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# The University Museum in Times of Fiscal Uncertainty: Fisk University and the Alfred Stieglitz Collection of Modern Art

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**The University Museum in Times of Fiscal Uncertainty:  
Fisk University and the Alfred Stieglitz Collection of Modern Art**

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Submitted in partial fulfillment for the degree

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A handwritten signature in black ink, appearing to read 'Petra Chu', positioned above a horizontal line.

Approved by: \_\_\_\_\_

Dr. Petra Chu

Thesis Advisor

## **Abstract**

This study of the travails of the Alfred Stieglitz Collection of Modern Art at Fisk University reveals the unique issues facing college and university museums and galleries, as they balance their responsibility to their donors, the public and their parent institution. In this thesis, I will argue that Fisk University made choices that directly violated generally accepted museum ethics, while simultaneously finding creative solutions to its parent institution's financial stability and honor charitable intentions. I will examine the legal process of breaching donor restrictions, dissect the role and position of the university museum, and analyze the precedent the Fisk case has set for the museum community.

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*“This part of the Stieglitz collection goes to Fisk University with the hope that it may show that there are many ways of seeing and thinking. And possibly, through showing that there many ways, give someone confidence in its own way, which may be different whatever its direction.”*

Georgia O'Keeffe

## **Introduction**

In 1949, Fisk University in Nashville, Tennessee, received a donation of artwork from the estate of photographer Alfred Stieglitz as his wife, American painter Georgia O’Keeffe, dispersed her husband’s collection among art institutions throughout the United States. More than 50 years later, the collection, which would come to be known as the Alfred Stieglitz Collection of Modern Art, would be at the center of a struggle between institutional survival and honoring donor intent. The case of Fisk University is unique, as it highlights a number of legal and ethical issues faced by the museum community, including the legality of gift restrictions and the ethics regarding the use of museum funds to close the holes in the budget of its parent institution.

Donor imposed restrictions are an issue that face museums of all classifications, but Fisk’s struggle illuminates issues unique to the university museum. In times of economic uncertainty, attitudes towards cultural assets change. In the university setting, these collections have been used as a means of generating income. University museums and galleries lack advocacy at the institutional level, keeping collections susceptible to monetization.

In this thesis, I will examine the history of Fisk University and its relationship with the Alfred Stieglitz Collection of Modern Art. I will argue that Fisk University

acted within its legal right, but failed to follow ethical guidelines set forth by professional museum organizations. I will argue that the dilemma faced by the Alfred Stieglitz Collection of Modern Art is symptomatic of university museums' and galleries' dual identity, as both public institutions and subsidiaries of much larger parent organizations.

The first chapter will examine the issue of gift restrictions and the role they play in art museums. This includes an introduction of the legal process of *cy pres* and a discussion of why restrictions may be imposed. The second chapter will explore the history of Fisk University and its relationship with the Alfred Stieglitz Collection of Modern Art. This section will outline Georgia O'Keeffe's gift to the university and discuss her charitable intention. The third chapter will review Fisk's lengthy legal battle through the Tennessee Court system. This section will define Georgia O'Keeffe's charitable intention as determined by the courts. The fifth chapter will analyze the ethical issues regarding the final court remedy. This section will review Georgia O'Keeffe's gift restrictions and charitable intent, in relation to Fisk's actions.

## Chapter 1: The Considerations of Restricted Gifts

The survival of a non-profit institution relies heavily on the generosity of donors, whether their contributions come in the form of monetary gifts, volunteerism, or in the case of Fisk University, art works. At the discretion of the donor, stipulations may be attached to a gift. These restrictions can range from minimal to rigid. According to Rebecca Buck, former museum registrar and editor of *Museum Registration Methods 5<sup>th</sup> Edition*, the two most common restrictions, in regards to artwork, are requests to exhibit objects permanently or to keep an existing collection together.<sup>1</sup> Whatever the terms, they need to be clearly outlined in the deed of gift that is required for all donated artworks, which are agreed upon by both the donor and the museum that is receiving the donation. Maria Malaro, author of *A Legal Primer on Managing Museum Collections* reflects on this type of agreement, writing:

Ideally, the offer and the acceptance of an object for the collections represent the best contemporary judgments as to the suitability of the object and its potential for museum use, and both donor and curator naturally hope that time will prove them right.<sup>2</sup>

Many museums address restricted gifts in their collection policy or in a specific gift guideline. Professional museum organizations also provide guidance on the topic. The Association of Art Museum Directors addresses donor restrictions related to gifts in their 2011 edition of *Professional Practices in Art Museums*:

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<sup>1</sup> Buck and Gilmore, *Museum Registration Methods 5<sup>th</sup> Edition*, 46.

