cutting away . . . it became a sleeping Venus and as pleasing a figure as any in this collection." *Id.*

34. It was said of the Earl of Arundel, one of the first great English collectors, that he

was . . . instrumental in teaching . . . the value of art as a means of enhancing the dignity and prestige of a great man; a lesson which Arundel himself had learned through his experiences in Italy, and one which was to remain a shaping force in the relationship between the owner of a great house and the tourist visiting that house for the next two centuries.

WITTLIN, *supra* note 5, at 56.

35. The notion of the owner as a guardian for posterity was raised most famously in ancient Rome, where collecting avidity was rampant, in Cicero's condemnation of Verres. See, e.g., JOSEPH L. SAX, *PLAYING DARTS WITH A REMBRANDT* 68-72 (1999) (noting the long history of the cited notion). It is also found in General Agrippa's appeal that the best of art should "belong to the community, to the state, to everybody who can and wants to enjoy it." See WITTLIN, *supra* note 5, at 109; TAYLOR, *supra* note 7, at 12, 20 (regarding the status of art in ancient Greece and Rome as "essentially public property" or "public wealth and treasure"); see also *infra* note 131.

36. A description of a visit by the poet Samuel Rogers to Fonthill gives a sense of the old style hospitality:

He was received by a dwarf . . . covered with gold and embroidery. Mr. Beckford [the owner] received him very courteously, and led him through numberless apartments all fitted up splendidly . . . They pass'd . . . into a great musick room, where Mr. Beckford begg'd Mr. Rogers to rest till refreshments were ready . . . [At the end of the day] Mr. R. was hardly arrived at the Inn before a

English dilemma. Elsewhere in Europe, aristocratic collections, conceived of as national property, could transition into public museums, attuned as need be to an increasingly popular view of who was the public. It could adapt to political movements in the direction of greater democracy and to newer views about the desirability of educating the masses. Conversely, the extremely privatized nature of English collections and their location within private residences presented a unique challenge regarding access to art: "the prevailing cultural climate made an acquaintance with art and architecture an integral part of upper-class social behavior."<sup>37</sup>

For the most part, there was a positive adaptation to these broadening demands for access. The eighteenth century saw the emergence of the "polite tourist" who visited to develop his taste and refine his sensibilities.<sup>38</sup> In 1760, Chatsworth, the Duke of Devonshire's estate, was open on two public days each week. Other great houses and famous sites, such as Blenheim, Woburn Abbey, Houghton, Holkham, Stowe, and Wilton, established formal arrangements for visitation with posted open days and sometimes with tickets that had to be acquired in advance.<sup>39</sup> Popular guidebooks began to appear<sup>40</sup> that set out suggested tourist routes to estates and their collections in much the same way that contemporary books lead visitors through Rome, London, or New York.<sup>41</sup>

Occasional reports of owners' reactions to the rising tide of visitation reveal the sense of obligation they must have felt to keep the gates open notwithstanding the burden it imposed.<sup>42</sup> Horace

present of game follow'd him . . . and then pressing him so strongly to return next day . . .

2 PEARCE & ARNOLD, *supra* note 2, at 302–03.

37. TINNISWOOD, *supra* note 24, at 66.

38. These were not the first such openings. See TINNISWOOD, *supra* note 24, at 58–59 (noting that even during the 1600s a few collections, such as the Tradescant cabinet of curiosities, which ultimately became the Ashmolean Museum in Oxford in the 1680s, were opened to ordinary visitors for a modest admission fee—a sixpenny). Furthermore, in London, the collection of Robert Hubert was open every afternoon and was among the first such places designed to attract a mass market. *Id.* at 59. These, of course, were exceptional instances for their time. *Id.* Similarly, Bonnaffé wrote that in France, Cardinal Mazarin was "the first one in France to open his library to the public and to scholars; he sought by his example to make fashionable a taste for beautiful collections and great painting . . ." EDMOND BONNAFFÉ, LES COLLECTIONNEURS DE L'ANCIENNE FRANCE: NOTES D'UN AMATEUR 58 (Chez Auguste Aubry 1873) (Author's translation).

39. TINNISWOOD, *supra* note 24, at 91, 94; see also ESTHER MOIR, THE DISCOVERY OF BRITAIN: THE ENGLISH TOURISTS 1540–1840, at 58–76 (1964) (describing at length eighteenth century country-house visiting).

40. For an early example of such a guide book, see MARTYN, *supra* note 32.

41. See 1 & 2 GILPIN, *supra* note 33.

42. Although earlier the country house had been an inclusive place where the lord of the manor having a large household and the farmers were part of his

Walpole, whose Strawberry Hill estate was among the most celebrated destinations for visitors in the later eighteenth century, wrote in 1783, "I am tormented all day and every day by people that come to see my house, and have no enjoyment of it in the summer."<sup>43</sup> A few years later he wrote in another letter, "[m]y house is a torment, not a comfort!" after three German barons had arrived just as he was about to take his dinner.<sup>44</sup> According to one author, "[O]n a number of occasions he was reduced to hiding in his bed chamber while his housekeeper showed parties [a]round."<sup>45</sup>

Many owners found responses less burdensome. Visitors would commonly be relegated to the care of the housekeeper<sup>46</sup> who would show them around. It was this situation that gave rise to the numerous colorful complaints about rude and greedy servants that are familiar to everyone who has read about tourism in England during the eighteenth and nineteenth centuries.<sup>47</sup>

Even professional tourists like Gilpin were sometimes frustrated: "We should have been glad to have examined Harewood-house," he said, "as it is a sumptuous pile; but it is shewn only on particular days; and we happened to be there on the wrong one."<sup>48</sup> More commonly, they were subjected to servants' caprices, demands for gratuities, or both. Visitors were also sometimes rushed through the premises at a pace that was highly unsatisfactory.<sup>49</sup> Even those who

responsibility, all this changed by the early decades of the eighteenth century; the sort of casual hospitality that had existed from the Middle Ages was cut back. See GIROUARD, *supra* note 25, at 184.

43. Letter from Horace Walpole to Horace Mann (July 30, 1783), *reprinted in* TINNISWOOD, *supra* note 24, at 88–89.

44. Letter from Horace Walpole to Horace Mann (June 1786), *reprinted in* TINNISWOOD, note *supra* note 24, at 89.

45. TINNISWOOD, *supra* note 24, at 89; *see also* TAYLOR, *supra* note 7, at 428, 438–39 (quoting Horace Walpole who said that he was a man who lived "to show the world the prowess of [his] taste," and that he had "a patriotic sense of mission" regarding England's great past and its taste).

46. *See* TINNISWOOD, *supra* note 24, at 89. The housekeeper was not a maid, but rather the manager of the household. *See id.*

47. *See* 1 THE TORRINGTON DIARIES 53 (C. Bruyn Andrews ed., Barnes & Noble, Inc. 1970) (1934) (detailing a caustic example from Viscount Torrington's Diary from July 6, 1781,

[w]e dined at the Bear Inn . . . and were wise enough not to dissipate the small remains of our purse . . . because the expense of seeing Blenheim is very great; the servants of the poor D[uke]— of M[arlborough] being very attentive in gleaning money from the rich travel[ers].

48. 2 GILPIN, *supra* note 33, at 205.

49. Describing his viewing in the 1830s of the Raphael Cartoons in the royal palace, Hampton Court [now in the Victoria and Albert Museum], Dr. Waagen states "Lord Howe had obtained permission for me to view the works of art at my leisure. I congratulated myself the more on this permission, when I saw that all the other visitors were driven through the rooms in the course of an hour." 2 G.F. WAAGEN,

had obtained letters of introduction were commonly importuned or turned away by insolent servants. As Gilpin put it:

We . . . could not see the [D]uke of Bedford's house; which is shewn only on particular days. But the disappointment was not great . . . [S]ometimes what are called the best collections, scarce repay the ceremonies you are obliged to go through in getting a sight of them.<sup>50</sup>

Similarly, Dr. Waagen, though he came armed with introductions from the highest levels of society,<sup>51</sup> as well as with his own exalted reputation, occasionally found himself shut out<sup>52</sup> or badly treated.<sup>53</sup> This was not his usual experience,<sup>54</sup> however, and he often spoke of

WORKS OF ART AND ARTISTS IN ENGLAND 87–88 (JOHN MURRAY ED., CORNMARKEET PRESS 1970) (1838). As to Blenheim, Waagen says, "I enjoyed the very rare favour of being allowed to remain alone, and as long as I pleased, in the different rooms; indeed, the hurrying through, as is practised here almost daily, would have been of little use to me." *Id.*, at 219. See also 1 DEFOE, *supra* note 31, at 177 (describing Defoe's visit to Hampton Court).

50. 2 GILPIN, *supra* note 33, at 264.

51. See 1 WAAGEN, *supra* note 49, at 95, 265 (explaining that Dr. Waagen brought letters of introduction from Princess Louisa and Prince Charles of Prussia when he went to the Duke of Devonshire's, and when he went to the Grosvenor Gallery of the Marquis of Westminster, "[a] letter from His Royal Highness the Duke of Cambridge to the Marquis procured me access, which is otherwise very difficult to be obtained this year.").

52. See Eastlake, *supra* note 15, at 480–81

Dr. Waagen examined no less than 157 collections . . . [and also] gives a catalogue of such as he was told of, but was not able to inspect, either from want of time, or of leave of admission. This latter, however, was of rare occurrence, though too often, however rare . . . It is true, he met with some Cerberuses no sops could satisfy, and was driven through galleries by awful ladies in black silk, whom no imploring appeals from his spectacles could propitiate. We need not mention where this happened, but only refer the owners of those collections . . . to the highest example in the realm. The Queen's housekeeper should be a pattern to all. No fine lady ushers you into the private apartments at Windsor, but an unassuming, cotton-gowned woman, who waits your time and pleasure—speaks when she is spoken to, and then not like a parrot, and, moreover respectfully refuses all gratuity.

53. See 3 WAAGEN, *supra* note 49, at 52 (describing Waagen's visit to Lord Radnor's Longford Castle). At Longford Castle, Waagen had been unable to obtain the owner's permission even through the intervention of a mutual acquaintance, and upon presenting himself was refused entry by the steward. *Id.* He then got the local member of parliament to provide a letter of introduction to the owner's wife, which got him inside, but the servants had their revenge, and he "was hastily driven through the collection," which contained the most important pictures by Holbein in England, as well as "works by Titian, Claude, Poussin and Velasquez, worthy to adorn the first gallery in the world." *Id.*

54. See *id.* at 3–4.

By the goodness of the Duke of Sutherland, I was provided by Lady Cowper with a letter to the housekeeper. This answered every expectation; for all the rooms in which the pictures are were opened to me, and I was then left to

the kind<sup>55</sup> treatment he received<sup>56</sup> and benefits he gained from his visits.<sup>57</sup>

However much difficulty some visitors may then have faced, what must seem extraordinary to an American today is not that access to great houses was sometimes problematic, but that it was assumed to be the normal order of things. Who today could imagine sauntering up to the door of a leading American collector such as Bill Gates, Eli Broad, or Henry Kravis?<sup>58</sup> While historians have written that the medieval tradition of hospitality helps to explain the origins of country house visiting, and may provide the first indicia of what has become modern tourism,<sup>59</sup> a more intriguing question exists. Why did an acknowledgment of responsibility and a willingness to provide access persist so long after visiting lost its political, personal, and social elements? Why did it persist after the numbers and social status of visitors diverged ever more dramatically from those of their hosts?

Of course, art is made to be seen, and there have always been people who want to see works of art that are thought to be worthy of viewing. The more interesting question is: who, in any sense, does society consider *entitled* to see such objects, and how is that entitlement implemented? Owners usually want some people to see at least some of their art because it demonstrates their wealth, power, and good taste; but by no means do they necessarily want to accommodate all the people who want to see it. What happened in England was that the gap between those whom owners would always have welcomed, and those who wanted to be welcomed, widened. Why did not owners assert their proprietary rights to close the gap?<sup>60</sup> Why

myself . . . I passed here six happy hours in quiet solitude . . . But when, as often happens in England, and, as I shall doubtless again experience, an impatient housekeeper rattles with her keys, one cannot of course be in the proper frame of mind, but must look at everything superficially, and with internal vexation.

