

**EXCELLENCE, AUTONOMY AND DIVERSITY:
THE CASE FOR TAX-EXEMPT CULTURAL ORGANIZATIONS***

by

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Why should an art museum (or a symphony orchestra, or any similar not-for-profit cultural organization) be eligible for federal income tax exemption? The paper that follows will allude briefly to the two more-or-less traditional (and, to a degree, related) arguments that are generally advanced. For the most part, however, it will concentrate on another and perhaps more compelling rationale, albeit that this rationale may not be equally applicable across the entire range of non-cultural organizations that are similarly tax-exempt.

1. The Traditional Arguments

Underlying the two more-or-less traditional arguments for federal income tax exemption is the notion that tax-exempt status ought be:

" . . . aimed either at encouraging private organizations and public instrumentalities to take on a task that must otherwise be met by governmental appropriation or at fostering some activity regarded as fundamental or as socially desirable."¹

1. Paul E. Treusch and Norman A. Sugarman, Tax-Exempt Charitable Organizations (Philadelphia: The American Law Institute, 1979), 3.

Section 501(c)(3) of the Internal Revenue Code reflects these goals in its enumeration of the purposes that may (in conjunction with the Code's other requirements) qualify an organization to be exempt from tax. Of those enumerated purposes, the two most relevant to an art museum are "charitable" and "educational."

The argument that an art museum serves a "charitable" purpose might rest on one of several definitional grounds.² To the extent, for example, that an art museum may either provide its services without charge or else charge a fee that is less than the full cost of such services, then it may be said to resemble a traditional philanthropy. Also arguable is that a museum is "charitable" because it advances education (see the next paragraph, however, for a simpler argument on that point) or because it has erected and continues to maintain a public building. Finally (and perhaps most importantly), if we believe that – in Carol Duncan's (ironic) phrase – "public art museums are important, even necessary, fixtures of a well-furnished state,"³ then the ongoing operation of a museum may be regarded as lessening a burden of government. Questionable, though, is whether this "charitable" argument would be

2. "Charitable" is defined in Treas. Reg. §1.501(c)(3)-1(d)(2) to include, among other things, relief of the poor and distressed or of the underprivileged, advancement of education, erection or maintenance of public buildings and lessening the burdens of government.

3. Carol Duncan, "Art Museums and the Ritual of Citizenship," in Ivan Karp and Steven D. Lavine, eds., Exhibiting Cultures (Washington: Smithsonian Institution Press, 1991), 88.

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equally persuasive for such other cultural organizations as opera or dance companies, particularly those that did not maintain their own premises.

More direct is the argument that an art museum (or similar cultural organization) is entitled to tax-exemption because it serves a socially desirable purpose, i.e., that it is "educational." Most museum practitioners would contend that — more than merely a storehouse for objects or a place of public recreation — the museum today functions primarily as a site for education. This is particularly so in the United States. As one authoritative publication argues:

". . . [P]ublic education is the most significant contribution that this country has made to the evolution of the museum concept . . . If collections are the heart of museums, what we have come to call education — the commitment to presenting objects and ideas in an informative and stimulating way — is the spirit."⁴

Here the Treasury Department's own Regulations conclusively echo this argument from the field. Among the specific examples the Regulations offer of organizations which per se satisfy the "educational" test of Section 501(c)(3) are:

4. Museums for a New Century (Washington: American Association of Museums, 1984), 55.

"Museums, zoos, planetariums, symphony orchestras, and similar organizations."⁵

Although not per se exempt, opera and dance companies ought more persuasively be able to justify their tax-exempt status as educationally "similar organizations" than as "charitable" ones. So might repertory and other non-commercial theaters as well as "little" magazines and "small" presses notwithstanding that these organizations might also qualify as "literary," another of Section 501(c)(3)'s enumerated qualifying purposes.

5. Treas. Reg §1.501(c)(3)-1(d)(3)(ii), Example (4).

2. Why Tax Exemption Matters

In one sense, the fact that not-for-profit art museums and similar cultural organizations are exempt from federal income tax is, in itself, almost wholly irrelevant. For a variety of reasons, such organizations generally operate at the very limit of their current resources. Rarely are they able to show even a negligible surplus or to accumulate any substantial reserves.⁶ Even without such a tax exemption, they would have little or no income available to be taxed.