<sup>2</sup> Malaro and DeAngelis, *A Legal Primer on Managing Museum Collections*, 151.

Gifts and bequests should be unrestricted whenever possible. No work of art should be accepted or acquired with conditions that restrict or otherwise interfere with the museum's obligation to apply the most reliable scholarly and scientific information available to questions of attribution, dating, iconography, provenance, conservation, and related matters.<sup>3</sup>

There are respectable reasons why museums and professional organizations are cautious of donations with restrictions. The most stringent restrictions can prevent museums from caring for the artwork that was entrusted to them by the donor. The restriction often yielded the opposite of the desired outcome. The most infamous case of a rigid donor restriction is that of the Barnes Foundation, an educational institution located in Philadelphia, Pennsylvania. Dr. Albert Barnes, a wealthy industrialist who amassed an impressive collection of European paintings, African sculpture, and decorative arts, built the Foundation. Upon his death, Barnes officially gifted his collection and an endowment to the Foundation, but each came with restrictions.<sup>4</sup> Barnes' indenture included rules related to the collection, access, and endowment investments, all factors that affected the sustainability of the organization.

As the stipulations were legally binding, board members were required to petition the Philadelphia courts each time a change needed to be made within the organization. The Barnes Foundation remains a cautionary example of the costly effect excessive restrictions can have on an institution's sustainability.

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<sup>3</sup> Association of Art Museum Directors, "Professional Practices in Art Museums."

<sup>4</sup> Anderson, *Art Held Hostage: The Battle Over the Barnes Collection*, 24.

Restrictions of varying degrees are common for museums, but issues arise when they cannot accommodate changing “societal needs and charitable objectives.”<sup>5</sup> Over time, a donor’s initial charitable intent may no longer be in line with an organizational mission, or the restricted conditions may be difficult for the recipient to implement. Organizations may no longer have the funds, staff, or facilities to safely and responsibly carry out a donor’s intent. In these instances, museums can petition the courts for legal relief from these unachievable stipulations based on the doctrine of *cy pres*. *Cy pres* refers to a legal principle used exclusively for issues of charitable donations and trusts. The term *cy pres* translates to “as near as may be,” meaning the purpose is to alter a legal restriction, while remaining as close to donor intent as possible.

Cy press exemptions are requested when recipients feel that they can no longer adhere to the legally binding restrictions set by a donor.<sup>6</sup> For museums, these terms are outlined in gift agreements, bequests, and other relevant documentation, such as correspondence. An institution must prove that they can no longer adhere to the agreement before they can attempt to seek court approval for relief.<sup>7</sup> When petitioning a *cy pres* action, the petitioner needs to demonstrate “(1) that the donor’s described purpose is impossible, impractical, or illegal to carry out and (2) that the donor had general charitable intent when making the gift.”<sup>8</sup>

When museums attempt to petition the court for relief from their restrictions, the attorney general of the state in which the museum is located often steps in. Attorneys General have become the enforcers of charitable gifts and trusts, ensuring that museums

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<sup>5</sup> Eason, “Private Motive and Perpetual Conditions in Charitable Naming Rights: When Good Names Go Bad,” 124.

<sup>6</sup> Willard, “Illustrations of the Origin of ‘cy pres,’” 72.

<sup>7</sup> Malero and DeAngelis, *A Legal Primer on Managing Museum Collections*, 22.

<sup>8</sup> Ibid.

do not violate their benefactors' intentions.<sup>9</sup> When charitable contributions relate to the public trust, Attorneys General acts as representative for the people of their state. The concept of public trust stems from the idea that public institutions have a responsibility to remain accountable and transparent to their community. When museum objects become a part of the public realm, they are held for the benefit of the public. The public trust defines the relationship between an institution and their public, who jointly share the museum collections.