55. 2 *id.* at 265.

56. *Id.* at 27.

57. 3 *id.* at 83.

58. See JANE AUSTEN, *PRIDE AND PREJUDICE* c. 43 (Barnes & Noble Classics 2003) (1813) (describing Elizabeth Bennett's visit to Mr. Darcy's Pemberley estate, which is said to be modeled after Chatsworth).

59. STONE & STONE, *supra* note 2, at 307–10.

60. Though rare, owners did assert their property rights, and on at least some occasions the public reacted strongly. See MANDLER, *supra* note 26, at 202–04.

One closing that caused a big furor was when Knole, the Sackvilles' estate, which had long been open, was more and more restricted by its current owner in 1873–4, who was churlish and rude and insensitive . . . Sackville had further isolated himself [this was in 1884] with a deliberate piece of rudeness to 'a gentleman of high university and literary standing', refusing him permission to view a portrait of Dr Johnson for scholarly purposes . . .; this churlish

would someone like Horace Walpole complain that he was being tormented by requests to see his art and yet submit to such requests?

There is no obvious answer to this question. As Lady Eastlake had made clear, "should [an owner] choose to shut up his doors, he has the power and the right to do so . . ." <sup>61</sup> But, as we shall see, the social and political cost of shutting the doors was not insignificant. A history unfolded in which the great treasures—historical and artistic, owned by the aristocracy and the new industrial rich—tested the formal powers of the private owner against an emerging sense of these treasures as significant constituents of the wealth of the nation and thus as "imaginatively public." <sup>62</sup>

While there were some notable early collectors, such as Charles I and the Earl of Arundel, serious spending on art by the upper classes (and the development of an active market for it) did not become an important activity in England until the end of the seventeenth century and the first decades of the eighteenth century. Indeed, until 1695, it was technically illegal to import paintings into England. Painting was considered an artisanal activity, and import prohibition was a protectionist measure designed to insulate English artists from foreign competition. <sup>63</sup> In any event, as the eighteenth century got under way, art collecting became a very popular activity. An active auction market developed, and a huge amount of European art poured into England. "For the first time in English history, paintings became an object of widespread capital investment" and part of "an increasingly active trade in luxury goods." <sup>64</sup>

Four factors contributed to this new enthusiasm: (1) increased travel on the continent by wealthy Englishmen; (2) a growing interest in science and in connoisseurship more generally; (3) emulation of the

behaviour bothered even Tory papers, who approved his exclusion of the 'ill-bred cockneys of the lower orders', but wondered 'why should Lord Sackville punish all the upper and middle classes on account of [their] misdeeds' . . . [The following spring] antagonism burst out again with renewed vigor . . . Sackville's selfishness now became nearly a national issue . . . A public meeting was held, attended by more than 500 . . . but [he] did not reopen the house which remained closed until his death in 1888 . . . The Knole Disturbances were fully discussed in the London papers. They clearly demonstrated how much landed power and privilege rested on such informal arrangements as public access to houses and parks . . . [One journalist wrote:] 'Like its neighbor and only rival, Penshurst, it [Knole House] it belongs to the history of our country—in other words, to Englishmen in general. Its present legal owner is Lord Sackville; but, like the owners of other entailed estates, he is only a trustee.

*Id.*

61. Eastlake, *supra* note 15, at 480.

62. *Id.*

63. PEARs, *supra* note 6, at 52.

64. DAVID H. SOLKIN, PAINTING FOR MONEY: THE VISUAL ARTS AND THE PUBLIC SPHERE IN EIGHTEENTH-CENTURY ENGLAND 1–2 (1993).

existing commitment to art of knowledgeable Europeans (not only the Dutch, who were avid collectors, but more importantly the French, whose perceived cultural superiority was a source of competitive rivalry among the English)<sup>65</sup>; and (4) the increased availability of important works of art in Italy, a vast repository of artistic treasures, as a result of the decline of the Italian economy.

Considering the prevalent eighteenth century concern with the morality of luxury, art collecting might well have been thought of as just another form of conspicuous consumption among the very rich, like keeping horses or extravagant gambling.<sup>66</sup> Although this concern was certainly one theme of public discourse, collecting came to be seen more as a source of positive contribution to national well-being.<sup>67</sup> "The formation of great collections," it was said, "would attract foreign tourists and assist in the training of artists, so that [not only painters] but the works of all our other artificers would also be proportionately improved and consequently coveted by other nations."<sup>68</sup> As the art historian Ian Pears explained,

The collection attained such importance primarily because it rested on conceptions which elevated its nature into a matter of national importance. Overshadowing the simple and individualist argument that collecting was a subtle and complicated version of conspicuous consumption, there was the theory which gave the accumulation of paintings a role in maintaining the political, economic and moral health of the entire country... [T]here was pressure to view Art as an important moral and financial stimulant to the country...

[It] related to England's distaste for the French and that France was traditionally thought to be superior in the arts. This was exploited in England as a means of increasing interest in the arts and patronage... This view elevated the status of the collector as a guardian of the nation's health, someone who not only did no harm by spending money and demonstrating his wealth and personal attainments, but in fact had a beneficial effect on all around him. This conception of the collection was an aspect of the eighteenth century obsession with the question of luxury... All writers on luxury, however, agreed that the surplus money in the hands of the wealthy

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65. GERALD NEWMAN, *THE RISE OF ENGLISH NATIONALISM: A CULTURAL HISTORY 1740–1830*, at 109 (1987) (speaking of "the despotism of French taste").

66. See W.A. SPECK, *SOCIETY AND LITERATURE IN ENGLAND 1700–60*, at 47 (1983) (discussing Alexander Pope's criticism of Timon, who "has no sense of serving the community" and "uses his wealth only to indulge his own vanity"); *Charles Saatchi Interview*, *supra* note 11, at 30 ("However suspect their motivation, however social-climbing their agenda, however vacuous their interest in decorating their walls, I am beguiled by the fact that rich folk everywhere now choose to collect contemporary art rather than racehorses, vintage cars, jewellery [sic] or yachts").

67. Some writers sought to justify activities like collecting as morally justifiable without more, on the ground that it generated humane virtues in the collector. See SOLKIN, *supra* note 64, at 82, 169.

68. LOUISE LIPPINCOTT, *SELLING ART IN GEORGIAN LONDON: THE RISE OF ARTHUR POND* 101 (1983).

was going to be spent on something . . . Of the innumerable solutions, painting was one which was invariably looked on with some approval.<sup>69</sup>

This was also the period of the “thinking nobleman” in which aristocrats presided over learned societies like the Royal Society, the Society of Antiquaries, and the Egyptian Society, though they often lacked the knowledge of non-aristocratic members who were genuine scholars and connoisseurs.<sup>70</sup> Participation in such organizations permitted a degree of social openness by allowing non-aristocrats the opportunity to engage with peers who served as patrons of such organizations. Art appreciation served as one of the standards by which newly wealthy commoners could rise in social standing, thus permitting a society undergoing dramatic change to become more porous and to permit some upward mobility for the non-noble rich.<sup>71</sup> This strategy has been credited as a major explanation for the stability that England was able to achieve in a time of social stress. The newer middle class was persuaded to aspire to copy their “betters” in manners, education, and behavior, engaging in cultural mimicry of the elite. And the elite’s attitude of self-conscious paternalism, which governed its relations with its social inferiors,

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69. PEARS, *supra* note 6, at 171–73. For example, Frank Herrmann quotes the auctioneer Thomas Winstanley as saying, “[p]aintings are universally acknowledged to be objects worthy of possession, and the wealthy are anxious to obtain works of first rate excellence.” FRANK HERRMANN, *THE ENGLISH AS COLLECTORS: A DOCUMENTARY CHRESTOMATHY* 199 (1972). That paintings are “universally acknowledged” or “invariably . . . approv[ed]”, however, is a bit strong, as revealed in the following passage:

Now would not one great act of charity . . . create a man more honour and respect than he could acquire by the finest house, furniture, pictures or clothes that were ever beheld . . . For my own part, when I have waited . . . in a room hung with fine pictures . . . I have never once thought of their owner, nor hath any one else . . . [F]or when it hath been asked whose picture that was, it was never once answered, the master’s of the house, but . . . the names of the painters . . . [T]hese great folks are mistaken, if they imagine they get any honour at all by these means . . .

HENRY FIELDING, *THE HISTORY OF THE ADVENTURES OF JOSEPH ANDREWS AND OF HIS FRIEND MR. ABRAHAM ADAMS* 287–88 (Paul Scanlon ed., Broadview Press 2001) (1742).

70. PAUL LANGFORD, *A POLITE AND COMMERCIAL PEOPLE: ENGLAND 1727–1783*, at 660–66 (1989); *see also* 5 *THE CAMBRIDGE CULTURAL HISTORY OF BRITAIN: EIGHTEENTH-CENTURY BRITAIN* 49 (Boris Ford ed., 1992) [hereinafter *CAMBRIDGE CULTURAL HISTORY*] (“The eighteenth century was characterised by the ‘Man of Taste’ and the lure of antiquarianism.”).

71. The effort to permit the entrance of the newly rich and powerful into the world of the older ruling class, through the elaboration of standards of “polite” society, was a central feature of the era in which attitudes about art and conceptions of what art should do, played an important role. *See* SOLKIN, *supra* note 64, at 36, 96–97 (stating that social stability was secured in Britain by establishment of a “polite society” to reach a common code of manners).

“imposed a number of moral obligations upon the elite . . . [a] sense of *noblesse oblige*.”<sup>72</sup>

At the same time, being knowledgeable about art showed taste, refinement, and a desire to be a genuine connoisseur. Insofar as the ruling class showed leadership in this domain, it was seen as playing a useful public role,<sup>73</sup> and its collecting was thereby insulated from some of the criticism of extravagance and self-indulgence against the old elite.<sup>74</sup> The amassing of works of art came to be associated with the provision of a benefit to the nation.

There was a price to be paid, however. The view that art collections benefited the nation made it almost inevitable that a demand for greater accessibility would ensue. “From the 1730’s, when the issue was first rehearsed in pamphlet debate, the owners of major collections were encouraged to make their treasures available to interested connoisseurs and painters.”<sup>75</sup> The claim for access was typically English; that is, it was essentially utilitarian in tone.<sup>76</sup> “Nothing can be more [a]bsurd than to keep such [i]ncentives to noble [e]mulation out of [s]ight. It is disappointing the very [e]nd and [s]cope of them . . . [I]ngenious, useful and ornamental arts, aggrandise a state.”<sup>77</sup>

An art collection was viewed as a repository of knowledge that, by being shared, would be “beneficial to the Publick.”<sup>78</sup> “[T]he nation’s art works, it was agreed, should be visible so that foreigners could appreciate the refinement and progress of English taste; and great art should not be concealed for the private pleasure of its owners but

72. STONE & STONE, *supra* note 2, at 412–13.

73. SOLKIN, *supra* note 64, at 3 (explaining that the conflation of “taste” with moral excellence was a familiar theme in eighteenth century philosophical discourse).

74. See BREWER, *supra* note 8, at 82 (“The fear that luxury and refinement were weakening the moral fibre of the nation persisted throughout the eighteenth century . . . This issue was often defined as a struggle between older, indigenous British values and continental foreign ideas of refinement . . .”); SOLKIN, *supra* note 64, at 2 (From 1700 to the 1730s the society was “undergoing rapid commercial expansion [and] sought to reconcile its new-found wealth with the dictates of Christian and classical morality.”).

75. See BREWER, *supra* note 8, at 220 (explaining that the response to this concern was mixed, and while many collections were open at least to some extent, there were notorious cases of lords who capriciously turned visitors away, or “put their best pictures on the back stairs”).

76. See PAUL GREENHALGH, *EPHEMERAL VISTAS: THE EXPOSITIONS UNIVERSELLES: GREAT EXHIBITIONS AND WORLD’S FAIRS 1851–1939*, at 8 (1988) (“[A]dour English insistence on making all things work toward a useful end, that is, art was to enhance industry and hence improve trade.”).