The most important consequences of tax exemption for not-for-profit cultural organizations lie elsewhere. They are to be found, rather:

First, in Section 501(c)(3)'s requirement that, in order to secure the benefits of tax exemption, such organizations must maintain themselves in such a configuration that no part of their net earnings "inures to the benefit of any private shareholder or individual"; and

6. As noted by Mary M. Wehle of Idmon Associates, Chicago, such organizations may be perceived by the public as not doing everything possible to carry out their charitable or educational purpose when they fail to employ all of their available resources on a current basis (conversation with the author). Beyond that, an arts organization accumulating reserves may have difficulty both in persuading potential donors of its need for current contributions and in persuading its staff to accept salaries that are frequently below those that private-sector employers pay for comparable work.

Second, in the interplay of tax exemption with the system of charitable deductions initially introduced into the Internal Revenue Code in 1917.

The impact of the so-called "inurement" rule has been to reduce sharply (if not eliminate altogether) the impact of marketplace considerations on the arts as practiced through not-for-profit cultural organizations. This, in turn, has profoundly shaped the development of these arts so that they are today substantially distinct (as distinct, for example, as public broadcasting is distinct from its commercial cousin) from their kindred art forms as practiced in the entertainment industry. So recently as World War I, there was perhaps little difference between the artistic presentations of various voluntary associations and those of commercial theater and concert producers, publishers, gallery owners and other individual entrepreneurs. Over the seventy-five years since, however, that difference has become a gulf.⁷

Of no less impact than the "inurement" rule has been the Revenue Code's system of charitable deductions. Under that system, individual taxpayers are in effect able to direct a portion of the federal government's forgone tax revenue to the tax-

7. The width of this gulf can perhaps best be grasped in fantasy. Imagine, for example, that the situation was otherwise and that for-profit considerations had universal applicability. Time-Warner, Inc., having just acquired as subsidiaries both the Martha Graham Dance Company and the Balanchine Troupe (ex New York City Ballet) for its Dance Division, determines that costs could be reduced if the dancers were freely interchangeable between one unit and another. "It's only a matter of style," as one corporate spokesperson happily explained. "With a few legs, arms and torsos adjusted, this could be a far better performing profit center."

exempt recipients of their choice.⁸ The outcome is a unique form of indirect public subsidy in which the choice of beneficiaries is shifted from a single and centralized decision-maker to a decentralized multitude of taxpayers. For tax-exempt cultural organizations, the total amount of this indirect federal subsidy is many times (perhaps as much as ten times in recent years) greater than the amount of subsidy they receive directly from such centralized federal agencies as the National Endowment for the Arts and the Institute of Museum Services. In 1989, for example, such indirect subsidies (by the author's estimate) may well have exceeded \$2 billion in contrast to a direct federal subsidy of some \$200 million.⁹

To be argued in the pages that follow is that not-for-profit cultural institutions (and the case may be similar for colleges and universities) provide a public benefit through their aspirations to excellence, their autonomy and their diversity, and that such aspirations, autonomy and diversity are, in turn, directly rooted, first, in the organizational form in which the Internal Revenue Code requires them to configure themselves and, second, in the workings of the charitable deduction system whereby

8. This is the so-called "tax expenditure" theory as first developed in the 1960s by Stanley S. Surrey. For a discussion of how this might apply in a charitable context (including several of the arguments urged against it), see Giving in America (Washington: Commission on Private Philanthropy and Public Needs, 1975), 107-110.

9. See Stephen E. Weil, "Tax Policy and Private Giving," in Stephen Benedict, ed., Public Money and the Muse (New York: W.W. Norton, 1991), 173. A similar figure can be calculated for 1990, a year in which Giving USA estimated that \$7.9 billion was contributed for "arts, culture and humanities." Assuming an average 30% marginal tax rate, the forgone federal tax revenue would have amounted to nearly \$2.4 billion. Meanwhile, the level of direct federal subsidies was little changed from 1989.

the indirect subsidy generated by forgone tax revenue is allocated through the broadly dispersed decision-making of the taxpaying public.¹⁰ Such an argument must, of course, in the first instance rest on the premise that the arts, in fact, do make an important contribution to our public life.