Each state has slightly varying statutes regarding the Attorney General's oversight in these matters. Tennessee, home to Fisk University, designated the Attorney General as the overseer and enforcer of charitable trusts under the Charitable Beneficiaries Act of 1997.<sup>10</sup> The Attorney General intervenes in legal proceedings as a representative of the donor of a charitable gift, to ensure that the charitable intent of that gift remains intact. Imposed restrictions can result in difficulties for the receiving institution, yet some organizations still accept them as a part of their gift agreements. The question is why? While the idea of donating to the public trust seems to promote the idea of perpetuity, some donor intentions "cannot realistically be guaranteed beyond a generation."<sup>11</sup> Governances can never predict the future with certainty, yet they make promises that may impact the sustainability of their organizations. Many institutions accept these provisions to prevent damage to any existing or future donor relationship.

There are many reasons why a donor would want to place a restriction on donated art work, including preserving a legacy or providing evidence of a donor's financial and professional successes and their charitable tendencies. The donors who make efforts to

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<sup>9</sup> Ibid, 23.

<sup>10</sup> Tennessee State Government, "Reviewing Nonprofits and Charitable Trusts/Gifts."

<sup>11</sup> Cohen, "Museums Grapple with the Strings Attached to Gifts."

keep their collection together do so for good reason. Cultivating a substantial art collection takes many years, if not a lifetime, along with considerable financial means. Susan Duke, a New York City art lawyer, said, “Donors like to show the fact that they are collectors.”<sup>12</sup> Letting go of a personal project, after investing a great deal of time and effort, is a difficult task. Museums should be sensitive to the possibility that collectors may feel a sense of loss when they donate work.

From the donor’s perspective, these restrictions are not created arbitrarily. Lawyers and even philanthropy non-profit organizations step in to help donors create wills and agreements to “ensure that their wishes are honored long after their deaths.”<sup>13</sup> Donors do not intend to create difficulties for museums; they simply want to protect their gifts. The additional oversight from a donor may be necessary when other forms of institutional governance are weak.<sup>14</sup>

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<sup>12</sup> Grant, “College Museums’ Sales of Art Raise Thorny Issues.”

<sup>13</sup> Cohen, “Museums Grapple with the Strings Attached to Gifts.”

<sup>14</sup> Yermack, “Donor governance and Financial Management in Prominent US Art Museums.” 216.

## Chapter 2: The History of Fisk University and the Stieglitz Collection

Fisk University was founded in Nashville, Tennessee on January 9, 1866 as a school for recently emancipated slaves.<sup>15</sup> The institution, originally titled Fisk School, was established by a small group of missionaries who had spent a great deal of time living and teaching in West Africa. The mission of the school was to offer freedmen (former slaves) the education that most had been previously denied. Initial instruction included reading, writing, and basic arithmetic. Students of all ages flocked to the school and displayed an immediate aptitude for learning and a thirst for knowledge. The administration recognized their students' needs for higher education and began to develop an advanced curriculum. In 1867 the school became incorporated as Fisk University, and by 1869 the University had developed a college-level program.<sup>16</sup>

During its formative years, Fisk University demonstrated a dedication to the arts. By the 1930's, the school began implementing opportunities for art exhibitions. In 1931, the University received its first gift of an art collection. Samuel Insull, a businessman from Chicago, donated close to 300 drawings and watercolor works by artist Cyrus Leroy Baldrige. The works explored Baldrige's life in West Africa, a nod to the cultural heritage of many Fisk students. The gift made national news and the New York Times dubbed Fisk a "cultured center."<sup>17</sup>

In 1947, Dr. Charles S. Johnson was named the first African American president of Fisk University. Johnson previously had served as the Chairman of the school's Department of Social Sciences, where he focused his research and publications on race

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<sup>15</sup> Richardson, *The History of Fisk University, 1865-1946*, 14.

<sup>16</sup> *Ibid*, 59.