77. PEARS, *supra* note 6, at 175 (quoting George Turnbull).

78. *Id.* at 176 (detailing the attitude that in addition to opening a collection to the public, the collector was obligated to act as a “repository of knowledge” and to guide “the public to appropriate appreciation”).

be displayed to edify and educate the public.”<sup>79</sup> This view continued well into the nineteenth century, where it was asserted that exhibiting art to a broader public would stimulate better industrial design and promote the sale of English goods.<sup>80</sup> For example, Henry Cole, the founding director of the Victoria and Albert Museum, designed a tea service based on the Etruscan pots on display at the British Museum; Cole petitioned Herbert Minton, a leading maker of quality china, to manufacture the goods, which Minton did with great success.<sup>81</sup>

The evolution of public attitudes along this line had an ironic consequence for rich collectors. While the view that they were performing a public service insulated them from the critique of useless self-indulgence, it simultaneously created a demand that was at odds with their fundamental belief in individual rights to private property.<sup>82</sup>

It was, of necessity, the private collection which housed these objects of emulation, as there was no other conceivable area where they might be amassed. For those who took the view that England's trade, moral health and honour were at stake, the . . . collector . . . was not purchasing merely for himself but for the good of the nation as a whole . . .

[Moreover], if collections were to have the desired effect of not merely keeping the individual owner out of trouble [not spending his money on more dissolute activities] but also of improving trade, stimulating painters and reforming the lower orders, then they had to be seen. The difficulties of gaining access to collections once they had been formed led to a concerted campaign throughout the first half of the eighteenth century to persuade owners to make their possessions more public and

79. BREWER, *supra* note 8, at 220.

80. See Elizabeth A. Pergam, *Waking the Soul: The Manchester Art Treasures Exhibition of 1857 and the State of the Arts in Mid-Victorian Britain*, at 28, 33 (Sept. 2001) (Ph.D. dissertation, Institute of Fine Arts, New York University) (on file with New York University Libraries) (discussing the Great Exhibition of 1851 and contemporary views on the relationship between the fine arts and industrial design, and its potential impact on the British economy, “the diffusion of good taste in the Fine Arts cannot but beneficially affect the productions of industry generally. . . .”); Stonge, *supra* note 3, at 68 (noting that in the 1830s, British manufactured goods were not competing successfully with those of France and Germany because they were “poorly designed and visually unattractive”).

81. ELIZABETH BONYTHON & ANTHONY BURTON, *THE GREAT EXHIBITOR THE LIFE AND WORKS OF HENRY COLE* 92–93 (2003).

82. PEARS, *supra* note 6, at 171–76; see also MANDLER, *supra* note 26, at 8:

The urge to show off the booty of erudition and travel posed an interesting problem for the culturally ambitious country-house owner of the mid-eighteenth century. His collections had to be seen and admired for his skill and taste as a connoisseur to be fully appreciated; he had therefore to ensure that his impregnable fortifications were just sufficiently permeable to admit any visitors able to assess, appreciate and, preferably, report on his achievements.

hence more useful . . . [The] argument is thus a strictly functional one based on the assumption that the prime purpose of paintings, and hence of possessing them, lies in the power they have when made visible possession consequently carries an implied obligation to let the paintings exert the beneficial effects inherent in their nature. The glory of the collector, therefore, lay not simply in the display of the taste which went into putting the collection together, it was also in the public service contained in making it visible.<sup>83</sup>

To be seen as performing a public service was also a useful self-protective strategy. "The British governing elite was homogeneous, compact, and enormously wealthy and powerful, and that invited attack."<sup>84</sup> These perils counseled the prudence of taking steps that would keep the elite as influential and respected as possible. The elite took steps such as supporting charities,<sup>85</sup> sending their children to school to mix with commoners rather than being tutored at home, and conspicuously opening their houses and their collections to the public. "With equality went openness, the answer to those who charged nobility with stand-offishness. The readiness of country house owners to permit public viewing . . . was part of polite proprietorship."<sup>86</sup> Such acts of nobility apparently made a strong impression on many ordinary people. For example, "at Harewood House in Yorkshire in 1794, a visitor found 'His Lordship obliged to leave his own House every Saturday that the Public may view.' The visitor concluded that this would 'shew little people that the possessors of those fine Houses ought to be no objects of Envy.'"<sup>87</sup>

"Denunciation of the landed classes as a discrete group . . . had appeared occasionally in polemics . . . in the 1760s and '70s. [By the 1780s] this kind of criticism [had] enter[ed] the mainstream of political discourse in Britain."<sup>88</sup> By then, there was awareness of the creation of public, national museums elsewhere in Europe;<sup>89</sup> yet,

83. PEARS, *supra* note 6, at 171–76 (citing contemporary critics who, in addition to urging that art should be made accessible to the interested public, also proposed that measures should be taken so that art could be understood and more fully appreciated. Pears further notes that many collectors responded by permitting annotated catalogues to be made of their collections).

84. LINDA COLLEY, *BRITONS: FORGING THE NATION 1707–1837*, at 152 (1992).

85. SOLKIN, *supra* note 64, at 158 (discussing the mid-eighteenth century as a time of great philanthropy, with a proliferation of institutions such as privately sponsored hospitals funded by the urban commercial classes).

86. PAUL LANGFORD, *PUBLIC LIFE AND THE PROPRIETED ENGLISHMAN 1689–1798*, at 549 (1991).

87. *Id.*

88. COLLEY, *supra* note 84, at 152.

89. As early as 1750, the Luxembourg Palace was opened as a place of public exhibition in response to complaints that the royal collection was not being seen and that the nation was, as a result, being disadvantaged. MCCLELLAN, *supra* note 7, at 8. Entry was open to all and free of charge. *Id.* A guide to the exhibitions said that "men of good sense . . . and good faith" possessed of "sensibility and quality of mind" were

there still existed a strong negative attitude among much of the British cultural elite to the idea that art collecting and taste-making should be in the hands of the government.<sup>90</sup> This perspective retarded the establishment and effective functioning of a national gallery in England, though some collectors and prominent artists had long supported such a move.<sup>91</sup> All this underlined the awkwardness of having such treasures locked up in the private quarters of what many saw as a handful of arrogant and capricious swells.

As part of the same political process, the definition of "the public" was expanding beyond the older, restrictive concept of "people of quality" to embrace a broader group. This new conception of the public was characterized by the masses' perceived capacity to appreciate and be affected by cultural phenomena such as art. This capacity was not considered inborn, but was thought capable of being cultivated. It was defined by what the eighteenth century mindset

welcome, adding that "well-bred women as well as men were welcome." *Id.* In 1767, the English writer Thomas Martyn, wrote, "[i]t should be mentioned to the honour of the French nation, that their collections are come at, even by foreigners, with great facility: in particular the royal pictures are not locked up in private apartments from the eye of the people, but are the pictures of the public." MARTYN, *supra* note 32, at v.

90. Lady Eastlake's view seems to have been that eventually the content of many privately formed collections would be given to a national gallery, and by that means England would have the best of both worlds—private taste, minimal government spending, and a publicly accessible national gallery. HERRMANN, *supra* note 69, at 264. In 1826, the distinguished collector Sir George Beaumont gave his pictures to the nation for the newly-authorized National Gallery. *Id.* Several years earlier the old masters collected by the merchant J.J. Angerstein had been purchased to be the nucleus of the new National Gallery. *Id.*

In addition to the question of what should be acquired and valued as art, there was (and is) also an important question of how it is to be seen and understood, a role that in our time has been largely turned over to the public museum and its professional cadres. See ART APART: ART INSTITUTIONS AND IDEOLOGY ACROSS ENGLAND AND NORTH AMERICA 3 (Marcia Pointon ed., 1994).

91. HERRMANN, *supra* note 69, at 263 (noting that among the collectors and prominent artists were Sir Joshua Reynolds, Benjamin West, John Opie, James Barry, and Sir Thomas Bernard); see also COLLEY, *supra* note 84, at 174 (stating that bourgeois activists like John Wilkes pleaded in Parliament for a national gallery); TAYLOR, *supra* note 7, at 475–76 (noting that Wilkes had criticized George III for moving the Raphael Cartoons from Hampton Court, where they were accessible to at least a limited public, to Buckingham Palace, saying, "they were purchased with public money . . . always considered . . . as an invaluable national treasure, as a common blessing, not as private property. The kings of France and Spain permit their subjects the view of all the pictures in their collections.").

One person who had a more nuanced view was Prince Albert, a strong believer in public art education and in the opportunity to experience works of art. See Colin Trodd, *Culture, Class, City: The National Gallery, London and the Spaces of Education 1822–1857*, in ART APART, *supra* note 91, at 33, 40. He supported the development of the National Gallery, which he conceived as a "complete school of art", thus serving a distinct, but important, function different from that of "collection of pictures by good masters, such as private gentlemen might wish to possess." *Id.*

understood as taste and "politeness," which connoted "an idea of what the true gentleman and gentlewoman should be . . . Embracing every aspect of morals and manners, it was a complete system of conduct."<sup>92</sup> While previously, a collection was considered to be open and accessible to those capable of appreciating it—presumably the rather small circle of those who were known to the owner or could secure an invitation—now a considerably larger audience was validated. The "polite public" embraced that more considerable circle of people capable of knowing what is worthy.<sup>93</sup> Taste was a means for expanding acceptability in society beyond the privilege of birth. Access for this more open category called for more openness on the part of the owner who wished his collecting to be seen as promoting "the good of the nation as a whole."

By the second half of the eighteenth century, the development of this new and broader public audience for art had produced a proliferation of public exhibitions, publications of catalogues to collections, and the rise of various guidebooks.<sup>94</sup> In addition, a market in reproductions burgeoned, placing images of great art before large numbers of ordinary people in England for the first time and contributing to the birth of a mass public for art.<sup>95</sup> In 1767, Thomas Martyn noted

that many of the collections of the great, are ever open to the inspection of the curious; who have been even permitted by some in the most liberal manner to take copies of their paintings, and to make drawings from them; but at the same time it must be lamented that some cabinets are not accessible without difficulty and interest.<sup>96</sup>

One of the few open opportunities to see either old master or modern paintings occurred in advance of an auction. At the beginning of the eighteenth century, paintings were displayed in auction rooms and coffee houses before they were sold. A few artists' studios

92. BREWER, *supra* note 8, at 100–01. Politeness had quite a different meaning then: "The essence of politeness was often said to be that *je ne sais quoi* which distinguished the innate gentleman's understanding of what made for civilized conduct. *Id.* LANGFORD, *supra* note 70, at 71. So too, "[t]aste was not dilettantism in the pallid modern sense but the deep appreciation of artistic quality." 5 CAMBRIDGE CULTURAL HISTORY, *supra* note 70, at 14–15.

93. BREWER, *supra* note 8, at 96 (citing Dr. Johnson's *Dictionary* definition).

94. See BREWER, *supra* note 8, at 219–20. 1 & 2 GILPIN, *supra* note 33 and MARTYN, *supra* note 32, are examples of such guidebooks and catalogues.

95. BREWER, *supra* note 8, at 459. Perpetual copyright was also abolished at this time, making the classics more broadly available. *Id.* A 1768 edition of Shakespeare said, "the works of . . . great authors . . . are part of the kingdom's riches . . . her estate in fame . . . the worth and value of which sinks or raises her in the opinion of foreign nations . . ." *Id.* at 476.

96. MARTYN, *supra* note 32, at v.

contained pictures designed to show off their owners' discernment; it was possible to visit some private aristocratic collections, if one could secure an invitation.<sup>97</sup> The first public exhibition of any sort was the rather haphazard display of pictures in Vauxhall Pleasure Gardens in the 1740s<sup>98</sup> and (more importantly) the paintings that Hogarth and other artists donated for public display at the Foundling Hospital in London after 1746. These donations were intended to give some exposure to the work of British artists, whose work at that time, and for some time afterwards, was thought of as inferior to the work done on the continent.<sup>99</sup> A contemporary rhyme went as follows: "But our artists, the fact to our shame is well known / Like our wives are neglected, because they're our own."<sup>100</sup>

The first significant public exhibitions of art in England were sponsored by the Royal Academy, an organization created under royal charter by leading artists to train students and to establish a venue in which the public could see great (and particularly) British art.<sup>101</sup> The Academy was founded in 1768, more than half a century before the National Gallery.<sup>102</sup> The Royal Academy gave legitimacy and importance to the idea that fine art had a public function to perform.