3. The Arts in Society

The arts that today fall within the province of not-for-profit cultural organizations are part of a continuum. Adjacent to one side (but with, as noted above, a considerable gulf between) is the far-larger, market-driven and generally congenial world of commercial entertainment: films, television, commercial publishing, radio, popular music, video and more. At the opposite side these arts shade into a relatively small and austere world of aesthetic speculation, essentially

10. As some commentators on the charitable deduction point out, however, it is not the entire tax-paying public that participates in such decisions but primarily the more affluent portion. See for example the discussion of this point throughout Alan L. Feld, Michael O'Hare and J. Mark Davidson Schuster, Patrons Despite Themselves: Taxpayers and Arts Policy (New York: New York University Press, 1983).

philosophic in nature and not necessarily intended to reach any substantial public.¹¹

What most distinguishes the arts that fall within the not-for-profit segment of this continuum is the degree to which virtually all of those who create, present, consume, fund, criticize or think about them have come to share the belief that their principal purpose is to provide important forms of insight and experience, not to serve primarily as a source of diversion. To be valued as well, in this view, is the utopian capacity of the arts, their ability not only to reflect what already is but also (at their most subversive) to imagine and to suggest what else might be. Widely believed as well is that the arts are all but unique in being able to perform these tasks.

From such a perspective, the free practice of the arts must be seen to have an enormous value to any society. What else can provoke those critical and life-central questions that can rarely be touched upon, if touched upon at all, in either the give-and-take of the political arena or in the marketplace of commerce? Only from its

11. To a similar effect: "One way to comprehend the broad spectrum of art in America is to divide that spectrum into two separate and unequal parts: the commercial, with its media stars and its seven-figure incomes, and the noncommercial, more unassuming, more serious, less concerned with 'entertainment'." The Arts in America: A Report to the President and the Congress (Washington: National Endowment for the Arts, 1988), 7. No suggestion is intended that the various art forms have sorted themselves out on this continuum in any logical way. As speculated earlier, what is more likely is that the very different ambiances which prevail in the for-profit and not-for-profit sectors have, with the passage of time, profoundly affected the nature of the arts each sector has produced.

responses to such fundamental questions can a society generate its values, shape its vision of the common good and arrive, ultimately, at its public decisions as to how, by whom and for what purposes it wishes itself and its affairs to be governed.

As the American playwright Terence McNally wrote in The New York Times for July 19, 1990:

"It's not easy to be an authentic grown-up. Our national divorce rate and romance with alcohol and drugs attest to that. But if we are to mature fully, we need to be told the truth about ourselves and the society we live in. Wise men have always depended on artists to tell us those truths, however painful or unpopular they may be. Society needs artists, even if it doesn't realize at the time how much it does."

Art that seeks to deal with such fundamental issues must often do so in ways that are neither pretty nor refined. As often as not, it must do so at the sacrifice of commercial appeal. King Lear is not a nice story. Goya's images of Saturn devouring his young or of the horrors of war are anything but ingratiating. Picasso's Guernica was never intended to please. But nonetheless, those are the works that endure and continue to provide value long after the hurly-burly of day-to-day politics has run its course and the marketplace has been swept clean. As George Sadek, the one-time Dean of the Cooper Union in New York was accustomed to ask, "How many people

can name the Mayor of Moscow during the year that Dostoyevsky finished writing Crime and Punishment?"

Unclear in retrospect (and most likely irrelevant) is whether and, if so, to what extent the cultural organizations that deal with the arts in this mode were initially located in the tax-exempt sector through foresight or simply by happenstance. To the extent that such organizations are descended from those nineteenth-century volunteer associations by which the arts were first introduced into the United States, the fact that they were not initially organized for profit may suggest an original purpose to maintain that pattern. Very clear, however, is the degree to which the location of the arts in the tax-exempt sector has enabled them not merely to flourish but also to take on a particularly distinctive character.¹² Two reasons can be suggested.