<sup>17</sup> *Ibid*.

relations.<sup>18</sup> As the university's leader, he tirelessly pursued advanced opportunities for his students and developed relationships to further Fisk University's mission of academic excellence and cultural relevance. Before his time at Fisk, Johnson had served as an editor for *Opportunity* magazine, a role that had catapulted him into the center of the Harlem Renaissance. During the 1920's, he had worked with many artistic figures of the movement, including Ella Fitzgerald, Langston Hughes, and Zora Neale Hurston. Poet Arna Bontemps and artist Aaron Douglas claimed that Johnson "did more to encourage the arts during the 1920s than anyone else."<sup>19</sup> Johnson would bring those influences to Fisk by developing an academic culture that valued the visual and performing arts.<sup>20</sup>

During this time, Johnson crossed paths with Carl Van Vechten, the man who would be the link to Fisk's most contested asset. Van Vechten was an artist-photographer, novelist, philanthropist, and avid collector. Through his interest and patronage, he became close to many prominent African American artists during the Harlem Renaissance. Van Vechten and Dr. Johnson both shared a progressive outlook, seizing opportunities to fracture racial biases. Johnson was an author and civil rights activist best known for his essential role in the advancement of the National Association of the Advancement of Colored People (NAACP). Van Vechten, a major collector, used his resources to further his agenda of racial unification. He often donated portions of his collection in a strategic manner, best exemplified in the James Welson Johnson Collection at Yale University. Van Vechten understood that by doing so, African American scholars would have to visit an almost all white university to research this

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<sup>18</sup> Gilpin, "Charles S. Johnson: Scholar and Educator," 545.

<sup>19</sup> Gasman, "A Renaissance in Nashville," 6.

<sup>20</sup> TEDx Talks, "TedxNashville – Creswell-Betsch – A Special Gift of Extraordinary Art."

collection.<sup>21</sup> Subsequently, Van Vechten created the George W. Gershwin Memorial Collection of Music and Music Literature at Fisk University, in hopes that the material would attract white scholars and researchers to the school.<sup>22</sup> Van Vechten continued to pursue opportunities to create a culture of interracial scholarship.<sup>23</sup> He would later gift Fisk an assortment of photographs he created during the 1930s and 40s.<sup>24</sup> Eventually, Van Vechten's philanthropic support would lead to his position as chairman of Fisk's Fine Arts Commission.<sup>25</sup> In this role, Van Vechten would help cultivate donor relationships with fellow artists like Georgia O'Keeffe, wife of Alfred Stieglitz.

Alfred Stieglitz was a pioneer in the art of photography, gallery owner, and prolific art collector. Stieglitz was educated as an engineer, but quickly turned his attention to photography. Photography, in America, had been seen as a means of documentation, rather than a means of artistic expression. Stieglitz strove to change the perception of the medium and joined the Camera Club of New York, an association of amateur photographers.<sup>26</sup> Stieglitz would eventually open his own gallery, 291, to exhibit the works of American modernist painters and photographers. Here, he and his future wife, Georgia O'Keeffe, would meet Carl Van Vechten.

In 1915, Stieglitz was shown a series of charcoal landscape drawings by O'Keeffe.<sup>27</sup> From that moment, Stieglitz would become her greatest advocate, and she would serve as

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<sup>21</sup> MacLeod, "The 'Librarian's Dream-Prince': Carl Van Vechten and America's Modernist Cultural Archives Industry," 374.

<sup>22</sup> Fisk University, "Special Collections and Archives."

<sup>23</sup> MacLeod, "The 'Librarian's Dream-Prince': Carl Van Vechten and America's Modernist Cultural Archives Industry," 375.

<sup>24</sup> Powell and Reynolds, *To Conserve a Legacy: American Art from Historically Black Colleges and Universities*, 120.

<sup>25</sup> Wibking, "Grand Ole Art," 82.

<sup>26</sup> Hostetler, "Alfred Stieglitz (1864-1946) and American Photography."

<sup>27</sup> Scott, *Georgia O'Keeffe*, 126.

his muse. Between 1917 and 1925, Stieglitz photographed O’Keeffe more than one hundred times. O’Keeffe would become a prominent member of Stieglitz’s circle, becoming associated with early-modernist painters such as Marsden Hartley and John Marin.<sup>28</sup> O’Keeffe would become an important artist of the movement, developing into one of the America’s best- known painters.