97. As to "visitors to the great country houses . . . their owners were willing to open their doors to whoever presented themselves on the tacit understanding that the low and common sort of people did not take such a liberty." MOIR, *supra* note 39, at xv.

98. See SOLKIN, *supra* note 64, at 190, 199.

99. The Vauxhall exhibits were not meant to be serious displays of important art. See SOLKIN, *supra* note 64, at 106, 173, 190, 199; TAYLOR, *supra* note 7, at 469–72. The exhibition of paintings at the Foundlings' Hospital was an initiative of Hogarth, begun in 1746, and was probably the first ongoing show of fine works of art in England. See SOLKIN, *supra* note 64, at 106, 173, 190, 199; TAYLOR, *supra* note 7, at 469–72. As an important charity, the Hospital was visited by many major figures in London, and was thus a desirable venue to show the work of English artists. See SOLKIN, *supra* note 64, at 106, 173, 190, 199; TAYLOR, *supra* note 7, at 469–72.

100. Fullerton, *supra* note 9, at 60 (quoting a song written by Rev. Dr. Franklin that was performed at the Royal Academy's first annual dinner in 1769). Hogarth wrote of "[t]he picture jobbers from abroad [who] . . . depreciate every English work as hurtful to their trade of importing by shiploads, dead Christs, Holy Families, Madonnas, and other dismal dark subjects on which they scrawl the names of Italian masters . . ." TAYLOR, *supra* note 7, at 458.

101. BREWER, *supra* note 8, at 228–29. In 1768, "several leading figures in the Society of Artists [persuaded] George III to sponsor the establishment of a Royal Academy of Art, [which for years had been the] ambition of certain prominent members of Britain's artistic community," but it was a negative for those artists excluded from the most prestigious institution devoted to the promotion of the visual arts (there were only thirty-four founding members). SOLKIN, *supra* note 64, at 239–40. London's Royal Academy was intended "to be built along the same lines as its Parisian equivalent." *Id.*

102. There were earlier public exhibits, though not devoted to the fine arts, for example, at the university libraries at Oxford and Cambridge. See 2 PEARCE & ARNOLD, *supra* note 2, at 94–95, 100.

From the very outset, exhibitions were received by the public with enthusiasm<sup>103</sup> and were heavily attended.

While the efforts of Hogarth and of the founders of the Royal Academy were primarily designed to promote the work of living British artists, the Academy also wanted to exhibit old masters. For this they had to turn to collectors for loans. An important new entity known as the British Institution<sup>104</sup> was established by collectors to mount public exhibitions of work drawn from their collections.

[P]erhaps the most effective means by which . . . art collectors were able to make their private possessions appear a public good was through the British Institution . . . established in Pall Mall, London, in May 1805. This was both a highly exclusive and a quasi-official venture. George III was asked to approve its foundation. The Prince of Wales acted as its Honorary President . . . It provided a permanent gallery where British artists could exhibit (and sell) their work, and it also displayed Old Masters.<sup>105</sup>

“To form [these exhibitions] the king and most of the owners of fine collections contribute[d].”<sup>106</sup> Works were borrowed from country house collections for the edification of the general public and homegrown, fledgling artists alike.

By lending some of his Old Masters to the Institution, a gentleman collector could flaunt his wealth and culture, and seem a patriot into the bargain . . . In all these ways, the British Institution helped to forge . . . the quite extraordinary idea that even if an art object comes from

103. One modern estimate is that maximum attendance at Royal Academy exhibitions in the early 1820s was around 91,000. Andrew Hemingway, *Art Exhibitions as Leisure-Class Rituals in Early Nineteenth-Century London*, in *TOWARDS A MODERN ART WORLD* 99 (Brian Allen ed., 1995). The British Institution had half that many attendees, or less. *Id.*

104. The full name of the British Institution was The British Institution for Promoting the Fine Arts in the United Kingdom. CAYGILL & CHERRY, *supra* note 14, at 17. It was

established in 1805 by a group of collectors and others associated with the arts, including the Marquess of Stafford, the financier John Julius Angerstein and the auctioneer James Christie . . . to mount twice-yearly exhibitions, one of Old Master paintings from their own collections and the other of works by living British artists. Their primary object was ‘to encourage the talents of the Artists of the United Kingdom; so as to improve and extend our manufactures, . . . and thereby to increase the general prosperity and resources of the Empire.’ These hugely successful displays, the first loan exhibitions in London other than those of the Royal Academy, not only enriched public experience but also contributed to a *growing understanding of the desirability of a national collection of works of art*. They further served to underline the quantity and quality of pictures that remained in private ownership in Britain . . .

*Id.*

105. BREWER, *supra* note 8, at 265; HASKELL, *supra* note 1, at 157.

106. 2 WAAGEN, *supra* note 49, at 156.

abroad, and even if it remains securely in private ownership, as long as it resides in a country house it must somehow belong to the nation and enhance it... In virtually every Continental state at this time, aristocracies had to live with the risk that their property might be pillaged or confiscated. Only in Great Britain did it prove possible to float the idea that aristocratic property was in some magical and strictly intangible way *the people's property also*. The fact that hundreds of thousands of men and women today are willing to accept that privately owned country houses and their contents are part of Britain's *national* heritage is one more proof of how successfully the British elite reconstructed its cultural image in an age of revolutions.<sup>107</sup>

The British Institution was in part a response to the artist-dominated Royal Academy that had effectively challenged the leadership of the aristocrat-collectors both in taste and in promoting the interests of the nation. It also allowed collectors with differing attitudes toward the changes occurring in society to respond according to their lights, maintaining the form and reality of private prerogative while adapting to the social and political pressures of the time. A number of the nation's leading collectors responded quite positively;<sup>108</sup> those who refused to open their collections or who were unwilling to loan works to public exhibitions were tolerated subject to harsh public criticism<sup>109</sup> and peer pressure. In 1804, the merchant

107. COLLEY, *supra* note 84, at 175–77 (emphasis in original).

108. PALACES OF ART, *supra* note 8, at 67. As explained,

[t]hough eighteenth century guidebooks to London record various houses as accessible to visitors, during the first thirty years of the following century the number of private galleries in London open, to at least a select public, increased markedly... The private galleries that could be visited included great aristocratic collections, often kept in London rather than the country... A number of these were opened to approved artists and to general visitors, from the first decade of the century onwards.

*Id.* England was not unique in this respect, though almost certainly access was more frequently granted there than in other European cities. GOULD, *supra* note 23, at 16. It was relatively easy to obtain permission to visit the great Orléans Gallery in the Palais Royal from the mid-eighteenth century. *Id.* Some collectors' Parisian homes were also famously open, some to a wide range of visitors, others only to those who could gain the favor of an invitation. BURTON, *supra* note 12, at 58–65.

109. John Byng's, later Fifth Viscount Torrington's, 1785 diary entry, dealing with a tour of country houses, is illustrative:

[I]n a few miles came to Wroxton, where Ld Guildford has an old seat and I prevail'd upon my party to drive down to it: when unluckily for us Ld G-- was just arrived from London, and denied us admittance. Very rude this, and unlike an old courtly lord! Let him either forbid his place entirely; open it al[ ]ways; or else fix a day of admission: but, for shame, don't refuse travel[ ]ers, who may have come 20 miles out of their way...

and collector Thomas Hope opened his Duchess Street house by admission ticket on Mondays during the London season. Hope was the first collector to build a gallery specifically as a public exhibition place, although a half-century earlier, the Duke of Richmond took the then-unusual step of opening his gallery in London to artists so that they could use his collection for copying.<sup>110</sup> Hope was a man entirely devoted to the arts and to influencing public taste, and his house was “a public museum to which access was to be gained by admission tickets, not by engraved invitation cards to dinners and parties.”<sup>111</sup>

Two years later, the Marquess of Stafford, who had inherited a very great collection from his uncle, the third Duke of Bridgewater, “opened up a gallery at Cleveland House in London to exhibit [his] paintings, grandly staffed by twelve servants whose liveries had cost forty guineas apiece.”<sup>112</sup> Speaking of Stafford’s decision, one historian noted “[t]he Marquess was one of the noblemen who was swayed by the contemporary belief that works of art should be made available to the public by private owners on as generous a basis as possible.”<sup>113</sup> Mrs. Jameson described the Stafford collection as the most accessible of the London galleries and an important part of the collection,<sup>114</sup> later installed at Bridgewater House, remained open to visitors “until the Second World War, the family continuing to regard the display of their paintings as a public obligation.”<sup>115</sup>

Shortly after the Marquess of Stafford’s gallery was opened, Earl Grosvenor opened his house in Park Lane one day a week during the season.<sup>116</sup> Other peers commissioned guidebooks to their art collections and then allowed them to be published.<sup>117</sup>

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1 THE TORRINGTON DIARIES, *supra* note 47, at 231. Three days later at Sherborne Castle he was

refused admission, as his L’dship was at home. This is the second rebuff we have lately experienc’d, and which . . . fretted us not a little; let people proclaim that their great houses are not to be view’d, and then travel[ers] will not ride out of their way with false hopes.

*Id.*, at 237.

110. PEARS, *supra* note 6, at 177.

111. DAVID WATKIN, THOMAS HOPE 1769–1831 AND THE NEO-CLASSICAL IDEA xix, 14 (1968).

112. *Id.* at 181.

113. PALACES OF ART, *supra* note 8, at 75.

114. JAMESON, *supra* note 18, at 77–79.

115. PALACES OF ART, *supra* note 8, at 143.

116. Dongho Chun, *Public Display, Private Glory: Sir John Fleming Leicester’s Gallery of British Art in Early Nineteenth-Century England*, 13 J. HIST. COLLECTIONS 175, 180 (2001).

117. COLLEY, *supra* note 84, at 176.

Still others, including rich commoners like Sir John Fleming Leicester, later Baron de Tabley, a noted collector of British art (especially Turner), opened the gallery in his London house from early April to late May one or two days a week. Commoners, of course, had their own motives. For example, Leicester badly wanted a peerage, which he eventually received.<sup>118</sup> In addition, “loan exhibitions have . . . been recognized by cultural historians as a shop window for prospective private sellers”.<sup>119</sup> At first, Leicester only permitted other prominent collectors to visit his collection,<sup>120</sup> but by 1818 his collection was opened to the public without any charge.<sup>121</sup> Still there was no way for “lower orders” to enjoy the collection in the gallery<sup>122</sup> any more than there had been at the great country houses.<sup>123</sup>

To put these restrictions in perspective,<sup>124</sup> it must be noted that even genuinely public institutions were far from welcoming in their

118. Chun, *supra* note 116, at 175.

119. Marcia Pointon, *Europe: Early Modern and Modern*, 107 AM. HIST. REV. 1629 (2002) (reviewing FRANCIS HASKELL, *THE EPHEMERAL MUSEUM: OLD MASTER PAINTINGS AND THE RISE OF THE ART* (2000)); see also Hemingway, *supra* note 103, at 103 (describing an 1817 review of an Academy exhibition, saying, “Somerset House is like a market or shop, and it is a fitting setting for the creatures a commercial society produces.”).

120. This was the case for Stafford’s collection as well, “[t]he Earl of Stafford firmly stated that his works would be open only to ‘persons of the first rank, to first rate connoisseurs and first rate artists.’ PEARS, *supra* note 6, at 177.

121. Looking back in 1866, Henry Cole (creator of the museum that became the Victoria & Albert) said, “for those not belonging to the upper ten thousand, it might be a work of years to get a sight of the Grosvenor or Stafford Collections.” BONYTHON & BURTON, *supra* note 81, at 153.