First, the embodiment of the arts in organizations of the so-called "third sector" – an alternative to both government and commerce – has largely insulated them, on the one hand, against political and bureaucratic bullying and, on the other, against the pressure to maximize their profitability. Second, this relative autonomy has in turn permitted the arts to achieve an unprecedented diversity. Through their embodiment

12. For a partially contrary view, see the discussion at p. 149 and following in W. McNeil Lowry, ed., The Arts and Public Policy in the United States (Englewood Cliffs, New Jersey: Prentice-Hall, 1984). An argument is suggested there that the requirement to configure themselves as not-for-profit organizations may actually be detrimental to certain performing arts groups, particularly those in which a charismatic, creative personality serves as the group's dominant figure.

in thousands upon thousands of separately-governed not-for-profit cultural organizations, they are able to reach out in every direction and to the very limits of the imaginable in stimulating new inquiries and new responses, inquiries and responses that touch upon every realm of our private and public lives. Arguably, the autonomy of the cultural organizations that serve as their vehicles has, by facilitating such diversity, provided the arts as practiced in the United States with their very greatest strength.¹³

4. Autonomy and Excellence

It should be self-evident that the arts cannot, however, truly function as important instruments of inquiry (including inquiries that may be critical of the existing order of things) unless they are free of governmental restraint.¹⁴ In the United States, at least, the Constitution provides a shield. As a general rule (albeit a remarkably recent one), the arts have been held to fall within the ambit of the First

13. That such autonomy and the diversity it permits are critically important not only in the arts but across almost the entire non-profit sector is forcefully argued by Waldemar A. Nielsen in The Endangered Sector (New York: Columbia University, 1979). Nielsen (p. 4) describes tax-exempt organizations as essential ". . . to embody the countervalues and complementary beliefs of our competitive, capitalistic, materialistic, egalitarian culture."

14. For a compelling account of the fate of the arts in authoritarian societies, see Hellmut Lehmann-Haupt, Art Under a Dictatorship (New York: Oxford University Press, 1954).

Amendment's protection of free speech.¹⁵ While that protection may at one time have been limited to those arts which involved actual or symbolic speech or which, regardless of their media, in some manner addressed matters of broad public concern, it now seems to cover the full expanse of artistic expression including even "art for art's sake."

As a corollary, the arts may also be disabled from functioning as instruments of free inquiry when they become too dependent upon direct governmental assistance, whether through actual patronage (such as the General Services Administration's Art-in-Architecture Program) or through the distribution of direct public subsidies (such as those awarded by the National Endowment for the Arts).¹⁶ If the First Amendment stands as a guardian of the arts against the danger of proscription, then their best protection against prescription may be through their location in the tax-exempt organizations of the "third sector." In many ways, such a situation is ideal.

15. Notwithstanding that the outcome of the case may be viewed as a setback for free expression, eight of the nine Justices recording their opinions in Barnes v. Glen Theatre, 111 S. Ct. 2456 (1991), the Indiana nude dancing case, appear to have agreed that artistic expression in general (and dancing in particular) is protected by the Constitution. Justice Scalia's concurring opinion suggests, however, a different view. Two important decisions on this point from the 1980s addressing the Constitutional protection of, respectively, the visual arts and music are Piarowski v. Illinois Community College, 759 F. 2d 625 (7th Cir., 1985) and Ward v. Rock Against Racism, 102 S. Ct. 2746 (1989). For a general discussion, see Barbara Hoffman, "Law for Art's Sake in the Public Realm," Critical Inquiry 17, No. 3 (Spring, 1991), 540.

16. The infinitely varied relationships that governments have maintained with the arts are well documented in Jane Clapp, Art Censorship: A Chronology of Proscribed and Prescribed Art (Metuchen, New Jersey: The Scarecrow Press, 1972).