On July 13, 1946, Stieglitz suffered a stroke and died at the age of 82.<sup>29</sup> He left behind an art collection of approximately 900 objects, including a large number of his photographic works. O’Keeffe served as the executrix of her late husband’s estate and was tasked with dispersing his art collection. Stieglitz’s will included specific stipulations for the distribution of his collection. The second article second of his will stated:

My said wife shall also have the right, during her lifetime, to transfer said property or any part thereof, without receiving any consideration, to one or more corporations, such as are described in Article THIRD of this Will, and as she may select or cause to be incorporated.<sup>30</sup>

Article third of the will expanded on the criteria for the types of organizations that should receive his collection. The article third stated:

Upon the death of my wife . . . I give and bequeath so much of my entire collection of photographs (including those produced by me) and other works of art as shall not have been disposed of by my said wife to one or more corporations . . . such property to be received and held by such corporation or corporations under such arrangements as will assure to the public, under reasonable

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<sup>28</sup> Messinger, “Georgia O’Keeffe (1887-1986).”

<sup>29</sup> Wei, Linda, dir. *The Gift: The Alfred Stieglitz Collection at Fisk University*.

<sup>30</sup> Clement, Frank G. “Georgia O’Keeffe Foundation (Museum) v. Fisk University.”

regulations, access thereto to promote the study of art, but no corporation shall be entitled to share in this bequest any part of whose net earnings shall inure to the benefit of any private stockholder or individual or any substantial part of whose activities shall be carrying on propaganda, or otherwise attempting to influence legislation.<sup>31</sup>

O'Keeffe dispersed portions of the collection to the Metropolitan Museum of Art, the Museum of Modern Art, the Art Institute of Chicago, the National Gallery of Art in Washington D.C, and the Library of Congress.<sup>32</sup> The final repository would be Fisk University. In 1949, the university received a donation of 97 artworks that would come to be known as the Alfred Stieglitz Collection of Modern Art. The decision was met by some confusion, as a small, historically black college in the South seemed an unlikely place to display the works of artists such as Pablo Picasso, Auguste Renoir, Paul Cézanne, Arthur Dove and Charles Demuth.<sup>33</sup>

On June 8, 1949, Georgia O'Keeffe wrote to Fisk University President Charles S. Johnson. The letter stated the following:

Pursuant to the authorization given me as Executrix of the Last Will and Testament of Alfred Stieglitz, deceased, by the decision of the Surrogate's Court of New York County rendered May 19, 1949, I do hereby assign and transfer to Fisk University the various objects previously delivered to it from the Stieglitz Estate on permanent loan.

It is my understanding that Fisk University will not at any time sell or exchange any of the objects in the Stieglitz Collection . . . and that it will lend The Gaboon

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<sup>31</sup> Ibid.

<sup>32</sup> Wibking, "Grand Ole Art," 82.

<sup>33</sup> Fisk University, "The Carl Van Vechten Gallery."

Figure to the Museum of Modern Art every three years for a period of three months if requested to do so.<sup>34</sup>

President Johnson replied with a letter on June 13, 1949. The letter acknowledged that “Fisk University will not at any time, sell or exchange any of the objects in the Stieglitz Collection.”<sup>35</sup> Johnson had little experience with donations of objects and little knowledge of the preserving a university collection. However, based on Johnson’s desire to develop Fisk University into a cultural destination of the South, it is likely that all stipulations were agreed upon rather than risking the loss of the donation. Though O’Keeffe’s relationship to Fisk was new, her relationship with Carl Van Vechten, a longtime supporter of the university, may have factored into the acceptance of the agreement.

In additional correspondence, O’Keeffe outlined further stipulations for the artwork in the collection, including the following:

- The artwork is to be designated as the Alfred Stieglitz Collection.
- No photographs in the Collection may be loaned to any other person or institution, and the other works may only be loaned for certain limited purposes.
- The photography mounting and matting may not be removed or changed.
- The Collection is to be exhibited intact and no other artwork is to be shown in the same room without Ms. O’Keeffe’s consent.
- The Collection must be under surveillance at all times when the room is not locked.