122. Chun, *supra* note 116, at 182. Until the later-nineteenth century museums were not established in the poorer areas of great cities with the express purpose of serving the working classes. ART FOR THE PEOPLE, CULTURE IN THE SLUMS OF LATE VICTORIAN BRITAIN 31 (Giles Waterfield ed., 1994). The South Kensington Museum (now the Victoria & Albert)—opened in 1857—was a first step away from the elitist focus of the exhibitions presented by the Royal Academy or the British Institution. See MacGregor, *supra* note 14, at 24–25. It was established essentially for the education of artisans to improve industry with the aid of works of industrial arts of the best sort. See *id.* Its first curator, Henry Cole, was quoted as saying in 1854, “[t]wenty years ago even the most clear-headed and uncompromising advocate of progress would have thought it necessary to apologize for the apparently Utopian opinion that workmen and manufacturers could have any practical business with museums.” *Id.* at 32 n.91.

123. Chun, *supra* note 116, at 182 (“[A]ll of these measures had already been widely in use in great country houses like Chatsworth, Blenheim, Houghton and Holkham by the 1790’s.”).

124. Francis Haskell, *The British as Collectors, in THE TREASURE HOUSES OF BRITAIN, FIVE HUNDRED YEARS OF PRIVATE PATRONAGE AND ART COLLECTING* 50 (Gervase Jackson-Stops ed., 1985).

approach to visitors.<sup>125</sup> The British Museum, established in 1753, was notable in this regard:

Its method of access-by-ticket available on application to the chief officer of the Museum and signed individually by him, proved increasingly unacceptable as waiting-times lengthened into months, and the subsequent experience of being harried through the galleries in small groups by hard-pressed curators proved deeply unsatisfying to the public.<sup>126</sup> Eventually, in 1810, these controls were swept away; thereafter the Museum opened its doors between the hours of ten and four o'clock on three days a week to 'any person of decent appearance,' without the need for a ticket and with no limit on the length of stay.<sup>127</sup>

125. WITTLIN, *supra* note 5, at 113. Visitors from the 1780s complained about being rushed along by insolent and impatient employees saying, "[i]n general you must give in your name a fortnight before you can be admitted . . . [and once there] I am sorry to say that it was the room . . . which I saw; not the museum itself, so rapidly were we hurried on." 2 PEARCE & ARNOLD, *supra* note 2, at 176–8. As late as 1909,

[i]n his account of the Vatican collection the German traveler Volkmann wrote as follows: "The famous statues and the new museum are now under the supervision of a guardian and it is most difficult to find him. Once he starts on a tour with a group of visitors he shuts the door of the museum and then one can lie in wait for hours, or it may happen that one has to give it up and leave the Vatican in the company of a person familiar with the place, so that one gets access to all the interesting things therein."

WITTLIN, *supra* note 5, at 123.

By contrast, at the National Gallery, founded in 1824, it was the wish of the Prime Minister and trustees that the new institution should be as readily visited as any contemporary museum was on the continent . . . From its earliest days the National Gallery was mobbed by visitors, especially after the move to Trafalgar Square in 1838. ART FOR THE PEOPLE, *supra* note 122, at 35.

126. See WITTLIN, *supra* note 5, at 113.

In 1785 . . . the German historian Wendeborn wrote that persons desiring to view the British Museum had first to give their credentials at the office and that it was only after a period of about fourteen days that they were likely to receive a ticket of admission . . . [As of 1808,] the museum was kept open for public inspection every Monday, Tuesday, Wednesday and Thursday and that persons wishing to see the museum were to apply in the ante-room between eleven and twelve o'clock in the morning; further, eight companies, of not more than fifteen persons each, were admitted in the course of one day. At each of these admissions the directing officer examined the visitors' credentials . . . and issued a ticket to every individual found to be 'not exceptionable.'

127. References to accessibility in the literature on private collections vary widely. Depending on the point the author wishes to emphasize, the situation may be described as "tolerably liberal", snobbishly limited, theoretically open but mined with a panoply of owner-tolerated obstacles, or as coldly calculated to promote the owner's social status. MacGregor, *supra* note 14, at 22. Contemporary students of museum culture explain that a quite different sort of constraint on visitation has never disappeared, noting, "[t]he visitor . . . apparently has free choice and yet the spatial

The elite sought to validate its members and their privileged status while keeping a tight grip on its proprietary perquisites. This behavior suggests not only an extraordinarily astute political strategy of self-preservation, but a subtle appreciation of the importance of acknowledging a legitimate public claim on those things that we now think of as heritage objects, whoever happens to own them.<sup>128</sup>

The successful eighteenth century strategy described above had a counterpart in the nineteenth century. The first decades of the new century, as Peter Mandler has observed, brought nostalgia for a mythic "olden time"; this feeling was stimulated by popular phenomena such as the novels of Sir Walter Scott. Mandler argues that the new mass culture industry pioneered by Scott gave rise to a peculiar sensibility for the past that gripped the nation.<sup>129</sup> While the olden time was an invention, it gave rise to a sense of a common historic heritage that focused on remains of the past such as the castles and ruins of the English and Scottish countryside.<sup>130</sup> From the aura created by fictionalized romances, the beginnings emerged of a more authentic association with the past akin to the modern notion of a national heritage.

Inasmuch as this interest was focused on the monuments of the physical landscape, people came to perceive of these sites as part of their past—as places that culturally "belonged" to the people as part of their heritage.<sup>131</sup> Mandler offers the provocative notion of a

structure and other elements of organization predetermine a range of meanings to be produced." ART APART, *supra* note 90, at 3.

128. See COLLEY, *supra* note 84, at 152, 175–77.

129. MANDLER, *supra* note 26, at 82–85.

130. *But see* MOIR, *supra* note 39, at xiv ("The habit of touring [England] began in the sixteenth century . . . [T]he motive force was pride in the greatness of Tudor England, and a curiosity both in the historic roots of that greatness and its contemporary manifestations.").

131. See WITTLIN, *supra* note 5, at 77–78. The idea that art should be seen as a collective property of the community goes back a long way. *Id.*

[A]rt in ancient Greece . . . bore a message to the people of Greece. The men, the events and the ideas represented in those images were the collective property of the Greek community . . . Unity of some sort underlaid many later art collections . . . above all, the theme of the Christian religion that would transform a number of single [objects] into an entity.

*Id.* It reappears repeatedly in modern times, for example as an argument for government protection of art in France even before the Revolution, "[a]rtistic masterpieces belong less to those who own them than to the nation." MCCLELLAN, *supra* note 7, at 71 (quoting Pahin de la Blancherie). It was used as an argument against vandalism during the Revolution. See Joseph L. Sax, *Heritage Preservation as a Public Duty: The Abbé Grégoire and the Origins of an Idea*, 88 MICH. L. REV. 1142, 1143–44 (1990). Further, in 1880 it was used to justify spending tax money to support the Metropolitan Museum of Art,

conception in the public mind of these places as “imaginatively public,” though not public property in any legal sense.<sup>132</sup>

Insofar as such places were the embodiment of a common (though often mythologized) past, they became objects of a newly burgeoning heritage tourism. Effectively, the process that had occurred in the previous century was being repeated with a new theme and a new touristic constituency. Again, the aristocracy and its holdings became a subject of public interest and, again, the question arose: would the holders of privilege, and thus the owners of objects of desire, associate themselves with the perceived national interest or make themselves a target by closing the gates against a popular upwelling of interest? Would new national interest in heritage serve as a source of national cohesion and unity, or of class conflict and friction?

It was not yet necessary for the owners to consider accepting public subventions to respond to public demand. The great families were still very rich. The result was that the public effectively received the access it sought, with a few holdouts, to be sure, and, the aristocracy of wealth and power was again seen as providing a national benefit.<sup>133</sup> This arrangement was one element of, to use Mandler’s felicitous phrase, the “Victorian Compromise.”<sup>134</sup>

if art were still . . . the mere plaything of courts and palaces . . . and the luxury of the rich and voluptuous, there might be some force in the objection [to expending public funds]. But now that art belongs to the people, and has become their best resource and most efficient educator . . .

3 PEARCE & ARNOLD, *supra* note 2, at 45 (quoting Joseph Choate, former trustee of the Metropolitan Museum of Art).

132. MANDLER, *supra* note 26, at 37.

133. See MANDLER, *supra* note 26, at 156 (explaining that the elite were fiercely determined to maintain their proprietary prerogatives,

when the new Liberal government finally established a Historical Manuscripts Commission in 1869 . . . which would . . . catalogue private holdings purely on a voluntary basis . . . [e]ven this mild, permissive gesture drew down a storm of criticism . . . as ‘an arbitrary interference with the rights of Private Property.’

See generally Joseph L. Sax, *Is Anyone Minding Stonehenge? The Origins of Cultural Property Protection in England*, 78 CAL. L. REV. 1543 (1990) (discussing opposition to the proposed Ancient Monuments Act in the 1890s). Not until 1943 “was an inventory law passed, and an allowance of control over demolition via various means including compulsory purchase.” MANDLER, *supra* note 26, at 325.

134. See MANDLER, *supra* note 26, at 154. Some experts question the necessity for such compromise. See DAVID CANNADINE, *THE DECLINE AND FALL OF THE BRITISH ARISTOCRACY* 15 (1990):

Throughout the years from the 1820s to the 1860s, the aristocracy might have liked to believe . . . that they had made many concessions to the forces of change . . . But in practical terms . . . these did not amount to much. Their

It was not to last forever. Of the one hundred or so great properties open in the 1860s and 1870s, half were closed by 1914, and most of those were closed prior to 1900, not to be re-opened until the very different era of the stately home as commercial and public-enterprise, and of the National Trust following World War II.<sup>135</sup>

Perhaps the most notable illustration of the Victorian Compromise involved art rather than landed estates. The affair, not much remembered today except by historians, was the Art Treasures Exhibition of 1857 held in Manchester. It has long been overshadowed by the Great (Crystal Palace) Exhibition of 1851, which focused on industrial and manufactured objects and exhibited almost no fine art.<sup>136</sup> The 1857 event was the first general exhibition in England of great art works (both old and modern masters) from private collections.<sup>137</sup> For the first time, it permitted people to see, in one place, a significant sample of the stupendous hoard of great art that England held.<sup>138</sup> Among the works on display were paintings

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position of dominance was so entrenched, so complete, that their . . . making concessions mattered far less than it was commonplace to suppose.

*Id.*

135. See BARKER, *supra* note 31, at 13–15 (detailing a brief description by the Duke of Devonshire of what happened to Chatsworth and its collections). The first problem was the Great Depression of the 1870s–1880s from which the great agricultural estates never recovered and a later problem was death duties. See *id.* The 1950s and 1960s saw a substantial revival of country house visiting. CANNADINE, *supra* note 135, at 651.

136. The French Exposition Universelle in Paris in 1855 contained exhibits both on industry and the fine arts. See GREENHALGH, *supra* note 76, at 14; Pergam, *supra* note 80, at 49. Its statement of purpose asserted that

the improvement of manufactures is closely connected with that of fine arts; that however, all the exhibitions of industrial products which have been hitherto held, have admitted the works of artists in only very insufficient proportions, that it belongs to France, whose manufactures owe so much to the Fine Arts, to assign to them in the coming Universal Exhibition, the place they merit.

GREENHALGH, *supra* note 76, at 14.

137. See Haskell, *supra* note 124, at 130, (discussing the Burlington Fine Arts Club); see generally Pergam, *supra* note 80 (describing in detail how the organizers of the Exhibition worked to obtain loans from collectors). Collectors' clubs, which organized exhibitions, apparently also arose in the 1850s, but the Author has not been able to learn about the extent of their public showings.