Through the mechanism of the charitable deduction, they are able to receive at least a modicum of government assistance while at the same time maintaining their distance from legislative scrutiny of the kind that almost inevitably follows when such assistance is distributed in the form of a direct subsidy.¹⁷ In the end, tax exemption creates a situation in which government, although it may partly pay the piper, is still unable to call the tune.

Full autonomy, however, requires still more. While the arts may thus be protected (at least to a degree) from the influence of government, to function as instruments of free inquiry they must also be protected (again, at least to a degree) from the need to maximize their profits in the marketplace. In this connection, there is a curious (and perhaps not widely understood) interplay between Section 501(c)(3)'s "inurement" rule and the manner in which not-for-profit cultural organizations generally operate, most particularly their traditional dependence upon contributed income to supplement what they are able to earn from user fees.

17. Thus, for example, during the 1989 controversy over the Robert Mapplethorpe exhibition organized by the University of Pennsylvania's Institute of Contemporary Art, objections were raised in the Congress and elsewhere to the direct federal subsidy which the National Endowment for the Arts had provided to underwrite a relatively modest portion of the exhibition's total budget. That another (and in all likelihood larger) portion of that budget had been underwritten by the indirect federal subsidy provided through tax-deductible charitable contributions to the University itself did not appear to trigger any comparable objections.

First, since such an organization can only retain its tax-exempt status so long as no part of its net earnings "inures to the benefit of any private shareholder or individual," it is able to operate on a no more than break-even basis without coming under outside pressure to pursue some greater return. Second, as pointed out in Section 2, since such an organization generally finds it a poor strategy to accumulate reserves for future programming, there may be little internal pressure to maximize revenues through programming designed to appeal to some broader or more upscale market. Third, since the income earned from fees charged to users constitutes only a part of such an organization's total support (a relatively minor part in the case of art museums; more in the case of performing arts organizations), program decisions must take into account not only what is likely to attract an audience but also what is likely to attract the approbation of potential contributors.¹⁸ There really can be such a thing as too many Nutcracker Suites or Christmas Carols.

Experience strongly suggests that it is the perceived excellence and creativity of a cultural organization's ongoing programming, not its broader popularity or special appeal to a more affluent audience, that is more likely to attract substantial support from individual and foundation donors. Excellence and creativity are also more likely to prove attractive to the peer review panels which recommend how direct public

18. Imagine, for example, how negatively the traditional supporters of a Cadillac-class museum might respond if the museum, in pursuit of an additional market segment, were to open a midline branch in which to exhibit its hitherto-in-storage Chevrolet-class paintings to a less discriminating audience at a reduced admission fee and under less than optimal conditions.

subsidies are to be allocated.¹⁹ That is wholly different from the situation of those commercial enterprises which operate at the entertainment end of the arts continuum and for which the fees charged to customers are their only source of income.

Marketplace considerations may, moreover, be not merely superfluous for non-profit cultural organizations. They may actually be pernicious. As Paul J. DiMaggio pointed out in a 1984 paper that addressed this issue:

"[A]t least two conclusions are worthy of confidence. First, the logic of the marketplace is in many ways inimical to the efforts of nonprofit arts organizations to present innovative productions and exhibitions of the sort favored by many artists, curators, and critics. Second, the marketplace is unsupportive of policies that expand the social range of the audience for the arts, serve the poor, or pursue the goal of public education."²⁰

19. In some instances, "excellence" may in fact be the mandated legislative standard. See, for example, Section 5(c)(1) of the National Foundation on the Arts and the Humanities Act of 1965 which authorizes grants-in-aid to productions that emphasize "the maintenance and encouragement of professional excellence." Similarly, Section 5(c)(3) refers to the achievement by individual artists of "standards of professional excellence." The perceived excellence of its programming may also be critical to a cultural organization's ability to recruit and retain a talented staff.

20. Paul J. DiMaggio, "The Nonprofit Instrument and the Influence of the Marketplace on Policies in the Arts," in The Arts and Public Policy in the United States, 79. See Note 12.