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<sup>34</sup> Clement, Frank G. “Georgia O’Keeffe Foundation (Museum) v. Fisk University.”

<sup>35</sup> Ibid.

- The Collection should be housed in as safe a building as possible.
- The walls are to be painted white or a very light color designated by Ms. O’Keeffe.<sup>36</sup>

Georgia O’Keeffe was encouraged by friend Carl Van Vechten to make the gift to Fisk University, but it is unclear whether he encouraged her stipulations. Though O’Keeffe’s reasons for her gift restrictions are unclear, it can be assumed that she sought to preserve her late husband’s legacy through his life’s work. Another theory is that O’Keeffe was practicing a form of donor governance because she thought Fisk needed it. It must be noted that for portions of Alfred Stieglitz’s collection that were gifted to other, more respected institutions in the United States, including the Metropolitan Museum of Art and the National Gallery of Art, O’Keeffe did not include restrictions.

Many speculate whether Georgia O’Keeffe used this donation as a social statement, or whether she was simply following the advice of a friend and fellow artist. At the time, colleges and universities, more prominently in the Southern United States, remained segregated. In 2006, O’Keeffe’s long-time assistant, Doris Bry, wrote a letter to Fisk’s president to explain the motivation of the gift. According to Bry, the donation was meant to challenge the ideas of segregation.<sup>37</sup> O’Keeffe recognized that African Americans were being denied access to art in other areas of society, and the gift to Fisk would be a small gesture to balance that inequality, while promoting the university’s mission of interracial scholarship. This gift would allow the university to promote the study of art by their students, as well as the greater community of Nashville. The pieces

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<sup>36</sup> Ibid.

<sup>37</sup> Emery, “Settlement Would Allow Fisk University to Sell 2 Paintings From Its Stieglitz Collection.”

given to Fisk did include several African artifacts once owned by Stieglitz, which may have been an acknowledgement of the school's history and its students' heritage.

Georgia O'Keeffe's oversight of the collection did not cease once the artworks became property of the university. O'Keeffe visited Fisk's campus to choose a building to house her late husband's collection. The school's former gymnasium would be transformed into the Carl Van Vechten Gallery, in honor of the man who helped secure the gift for the university.<sup>38</sup> O'Keeffe participated in the preparation of the newly created gallery, offering advice on the outfitting of the space and the hanging of the artwork.<sup>39</sup> President Johnson would appoint a curator for the gallery, an inexperienced, but enthusiastic Fisk alum named Pearl Creswell.<sup>40</sup>

After the initial gift, Georgia O'Keeffe maintained a relationship with Fisk University, Carl Van Vechten, and President Charles S. Johnson. O'Keeffe supported campus activities, including the formation of the university's Basic College. The program, designed for accelerated students, invited visiting "luminaries" to campus, one of which was O'Keeffe.<sup>41</sup> O'Keeffe also continued to keep a watchful eye over the Stieglitz Collection, expressing worry regarding its maintenance. In 1951, only two years after the initial donation, O'Keeffe wrote to President Johnson with those concerns: "Would you like to *consider* letting me withdraw the Collection?" The letter continued, stating, "In the meantime, if you find the Collection too much of a problem and wish to consider giving it up, let me know so that I can plan what to do with it next."<sup>42</sup> President

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<sup>38</sup> Fisk University, "The Carl Van Vechten Gallery."

<sup>39</sup> Wei, Linda, dir. *The Gift: The Alfred Stieglitz Collection at Fisk University*.

<sup>40</sup> TEDx Talks. "TedxNashville – Creswell-Betsch – A Special Gift of Extraordinary Art."

<sup>41</sup> Gasman, "A Renaissance in Nashville: Charles S. Johnson's Use of Philanthropy to Build Fisk University in the Post-War Period," 118.

<sup>42</sup> Clement, Frank G. "Georgia O'Keeffe Foundation (Museum) v. Fisk University."