138. See Pergam, *supra* note 80, at 164–65 (“The Manchester display was certainly more complete than the National Gallery at the time,” which, for example, had no representation of important German and Netherlandish masters such as Cranach, Memling, Van der Weyden, and Grünewald, among others.); WINSLOW AMES, PRINCE ALBERT AND VICTORIAN TASTE 174 (1968).

from the inherited collection of the Queen as well as the personal collection of Prince Albert, himself a distinguished connoisseur:<sup>139</sup>

Among the paintings were three Rubenses from Windsor, several great Poussins, the Wilton Diptych, Prince Albert's Duccio [tryptich], his best Cranach, and his Kulmbach and van Orley, the Queen's Mulready The Wolf and the Lamb, many of Stirling's Spanish pictures and some from Louis Philippe's posthumous sale, as well as the Velasquez Admiral Pulido Pareja from the Duke of Bedford and the Olivares on Horseback from the Earl of Elgin; Mr. Durry-Lowes' Pollaiuolo David on a Shield, a Castagno now in the National Gallery in Washington, many ducal Canalettos, the Panshanger Raphaels; Mr. Dingwall's Bellini, St. Francis, now in the Frick Collection; the Hampton Court Tintoretto and the Earl of Yarborough's great Veronese; a Fra Filippo Lippi lent by John Brett the painter . . . fifty Reynoldses; and a fine lot of Hogarths . . .<sup>140</sup>

The Exhibition was, in one respect, an extension and refinement of the nationalist sentiment and popular fascination with the nation's olden times. "The selection and arrangement of the . . . Exhibition included a clear nationalist agenda . . . [by including] a Museum of Celtic and Anglo-Saxon Antiquities."<sup>141</sup> Another view was that "a display of the sheer quantity and quality of art in private hands in Britain was . . . the nationalistic motive to announce Britain's wealth to the world."<sup>142</sup> But, it also reflected the nineteenth century interest in public education and the ostensible cultural refinement of a broader public—an especial preoccupation of Prince Albert.<sup>143</sup> The final report of the executive committee noted its purpose in these words: "To give an educational direction to its enjoyments was one great aim of the Exhibition; to promote the education not only of the understanding only, but of the taste, the invention, the fancy, and the devotional and moral sympathies of the people by the force of example."<sup>144</sup>

The original proposal for the 1857 Exhibition explicitly set out, perhaps for the first time in an authoritative document, the peculiar English situation: the material sources necessary to fulfill the

139. See JOHN STEEGMAN, *CONSORT OF TASTE 1830–1870*, at 60–61 (1950). Prince Albert brought to England works of Carracci, Teniers, Cuyp, Van Eyck, and Rogier Van der Weyden, as well as early Italian Schools, Fra Angelico, Gentile da Fabriano, the Duccio triptych, in an effort "to educate the taste of his adopted country in a direction of which it was yet ignorant [i.e. early masters]," and after his death the Queen presented the best of his pictures to the National Gallery. *Id.*

140. AMES, *supra* note 138, at 150–51.

141. 2 PEARCE & ARNOLD, *supra* note 2, at 9.

142. Pergam, *supra* note 80, at 59.

143. Asa Briggs, *Prince Albert and the Arts and Sciences*, in *PRINCE ALBERT AND THE VICTORIAN AGE* 51, 76 (John A.S. Phillips ed., 1981).

144. Pergam, *supra* note 80, at 8, 67–68.

Exhibition's goals were owned by a handful of individuals who bore no legal responsibility whatever to the public. The language of the proposal is, as one would expect, crafted with the greatest possible delicacy, but the essential message—that a sense of duty in this regard should be acknowledged and fulfilled—could hardly have been clearer:<sup>145</sup>

Art in England may be said to have derived all its encouragement from private persons. Its best treasures have passed into the hands of those whose wealth has enabled them to foster and gratify their tastes. The pictures of our leading artists, the works of our best Sculptors, as well as the most select of all other objects coming under the denomination of Fine Arts, are distributed in private houses throughout the kingdom, instead of being found as in continental countries in National Collections accessible to the public.

Valuable as these treasures are to their possessors, great liberality has always been shown in lending them for Exhibitions, and more particularly to those where they could be seen by the humbler and more uneducated classes of the community. In a full belief that this liberality<sup>[146]</sup> will be still more evinced, a scheme for an Exhibition at Manchester to be called 'The Art Treasures of Great Britain'[] is now submitted for your consideration.

[T]here appears no reason why an effort should not be made to collect . . . the Treasures of Art with which Great Britain abounds, and in the collection of which for a national purpose it is believed there would be no practical difficulty.

The plan of the organizers was to ask Prince Albert to serve as a sort of honorary chair, which he gladly agreed to do, and to ask him to prepare a letter to Lord Ellesmere, President of the General Council of the Exhibition, that would effectively request collectors to join him and the Queen in loaning certain of their finest specimens to the Exhibition. His letter was sent out with the circular announcing the Exhibition to "the principal owners of Works of Art and to the various learned societies in England, Ireland, and Scotland."<sup>147</sup>

Albert's letter went directly to the point:

How to succeed in collecting such treasures, fondly *cherished* as they are by their owners, who are justly jealous of their safety, is the problem to be solved. In my opinion the solution will be found in the satisfactory proof of the usefulness of the undertaking. The mere gratification of public curiosity, and the giving of an intellectual entertainment . . . would be praiseworthy in itself, but hardly sufficient to convince the owners of Works of Art that it is their duty, at certain

145. *Id.* at 10, 60–62 (with the full document appearing in app.4, at 301).

146. *Id.* at 62 (noting the significance of the word "liberality" at this place and time, as Manchester had just displaced the governing radicals with Palmerstonian Liberals in an election).

147. Pergam, *supra* note 80, at 69.

risk and inconvenience, to send their choicest treasures to Manchester for exhibition. That national usefulness might, however be found in the educational direction which may be given to the whole scheme . . . A person who would not otherwise be inclined to part with a picture would probably shrink from refusing it if he knew that his doing so tended to mar the realization of a great National object . . .<sup>148</sup>

It may seem surprising, in light of the history of access that has been recounted above, that Prince Albert would express such concern about collectors' reluctance to offer their works to the Exhibition. But, it should be noted that access previously had been granted entirely on the owners' terms, usually within their own galleries. And, where loans had been made (as to the Royal Academy or British Institution exhibits), works were chosen by the owner, exhibited for rather brief periods, and visited for the most part only by "people of rank." This time, however, collectors were presented with a wish list<sup>149</sup> for an exhibit that would run more than five months and be open to the mass public.<sup>150</sup> Even more significantly, the works would be out of their hands, and potentially at risk of damage or loss.

The location may also have been a deterrent: "[T]he smoky, sooty, steamy mill-town . . . seemed an unappealing environment for their family treasures."<sup>151</sup> The location, however, had been consciously chosen. Manchester was home to industrialist collectors who had strong holdings in nineteenth century British painting, while the nobility preferred old masters.<sup>152</sup> Thus, the siting of the exhibition was certainly designed in part to encourage their

148. 2 PEARCE & ARNOLD, *supra* note 2, at 12–13; *see also* Pergam, *supra* note 80, app. 6, at 307 (reprinting the full letter).

149. The list was prepared largely by Gustave Waagen based on his previous visits to English collections, and the catalogue he had made. *See* Pergam, *supra* note 80, at 107 (discussing Waagen's role in detail). The organizers "proposed not to ask possessors for a general contribution . . . but in every case . . . to solicit particular objects . . . with the view of collecting together . . . the choicest Treasures of the United Kingdom." *Id.* at 71. Some information on the holdings of English collectors was also obtained from dealers who knew about sales and auctions, which collectors sometimes resented as an invasion of their privacy. *See id.* at 90–91. Waagen's catalogs of English private collections were published in 1–3 GUSTAV FRIEDRICH WAAGEN, TREASURES OF ART IN GREAT BRITAIN (LONDON, JOHN MURRAY 1854) AND IN GUSTAV FRIEDRICH WAAGEN, GALLERIES AND CABINETS OF ART IN GREAT BRITAIN (John Murray 1857).

150. In effect the framework of the Manchester Exhibition anticipated the rationale for public art museums. Louise Purbrick, *The South Kensington Museum: The Building of the House of Henry Cole*, in *Art Apart*, *supra* note 90, at 69, 72. "To argue that art exhibitions should be permanent, open and free was, of course, to argue that there should be public museums." *Id.* at 72. The South Kensington Museum opened in 1857, a permanent product of the 1851 Crystal Palace Exhibition. *Id.* at 73.

151. Suzanne Fagence Cooper, *The British School at the Manchester Art Treasures Exhibition of 1857*, *APOLLO: INT'L J. ARTS*, June 2001, at 30–31 (quoting *THE TIMES*, May 11, 1857).

152. Pergam, *supra* note 80, at 65–66; *see* Haskell, *supra* note 124, at 98.

participation. Moreover, the Art Treasures Exhibition was expressly intended to serve the working classes, drawing 1.3 million visitors.<sup>153</sup> The organizers explained that in addition to the benefits it would offer the connoisseur, the art student, and the artist, “far above them all . . . [will be] the permanent benefit which will be instilled . . . into the minds and characters of the great masses of our population . . . .”<sup>154</sup> In opening the exhibit the next year, Albert spoke of it as “a banquet offered by the rich to the poor—a proof of harmony among the classes.”<sup>155</sup> Admission was one shilling, reduced in the last months of the Exhibition to six pence on Saturday, a half-holiday for workmen; some philanthropists provided free tickets for working-class visitors.<sup>156</sup>

The plan for the Exhibition, relying almost exclusively on loans from great collectors, was the sharpest test that could be posed for the evolved version of *noblesse oblige* as it existed in the mid-nineteenth century. Moreover, though private in form, the organization of the Manchester Exhibition had an official, governmental flavor that was far removed from the aristocratic condescension that characterized either country house visitation or British Institution and Royal Academy-type exhibits. As one writer astutely observed, the older idea of *noblesse oblige* was encountering “a cultural authority deriving from the state,” with the public and the private conjoining in something identified as “the public good.”<sup>157</sup> This was not something the English elite had thus far deigned to embrace. Albert did not shrink from laying down the challenge, however: “[I]t is their duty,” he had said, and he would see whether the English grandes would presume, by “shrink[ing]” from it, “to mar the realization of a great National object.”<sup>158</sup>

Neither Prince Albert nor the Queen left any doubt as to how they thought an owner of great art ought to behave when offered an opportunity to contribute to public education and to the standing of the British nation as a patron of the fine arts. Queen Victoria gave her formal support to the Exhibition and loaned a number of precious works from her private collection. A contemporary publication noted

153. Pergam, *supra* note 80, at 33.

154. Thomas Fairbain, Raising the First Pillar (Aug. 13, 1856), reprinted in Pergam, *supra* note 80, app. 12, at 317.

155. Pergam, *supra* note 80, at 32.

156. *Id.* at 33. The weekly wage of a skilled worker in Manchester in 1857 was about 25 shillings (£65/year). *Id.* at 193. The equivalent percent of a week’s wages today for someone earning \$700 would be about \$25.

157. Brandon Taylor, *From Penitentiary to ‘Temple of Art’: Early Metaphors of Improvement at the Millbank Tate*, in ART APART, *supra* note 90, at 9, 27.

158. 2 PEARCE & ARNOLD, *supra* note 2, at 12–13; see also Pergam, *supra* note 80 app. 6, at 307 (reprinting the letter in full).

“the nobility and gentry throughout the Empire generously imitated the example of their sovereign and her consort.”<sup>159</sup>

With few exceptions, owners responded positively and generously.<sup>160</sup> While the loans were undoubtedly attributable primarily to the example set by the sovereign, to peer pressure,<sup>161</sup> and to patriotic pride, the organizers were not above calling on influential third parties to persuade those who had shown themselves hesitant. These persuaders “point[ed] out that the paintings’ value [would] be increased by virtue of its having been exhibited in Manchester.”<sup>162</sup> The result was an exhibition consisting of several thousand extraordinary objects.<sup>163</sup> Both the number and quality of items loaned reveal the breathtaking richness of Britain’s private collections: a rare fourteenth century Coronation of the Virgin;<sup>164</sup> forty-four works from the fabulous collection of the Third Marquess of Hertford; thirty-five from Lord Spencer; eleven from the banker Baring, including a Mantegna, a Sebastiano del Piombo, and a Giorgione; and two great Raphaels from Earl Cowper.<sup>165</sup> The list went on and on.<sup>166</sup>

Though owners were sometimes uneasy because of the fragility and rarity of their works,<sup>167</sup> these concerns were overcome by the

159. Cooper, *supra* note 151, at 32; see also Pergam, *supra* note 80, at 53 n.145 (explaining that English collectors had also made substantial loans to the Paris Exposition in 1855).