While this freedom from both governmental and marketplace pressures may enable not-for-profit cultural organizations to pursue their own development, such autonomy in itself does not demonstrably provide a public benefit. Without something further, it might offer little more than an opportunity for institutional self-indulgence. Its importance lies, rather, in the degree to which it permits an infinitely greater diversity than the arts could achieve under any system of central administration (including even a hypothetical and equally autonomous not-for-profit central administration). Autonomy coupled with the charitable deduction system of dispersed decision-making is what permits tax-exempt cultural organizations to act not merely as alternatives to governmental and market-driven entities but as alternatives to one another as well.

5. Diversity and Excellence

Some of the reasons why diversity is important ought be self-evident. If the arts are to provoke us toward broader horizons, then – in a world not of one horizon but many – they must of necessity provoke us in not one direction but many. What we seek through the arts is a richness of possibility, not a narrow propriety, and diversity can serve as a principal means toward that end. Similarly, if we expect the arts to engage our hearts, imagination and intellect in the broadest possible ways, they can far better do so when they are vigorously and independently variegated, not when they are standardized, official and gray. Diversity is again the key. The importance of

diversity, though, goes still further. If the arts are truly to embody what Waldemar A. Nielsen calls "countervalues and complementary beliefs,"²¹ then diversity is essential for that task. Moreover, if we believe that the arts best fulfill their public function when they aspire toward excellence, then consideration must also be given to the relationship between diversity and the ever-vexing question of artistic "quality."

To the extent that the arts are supported by direct federal subsidies, those distributing such subsidies must ultimately (in some degree) be responsive to majoritarian views.²² Works of art that forcefully position themselves against such views can scarcely be expected to share greatly in such subsidies. By contrast, the charitable deduction system offers something akin to a form of proportional representation. It permits the considerably larger indirect federal subsidy that is generated through the charitable deduction system to be allocated in ways that more nearly reflect the widely varying tastes, personal choices and individual opinions of the entire taxpaying public, not simply the majority.²³ With richness as a goal, the inclusion of such minoritarian inputs is essential. Whereas art that explores such

21. See Note 13.

22. Thus, in A Report to Congress on The National Endowment for the Arts submitted by The Independent Commission (Washington: 1990), 57, 60, the theme is developed that "to support art from public funds entails considerations that go beyond artistic excellence" and that, in providing such funds, the government must "be sensitive to the nature of public sponsorship."

23. Beyond assuring that the arts will benefit by the reflection of these tastes, choices and opinions, this also seems a matter of some basic fairness to these taxpayers.

controversial issues as abortion, sexual preference or the justness or unjustness of particular wars will rarely (except when impeccably "correct") receive direct public funding, the indirect public funding of such art can provide a desirable alternative.

The relationship between diversity and our aspirations for artistic excellence is a more complicated one. The very notion that "quality" might be an inherent property of a work of art has recently been under attack,²⁴ and even those who must passionately argue in its defense find themselves hard-pressed to formulate a definition.²⁵ Nonetheless, no satisfactory substitute has yet been proposed, and "quality" (or something very like it) continues to be the prevailing basis for making artistic decisions and, most particularly, decisions as to how public funds ought be allocated.²⁶

24. See, for example, Michael Brenson, "Is 'Quality' an Idea Whose Time Has Gone?", The New York Times, July 22, 1990. For a response, see Hilton Kramer, "A Times Critic's Piece about Art Amounts to Political Propaganda," The New York Observer, August 13-20, 1990.

25. Its indefinability should not in itself put "quality" in any worse a position than "love," "sadness" or "delight." As Eugene Ionesco once observed, "Not everything is unsayable in words, only the living truth."

26. To wit: "Although the National Endowment for the Arts encourages a diversity of artistic perspectives, the principal criterion for making grants must be artistic quality." A Report to Congress on the National Endowment for the Arts, 57, 58. See Note 22. It might be argued that, absent such a criterion, the Endowment would have no other valid basis on which to allocate its funds among competing applications. To do so on the basis of viewpoint, for example, would clearly seem Constitutionally prohibited.

One suggestive approach to the question of quality was recently offered by Albert Elsen. Likening its elusive nature to Potter Stewart's frequently-quoted observation about pornography (i.e., that without being able to define it, he would still know it when he saw it),²⁷ Elsen suggested that what might constitute "quality" in a work of art was its "esthetic durability," the fact that it did not wear out "its intellectual and emotional welcome."²⁸ Thus defined, the question of whether any particular work of art has "quality" is one that can only be answered over time.