Johnson assured O’Keeffe that measures would be taken to properly preserve her husband’s collection. Satisfied with Johnson’s guarantee, O’Keeffe would ultimately donate four additional pieces to be included in the Alfred Stieglitz Collection.

Pearl Creswell would continue to serve as the curator of the Carl Van Vechten Gallery for the next forty-years.<sup>43</sup> During that time, she would assume many roles, including gallery educator. Creswell actively worked to promote the gallery and bolster attendance. She expanded her reach beyond the borders of Fisk’s campus, recruiting visitors from local civic groups and other community organizations. She fostered relationships with neighboring schools and often hosted field trips, introducing new generations of Nashvillians to the collection.<sup>44</sup> Attendance to the gallery dwindled in the years following Creswell’s retirement. Fisk University faced a growing number of financial difficulties and preserving the Stieglitz Collection became less of a priority. Debt continued to rise and the university was forced to cut programs, dismiss faculty, and mortgage buildings. As frustrations grew, Fisk’s most valuable asset remained untouchable.

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<sup>43</sup> Wei, Linda, dir. *The Gift: The Alfred Stieglitz Collection at Fisk University*.

<sup>44</sup> TEDx Talks. “TedxNashville – Creswell-Betsch – A Special Gift of Extraordinary Art.”

### **Chapter 3: Fisk in Court: The Legal Battle over the Alfred Stieglitz Collection of Modern Art**

By 2005, Fisk University was facing a grim reality. President Hazel O’Leary claimed that the school might face closure if a solution to their financial problems was not devised. According to court documents, Fisk was operating at a \$2 million deficit, the endowment was almost non-existent, and several university buildings had already been mortgaged.<sup>45</sup> Many academic and staff positions had been eliminated and enrollment was down to only 700 students.

The Board of Trustees and academic governance of Fisk University was forced to take stock of their assets, which included all collections owned by the school. President O’Leary, only one year into her tenure, announced a drastic solution to Fisk’s problems. The university would begin the process of selling artworks from the Alfred Stieglitz Collection of Modern Art. Due to the gift restrictions posed by Georgia O’Keeffe in 1949, the collection could not be legally sold or split up. The university filed a motion with the Tennessee court, describing the necessity and urgency of the sale. Fisk claimed that the sale of only two works could generate funds to, “restore its endowment, improve its mathematics, biology, and business administration departments, and build a new science building.”<sup>46</sup>

The two paintings in question were Marsden Hartley’s *Painting No. 3* and Georgia O’Keeffe’s *Radiator Building: Night, New York*. *Radiator Building* was not part of the original gift made to Fisk, as O’Keeffe donated it at a later date. Fisk argued that the restrictions applied to the Stieglitz Collection had no bearing on the four works the

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<sup>45</sup> Emery, “Settlement Would Allow Fisk University to Sell 2 Painting From Its Stieglitz Collection.”

<sup>46</sup> Clement, Frank G. “Georgia O’Keeffe Foundation (Museum) v. Fisk University.”

university later received from O’Keeffe. The Tennessee court found that there was evidence that O’Keeffe intended to include her later gifts as a permanent part of the Stieglitz Collection, and therefore all donor conditions are applicable to the four additional paintings.<sup>47</sup>

At the time Fisk estimated that the paintings *Painting No. 3* and *Radiator Building: Night, New York* would fetch an estimated \$16 million at sale, making them two of the more valuable artworks in the collection.<sup>48</sup> Aside from their monetary value, these pieces had become highlights of the collection, especially *Radiator Building: Night, New York*. This work by Georgia O’Keeffe had become synonymous with her career in New York City, the portion of her life that she shared with Alfred Stieglitz. Researchers believe that the piece is a tribute to the artist’s late husband, as evident by his name illuminated in the top left corner of the painting.<sup>49</sup> Fisk was now moving to sell an artwork deeply rooted in ‘the lives and relationship of the university’s generous benefactors.

These two artworks were targeted for sale purely based on their estimated monetary worth. The popularity of the pieces drew significant attention to the sale announcement. Had Fisk chosen to sell a lesser-known piece by a lesser-known artist, one can speculate whether the announcement would have garnered the same level of publicity and opposition.