160. Haskell, *supra* note 124, at 208 n.18 (quoting the historian and critic Théophile Thoré saying almost the only abstainers were “la noble maison de Sutherland et le duc de Devonshire, Lord Ashburton et Lady Peel”).

161. See Pergam, *supra* note 80, at 87 n.38. Earl Cowper wrote that he had delayed responding to the request for some of his paintings because “I was anxious to see . . . whether other owners of valuable pictures would contribute theirs before I engaged to send mine.” *Id.*

162. *Id.* at 91. An interesting sidenote is that Waagen was in effect validating the authenticity of some owners’ uncertain old masters by putting them on his wish list for the Exhibition. *Id.* at 119–20.

163. See *id.* at 75; MOUSEIA, HISTORY OF MUSEUMS CHAPTER SIX: THE MUSEUM CONTEXT 1845–1945, at 21, <http://www.utoronto.ca/mouseia/course2/Museum6.pdf> (last visited Sept. 1, 2005) (noting that the objects exhibited consisted of 1,100 old master paintings, 700 contemporary works, 386 British portraits, and 1,000 watercolors).

164. Thought then to be by Giotto, now attributed to Maso di Banco—the most important of Giotto’s followers—and in the Fine Arts Museum of Budapest. See Pergam, *supra* note 80, at 83.

165. Both now in the National Gallery, Washington, D.C.

166. See Pergam, *supra* note 80, at 75–142.

167. The Reverend Davenport Bromley, who loaned his Giotto (Maso di Banco), at first hesitated, saying, “you cannot be surprised by my being averse to having them out of my protection,” his two being the only ones in England. *Id.* at 84. The Marquess of Hertford also expressed concern about putting his treasures at risk, but ultimately loaned nearly four dozen, having first secured a promise that the organizers would indemnify him. DONALD MALLETT, THE GREATEST COLLECTOR: LORD HERTFORD AND

organizers' ability to offer insurance against loss.<sup>168</sup> In several cases, the owner of a contemporary painting who was reluctant to part with it agreed to do so because the artist wanted it to be displayed in Manchester.<sup>169</sup> "I think it highly proper that the wishes of artists should be considered in the selection of their works for the Exhibition," one owner wrote.<sup>170</sup> In another case, the artist was pessimistic, explaining to the organizers that the owner "is selfish in her possession." In fact, however, upon being solicited, she yielded and said "that if any artist particularly wished a work of his in her possession to be sent, in order that he might be fairly represented, she would yield her own scruples."<sup>171</sup>

There were some prominent refusals, but hardly any that seem to have been based on a "public-be-damned" attitude or pure proprietary possessiveness. For example, the Duke of Devonshire, who held one of the nation's greatest collections, declined even though he had made loans to exhibits previously and his estate at Chatsworth was one that had been formally open to visitors since 1760. His excuse was illness, and he later expressed regret at not having been a contributor.<sup>172</sup> Others, such as the Duke of Marlborough at Blenheim, were prevented by legal restrictions on family heirlooms, or other restrictions, from loaning works offsite.<sup>173</sup>

The one documented case of an owner utterly unmoved by the Exhibition's moral, patriotic, and social importuning involved Lord Folkestone, the son of the Earl of Radnor. Lord Folkestone's Longford Castle held some of the finest works of Hans Holbein in England, which the organizers were very eager to obtain. The organizers did not succeed, however, despite their repeated efforts, which included the enlistment as intermediaries of high-status aristocrats who were themselves loaning pictures and their invocation of the example set

THE FOUNDING OF THE WALLACE COLLECTION 80 (1979). *See also* Pergam, *supra* note 80, at 116 (referencing the Earl of Yarborough, who loaned nearly forty works).

168. Pergam, *supra* note 80, at 140-41 (describing insurance against select risks and noting that the organizers negotiated special arrangements with some owners who were particularly insistent, and whose works were especially desired).

169. *See id.* For the most part, the owners of contemporary British artists were the newly-rich industrialists. Old masters were mostly owned by aristocrats. *See id.*

170. *Id.* at 131-32.

171. *Id.* at 134, 137-38 (describing another reluctant owner who finally yielded to an artist's (Augustus Egg) plea that one of his works be loaned, but who refused to lend a Turner that the organizers badly wanted).

172. *Id.* at 98.

173. *Id.* at 99, 105 n.94. The widow of former Prime Minister Sir Robert Peel said she had no power to remove from the residence the pictures she had inherited. *Id.* at 101 n.83. A list of those unwilling or unable to loan off-site includes a number of galleries that were open to visitors coming to them, such as the Bridgewater Gallery, Stafford House, and Blenheim. *Id.* at 200 n.39.

by royal contributions.<sup>174</sup> The person in charge of obtaining old masters loans for the Exhibition later wrote:

Lord Folkstone refused, as he has always done, to allow any one of his pictures to be removed, and we know, upon good authority, that, although he permits strangers to see the pictures upon certain conditions, no one is allowed to make even the slightest sketch or memorandum from them.<sup>175</sup>

On the other side, the Third Marquess of Hertford, who contributed forty-four works,<sup>176</sup> was notorious for his unwillingness to grant access to his collection. He was perhaps the richest man in England<sup>177</sup> and possessed one of the greatest private collections in the world, which he kept in both Paris and London. He was also infamous for his indifference to others. The writer Prosper Mérimée described him as "having a vast fortune and never spending it, beautiful houses in England and never visiting them, fine pictures and never showing them";<sup>178</sup> a biographer observed the "the veil of secrecy which had kept these treasures hidden from the eyes of the public."<sup>179</sup>

Samuel Mawson, the Marquess's primary agent in managing his collection, nonetheless thought his masterpieces should be seen by the public. Mawson saw the forthcoming Manchester Exhibition as an opportunity to propose to Hertford that he lend some of the best paintings from his London collection. Dr. Waagen, who described Hertford as "a quite incalculable person," also made a personal appeal to him.<sup>180</sup> Despite feeling that doing so would invade his privacy, Hertford agreed to contribute. Ironically, the Marquess himself had never seen most of these works, for he almost never visited England, and told Mawson that he did not regret sending his pictures to Manchester because it would give him a chance to see them. He never did, however, did attend the exhibition.<sup>181</sup>

Even this hard-hearted aristocrat was apparently caught up in the public spirit that the Exhibition had generated. Hertford was quoted as saying, uncharacteristically, that he was most happy to contribute his best pictures so that the famed collection so little seen

174. *Id.* at 102-05.

175. *Id.* at 200.

176. *Id.* at 112 (noting that Waagen had proposed a list of fifty paintings).

177. THE HERTFORD MAWSON LETTERS 14 (John Ingamells ed., 1981); MALLETT, *supra* note 177, at 55.

178. MALLETT, *supra* note 167, at 89.

179. *Id.* at 80.

180. Pergam, *supra* note 80, at 111.

181. THE HERTFORD MAWSON LETTERS, *supra* note 177, at 12.

by the public would be opened to the promoters of the Exhibition.<sup>182</sup> After the Exhibition closed, he was quoted again in that vein, stating that he had “the honor, in my little way, to have contributed to the glory of the Manchester Exhibition.”<sup>183</sup>

Ironically, unlike so many great English collections which have been scattered to the ends of the earth, Hertford’s collection can still be seen by residents and visitors to London.<sup>184</sup> Hertford’s son, Richard Wallace, loaned the collection to a museum for several years to be shown in a working-class neighborhood in London. Wallace made the loan in memory of his father who, he said, no one in England understood. Wallace then left the collection to his wife, who in turn bequeathed it to the nation in 1897.<sup>185</sup> Hertford’s collection is currently on view as the Wallace Collection at Hertford House in Manchester Square, open almost every day of the year, and free to the public.

The aristocratic, private, supremely privileged world reflected in the organizing of the Art Treasures Exhibition is usually thought of as lasting up to the time of the World War I. In one important sense, however, the 1857 Exhibition marked a critical turning point. It signaled the beginning of the end of the era of real resistance to the establishment of public cultural institutions and the rising to prominence of the state in shaping the cultural life of the nation. The experience at Manchester sent an implicit message: why shouldn’t art be on display permanently, open to all, and free—or nearly so?<sup>186</sup> To ask such questions was to acknowledge the desirability of public art museums as venues for the cultural opportunities revealed to the public at Manchester.

There were precedents for such a change. As early as 1838, Queen Victoria opened the gallery at Hampton Court to the mass public as a museum in the modern sense, converting it into a public place.<sup>187</sup> Although it had been open to a limited public for several hundred years, prior to the 1830s it saw only a few hundred visitors a year. By 1851, 350,000 people visited it,<sup>188</sup> and despite warnings of

182. *Id.* at 90.

183. *Id.* at 102.

184. See HERMANN, *supra* note 69, at 359–60. Much of the collection in Paris, however, was acquired by an art dealer, Jacques Seligman. See GERMAIN SELIGMAN, *MERCHANTS OF ART: 1880–1960, EIGHTY YEARS OF PROFESSIONAL COLLECTING* 92–103 (1961).

185. MALLETT, *supra* note 167, at 180–81.

186. See BURTON, *supra* note 12, at 76–90 (explaining that Patrician Victorian attitudes toward the working class and its entitlements were complicated and often ambivalent).

187. BONYTHON & BURTON, *supra* note 81, at 82.

188. TINNISWOOD, *supra* note 24, at 131.

vandalism, drunkenness, and other sorts of misbehavior by the multitude, no such dreaded consequences ensued. Hampton Court became a symbol of appropriate change for those who favored greater rights for the general public in every sphere. One travel writer, admittedly a radical, wrote that the Palace "is, as it should be, given up to the use and refreshment of the people. It is the first step towards the national appropriation of public property . . . [I]t is now fitting that the people should have their own again."<sup>189</sup>

In 1845, Parliament enacted a bill permitting larger towns to levy a tax to establish art and science museums to be open on Sundays and with admission fees not to exceed one pence (later all entrance fees were prohibited).<sup>190</sup> In the following years, other important public museums were established: the National Gallery of Scotland in 1850, the National Portrait Gallery in 1856, and the South Kensington Museum (now the Victoria and Albert) opened in 1857.<sup>191</sup>

These developments were part of a larger social change that increased opportunities for leisure among working people, produced a shorter work week, and enhanced the possibilities of train travel. Country house visiting reached its peak in 1870. Thereafter it declined until its commercialized revival following World War II. The last decades of the nineteenth century also marked the beginning of the end of British economic hegemony, and the first of many transfers of great artworks to the new American plutocracy.<sup>192</sup>

The emergence of public museums tracked the adult education movement in the later nineteenth century. The movement was motivated in significant part by the desire to influence the leisure time of the working classes by offering cultural, sporting, and educational opportunities. It was a process that had begun as part of the Victorian effort to divert the masses from what were viewed as traditional proletarian recreations, such as drinking, brawling, and pleasures of the flesh, and to redirect them toward "rational"

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189. *Id.* at 132 (quoting William Howitt's writing of 1840).

190. A Bill To Enable Town Councils, 1845, 8 Vict., c. 4 (Eng.); see *MOUSEIA*, *supra* note 163, at 12.

191. Some museums displaying art had been earlier established at schools, such as the Hunterian Museum in Glasgow in 1807, the picture gallery at Dulwich College in 1811, and the Fitzwilliam at Cambridge in 1816. MacGregor, *supra* note 14, at 22–24. The art dealer Sir Francis Bourgeois bequeathed his pictures to Dulwich with the proviso that the paintings should be on public display, having concluded that the trustees of the British Museum were too "arbitrary" and "aristocratic." See Dulwich Picture Gallery—Gallery History, <http://www.dulwichpicturegallery.org.uk/history> (last visited Sept. 9, 2005).