To tie this back to the value of diversity, Elsen's notion can be usefully combined with one advanced several years ago by Richard A. Posner.²⁹ Posner also argued that "the 'test of time' is the closest we seem able to get to an objective measure of artistic value." He then went on, however, to suggest — by an analogy to biological evolution — that the best hope of having art of excellence emerge from any period was by assuring the greatest possible variety out of which history could subsequently make its selection.³⁰ Diversity, in other words, might function as a means to expand the gene pool, thereby increasing the likelihood that some number

27. Jacobellis v. Ohio, 378 U.S. 184, 197 (1964).

28. Essay in the catalogue Bruce Beasley, An Exhibition of Bronze Sculpture, Sonoma State University, 1990, 7, 9.

29. Richard A. Posner, "Art for Law's Sake," American Scholar 58 (Autumn, 1989), 581.

30. In accord would seem to be Marcel Duchamp's observation that most works of art "die" after thirty years. The corollary would be that some number of the hardier ones do survive.

of specimens will turn out to be sufficiently hardy and well-adapted to survive, to prove their "esthetic durability." Here, again, the diversity achievable through the decentralized decision-making of the charitable deduction system would appear to provide a considerably greater public benefit than either a more centralized system of direct support or the profit-oriented strategies of the marketplace.

A final reason to consider diversity important stems from the observation that the arts seem to attain their greatest creativity when they achieve some critical mass. That appears to be most particularly so when there is a body of artists working in a variety of styles that are sufficiently distinct to encourage aesthetic (rather than simply political) competition for patronage and to stimulate the development of an informed and discriminating audience. Set in motion is a kind of dialectic by which new artistic possibilities are synthesized out of the clash of earlier styles, and the "scene" becomes a magnet that attracts successive waves of artists, all striving to improve upon and supplant their predecessors. Again, diversity is the condition most conducive to such a vigorously creative situation.

6. Conclusion

It may be objected that the arts in this country are at no point so truly free from either censorship (including self-censorship) or marketplace considerations as the foregoing sketch would suggest. That may be the case. Nonetheless, nobody has

yet proposed a more suitable place in which the arts might be located than the not-for-profit cultural organizations of the "third sector" — a location made all the more advantageous by the eligibility of such organizations for tax exemption. If still greater autonomy is thought to be desirable, that ought not be incompatible with such a locus.

It may also be objected that the arts have flourished under other systems of support — particularly direct government patronage, as still practiced in parts of Europe and elsewhere — and that those systems should not be rejected out-of-hand as alternative models for the United States. To be questioned, though, is whether any particular feature of one social or legal system can simply be plucked out of context and grafted onto another. Also to be questioned is whether those other funding devices — seen perhaps at their most attractive in support of great opera, dance and symphonic organizations — are truly as able as our own to accommodate the persistently dissenting, impudent, scruffy, frequently rude and often seminal art that prowls on the fringes of the mainstream or sometimes, even, squares off directly against it. The entire range of art needs to be taken into account, not merely what is polite or pleasing.

To conclude where we began: Why should an art museum (or a symphony orchestra, or any similar not-for-profit cultural organization) be eligible for federal income tax exemption? The most compelling rationale would seem to be this:

- That, more than being merely decorative or a frill, the arts provide an essential public benefit through their unique ability to provoke, stimulate and stretch us in ways that ultimately relate importantly to our future as individuals and to our destiny as a country;
- That the arts can best perform those functions through their location in tax-exempt cultural organizations which insulate them (at least to a degree) from both the ideological pressures of government and the mediocratizing pressures of the marketplace while still, through the mechanism of the charitable deduction system, allowing them to receive at least a modicum of indirect public support; and
- That, through the consequent autonomy of these not-for-profit cultural organizations, the arts can enjoy an almost unbounded diversity – a diversity without which they would not be able fully to perform the functions for which we value them or to realize their greatest potential for excellence.

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