192. CANNADINE, *supra* note 134, at 112–16.

recreation and uplift.<sup>193</sup> “The growth of general education gave a major impetus to museums, especially museums of art.”<sup>194</sup> The process did not move quickly. As late as 1889, when Henry Tate offered his collection of modern British art to the nation, “there was as yet no national collection [i.e., of British art] on view to the public in London—such as could be found in most other European capitals.”<sup>195</sup> The Tate Gallery finally opened in 1897. By 1914, “every English and Scottish town of any consequence boasted a municipal art gallery.”<sup>196</sup>

The proliferation of museums generated an entirely new context for the issue of collector responsibility.<sup>197</sup> Whereas the venue for seeing art had previously, and necessarily, been on the collector’s own premises or episodically in a temporary exhibition, it had now moved into a permanent, publicly-accessible art museum. The sense of duty that generated loans to exhibitions—such as those of the Academy, the British Institution, or the 1857 Art Treasures show—understandably dissipated (although the aristocracy became prominent as board members of the new public institutions, taking on a revised role as “cultural trustees”).<sup>198</sup> There is no longer a collector-elite that blocks the establishment of public museums or the expenditure of public money on acquisitions. Nor, in an era of taxation where a sharing of societal burdens is imposed, does the self-indulgence and luxury of the very rich create the degree of social friction that made arrangements like the Victorian Compromise so prudent, perhaps even essential, to their survival as a class. Beyond all this, the collector community worldwide today evinces an admirable willingness to provide benefactions in the form of gifts of art to museums.<sup>199</sup>

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193. See MacGregor, *supra* note 14, at 23.

194. ART FOR THE PEOPLE, *supra* note 122, at 34.

195. Taylor, *supra* note 157, at 10.

196. ART FOR THE PEOPLE, *supra* note 122, at 34.

197. There are exceptions to every general case. See Hilane M. Sheets, *A Spiritual Journey*, ARTNEWS, Apr. 2004, at 58. For example, the sculptor David Smith “had a long-standing antipathy toward museums,” and did not want collectors of his work to loan them to museum exhibitions. *Id.*

198. CANNADINE, *supra* note 134, at 578, 685–86.

199. Museums have always depended on donations. See Mouseia, *supra* note 163, at 28. In England,

[t]he role of the individual collector or benefactor in museum development was marked [not only in provincial museums, but] even at the national level the National Gallery, the National Portrait Gallery and the Tate Gallery were dependant on private benefactors for their collections or building . . . In the twentieth century, the private benefactor was still a significant factor. Samuel Courtauld left his . . . French Impressionists to form the Courtauld Institute . . .

Yet, a striking anomaly remains. A vast quantity of the world's great art, especially old masters, now resides in museums (including many of the works loaned to the Art Treasures Exhibition in 1867).<sup>200</sup> A great deal of superlative art nevertheless resides in private collections and museums avidly seek many of these works. Indeed, when important works come up for sale, the richest collectors can and commonly do outbid museums,<sup>201</sup> whose acquisitions budgets are quite limited.<sup>202</sup>

The vigor of the private collecting market is a good thing for the public, despite its sometimes stunning displays of extravagance. Society benefits from having private collectors with a broad range of tastes who thus assure that the art market is not wholly dominated by the limitations of institutional and governmental behavior. Nor would it be appropriate for the state to obtain ownership of everything that constitutes heritage: for example, a family portrait that is an artistic masterpiece. Indisputably, art thrives when the acquisitive enthusiasm of connoisseurs and art lovers flourishes.

But, because so much important art is still in private hands, a problem remains. While many individual collectors are generous in making their collections accessible,<sup>203</sup> long-delayed benefactions upon

*Id.* (alteration in original). "Courtauld was a great believer in the civilizing virtues of art through wider access." *Row Over Possible Courtauld Loans to Getty: Some Academics Challenge Bid to Relax Terms of Benefactor's Will*, THE ART NEWSPAPER, Feb. 2003, at 5 [hereinafter *Courtauld Loans*]. One of the greatest benefactors ever was Anna Maria Ludovica who in the eighteenth century left all the Medici collections to the State of Tuscany "for the benefit of the public of all nations." Taylor, *supra* note 7, at 116.

200. In 1971, the British government was given a list of European and British paintings still in private hands that, it was urged, should be saved for the nation. THE ART NEWSPAPER, Apr. 2003, at 41. The list comprised twenty-five works, excluding the Duke of Sutherland's pictures on loan to Edinburgh. *Id.* As of 2003, two have gone abroad, one to an American collector; nine are in the National Gallery (three on loan), one is in a museum in Liverpool and one in Cardiff; three were acquired by the National Trust, and nine are still with the original families, but of these, seven are in homes open to the public. *Id.*

201. The hugely endowed Getty Museum in California is the notable exception that proves the rule. See *Courtauld Loans*, *supra* note 199.

202. In England, especially, "[t]he philosophy of laissez-faire and the suspicion of any expansion of the government role took many years to fade." MOUSEIA, *supra* note 163, at 15.

203. Collector attitudes and behaviors range widely, embracing those who consciously see themselves as steward-custodians, see, e.g., SAX, *supra* note 35, at 68–72, those who centrally view their collections as an investment, see Tom Flynn, *Saatchi's Latest Sensation*, ARTNEWS, Apr. 2003, at 50, and those who, by welcoming visitors, make themselves—who may be rather dull and boring people—the center of attention by the artistic glitterati, see BRENDA RICHARDSON, DR. CLARIBEL AND MISS ETTA 14–15 (The Cone Collection of the Baltimore Museum of Art 1985). The variations are almost endless.

death are not a satisfactory resolution, and some very important collections have been held prisoner to the extremely seclusive views of their owners both during life and thereafter.<sup>204</sup> For such individuals, there is no one in America today who, like Prince Albert, would be credible and effective in saying to reluctant owners that it is their “duty, at certain risk and inconvenience, to send their choicest treasures” to be seen by the public. It is not simply the absence of a royal personage and the social hierarchy a monarchy embodies that prevents such a statement. Rather, in modern times, it is rare to hear respected writers or connoisseurs charge those who keep their treasures secreted away with being churlish or to hear such critics assert that hoarders should, and will, be “denounced by opinion.”<sup>205</sup> Indeed, the press routinely and without comment mentions works of

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204. An illustrative example is the important Grenville Winthrop collection, which was kept in the owner’s New York townhouse, seen by few, with almost nothing ever loaned. See *A PRIVATE PASSION: 19TH-CENTURY PAINTINGS AND DRAWINGS FROM THE GRENVILLE L. WINTHROP COLLECTION*, HARVARD UNIVERSITY 33–47 (Stephen Wolohojian ed., 2003). Once a year, Winthrop invited a select group of art students from Harvard and Yale to visit the collection. Having studied art as a Harvard student, he was willing to share his treasures only with a small number of other sufficiently-pedigreed aspiring art historians whom he considered worthy, or perhaps reminiscent of himself as a young man. He bequeathed the collection to Harvard’s Fogg Museum in 1943, with the proviso that no item was ever to be loaned from it, and that it only be available for study by scholars. For more than sixty years, no item from the collection was loaned, and it was seen only by specialists. The Fogg finally decided to permit a loan to several museums in 2003 because it was closed down for restoration work. The exhibit, consisting of a selection of nineteenth-century western European and American paintings, drawings, and sculpture, went to the National Gallery, London; the Metropolitan Museum, New York; and the Musée des Beaux-Arts, Lyon. A more generous portrait of Winthrop, however, has been offered by one of his art dealers. See SELIGMAN, *supra* note 184, at 148–50.

205. The well-known historian Kenneth Clark provides a contrary view, as he writes,

[t]his brings me to a final question . . . Has a single individual the right to possess and keep for his own enjoyment works of art which are part of the cultural heritage of mankind? The fact that I cannot phrase the question without employing clichés suggests that it has about it an element of humbug. I doubt whether those who object to the privacy of private collections pay many visits to the Dulwich Gallery . . . or other once private collections which are now open to them . . . [I]f certain supremely great works of art, say the Elgin Marbles or Titian’s Entombment, were in private hands, and more or less inaccessible, we should feel frustrated, and even indignant. But the number of great works of art which are really inaccessible to the general public must now be very small . . .

GREAT PRIVATE COLLECTIONS 18–19 (Douglas Cooper, ed., 1963) (referencing Kenneth Clark’s introduction to the book). A review of the artworks described in the book Clark is introducing, a number of which are pretty great (the Elgin Marbles is a rather severe standard) and also pretty inaccessible, presents a fair test of whether the question is “humbug.” See *id.*

art coming up for sale that have not been seen or whose whereabouts have been unknown for many decades.<sup>206</sup> The marshaling of the richest patricians to respond to a call such as was accomplished by the organizers of the Art Treasures Exhibition is almost inconceivable today. Instead, museum directors and curators approach collectors as suppliants, cap in hand. A sense of responsibility to the public has been replaced by a sort of philanthropic hauteur. When asked recently by an interviewer, “[w]hat made you decide to open a gallery to the public? Did you feel it was some sort of public duty . . . ?” the prominent British collector Charles Saatchi replied, “I like to show off art I like.”<sup>207</sup>

It may be urged that today’s taxing system, by which the rich are obliged to support the cultural life of the community whether they like it or not, has created a wholly different world and has compelled the economic elite to serve as community benefactors far beyond what anyone asked of their counterparts in previous

206. A typical example was a newspaper story about the Metropolitan Museum of Art’s acquisition of a painting by Federico Barocci, whose works are extremely rare. See Carol Vogel, *Inside Art*, N.Y. TIMES, June 13, 2003, at E33. The painting, described as a Baroque treasure, was unknown to modern scholars, none of whom had seen it or had any record of it. *Id.* It was known to have been in private collections, and had last been noted in 1876, but since then had disappeared. *Id.* Though it was thought to be owned by a collector in London, it only surfaced in 2003 when a dealer offered it to the Metropolitan Museum of Art in New York. *Id.* Six weeks earlier, a New York Times story noted a Renoir portrait to be sold at Sotheby’s that “has not been seen since 1937.” Carol Vogel, *Art Auctions Buffeted by Events*, N.Y. TIMES, Apr. 30, 2003, at E33. Similar stories appear in English press. See Dalya Alberge, *Export Ban on Blake’s Heavenly Vision*, THE TIMES, Oct. 24, 2000, at 12. As reported in 2000, a William Blake watercolor that was being sold overseas had last been seen in 1969. *Id.* The present owner declined to loan it to the Tate for a then-current exhibition. *Id.* Nothing was said other than the British owner “refuses to be named.” *Id.*

Some very famous paintings disappear into the hands of anonymous buyers.

Vincent van Gogh’s *The Portrait of Dr. Gachet* . . . was purchased in 1990 by a Japanese financier who immediately locked it away in a bank vault. It’s rumored to have gone up for sale in the mid-1990s, but no one I talked with knows who (if anyone) bought it. ‘I don’t believe it’s in Japan anymore,’ says Michael Findlay, a director at New York’s Acquavella Galleries and a former Christie’s honcho.

Thane Peterson, *The Art Market by Numbers*, BUSINESS WEEK, May 11, 2004, available at 2004 WLNR 4020436. More recently, Picasso’s “*Boy With A Pipe*” sold for \$104 million to an anonymous buyer. See Carol Vogel, *Picasso Work from Rose Period Sets Auction Record for a Painting*, N.Y. TIMES, May 6, 2004, at B6. When and whether it will surface remains to be seen. *Id.*

207. *Charles Saatchi Interview*, *supra* note 11, at 29. When asked in the same interview, “Do you believe in philanthropy? Do you believe that people who are rich and successful have a responsibility towards society?” Saatchi replied, without more, “[t]he rich will always be with us.” *Id.* at 28.

centuries. This observation is certainly true. Still, to withhold for several generations something that is the gift of another's genius, and that the entire world treasures, is a matter that calls out for redress.

The very importance of maintaining a private area, even for objects that have great meaning and value to the community as a whole, creates what may be thought of as the patrimonial paradox: some things imaginatively belong to the public as part of a national or cultural heritage, even though they legally belong to a private individual. The arrangements described earlier in this Article were, however intuitively, designed to deal with this perplexity in the realm of private property. The historic experience described here suggests that an artful arrangement was once crafted to avoid the incongruity embodied in such a duality and that, despite the changes we have seen during the last century or so, it still offers a useful way of dealing with heritage property—an implicit compact sustaining a delicate balance between privilege and responsibility. All that is required is for those who enjoy the most privileged positions in the enjoyment of artistic genius to emulate their precursors and agree “at certain risk and inconvenience” to allow their choicest treasures to be seen by the public.