Fisk’s lawyer later argued that due to its lack of financial resources, the University could not adhere to the restriction of keeping the Stieglitz Collection intact.

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<sup>47</sup> Feld, “Who Are the Beneficiaries of Fisk University’s Stieglitz Collection?” 883

<sup>48</sup> Stout, “Struggling Colleges Debate the Propriety of Selling Their Art.”

<sup>49</sup> Fryd, “Georgia O’Keeffe’s ‘Radiator Building’: Gender, Sexuality, Modernism, and Urban Imagery,” 273.

University representatives asked the court to approve the sale of *Painting No. 3* and *Radiator Building: Night, New York* under the doctrine of *cy pres*.<sup>50</sup> As discussed earlier, *cy pres* refers to a legal doctrine applies to issues of charitable gifts. *Cy pres* is requested when the gift recipient feels that they can no longer adhere to the restrictions set forth in the gift agreement. In this case, Fisk claimed that they could not properly care for the Stieglitz Collection without an influx of income. The university stated that a portion of the funds generated from the sale would allow for renovations of the Carl Van Vechten Gallery and provide for the maintenance of the collection.<sup>51</sup>

Shortly after Fisk filed its initial motion, the Georgia O’Keeffe Foundation attempted to intervene on behalf of O’Keeffe’s estate. After O’Keeffe’s death in 1986, the Foundation was created to represent her estate. In a petition to the court, the Foundation noted that Fisk University’s proposed sale would violate the terms of the O’Keeffe gift agreement. The Foundation claimed that any breach of this contract would essentially render the agreement void, and the ownership of the Alfred Stieglitz Collection of Modern Art would revert back to the O’Keeffe estate. In March of 2006, with motions pending from both Fisk University and the Georgia O’Keeffe Foundation, the Foundation filed a new motion. The Foundation wanted to transfer its interest in this case to the Georgia O’Keeffe Museum. By May, the trial court granted the motion for substitution.<sup>52</sup> At this time, the Attorney General of Tennessee, Robert Cooper, filed a motion to intervene. In association with charitable donations and trusts, the state Attorney General’s role is to represent the public interest.

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<sup>50</sup> Ibid.

<sup>51</sup> Clement, Frank G. “Georgia O’Keeffe Foundation (Museum) v. Fisk University.”

<sup>52</sup> Ibid.

Fisk University subsequently filed a motion to dismiss the case. The University's legal representative claimed that Georgia O'Keeffe donated artwork to Fisk while serving as Executrix of her husband's estate. Under these circumstances, they claimed that O'Keeffe was not acting as a representative of her own estate. Thus, The Georgia O'Keeffe Museum, acting on the behalf of the artist's estate, had no legal claim to the Stieglitz Collection. In October of 2006, a trial court denied the motion. The court determined that O'Keeffe had acted on her own behalf when she gifted Fisk the works of the Stieglitz Collection as well as the four pieces she owned.<sup>53</sup>

In April of 2007, Fisk University requested relief under *cy pres*. In response, the Georgia O'Keeffe Museum filed a motion for reversion. As they had previously claimed, the O'Keeffe Museum alleged that they were entitled to ownership of the Alfred Stieglitz Collection if Fisk University could not meet O'Keeffe's gift stipulations. The Museum claimed that the act of requested *cy pres* was admittance that the restrictions could not be met. The court denied the request for reversion, as O'Keeffe never included a reversion clause in her donation documentation.<sup>54</sup>

In 2007, Fisk University and the O'Keeffe Museum came to a settlement that they presented to the court. The agreement included the terms that the Museum would purchase *Radiator Building: Night, New York* from Fisk for \$7.5 million. The Museum also agreed to present no future opposition if the university attempted to sell Marsden Hartley's *Painting No. 3*.<sup>55</sup> Attorney General Cooper intervened, as he felt that the settlement was not aligned with O'Keeffe's wishes, nor was it in the best interest of the people of Tennessee. However, Cooper was able to help negotiate a slightly different

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<sup>53</sup> Ibid.

<sup>54</sup> Dinkins, Richard H. "In Re Fisk University."

<sup>55</sup> Clement, Frank G. "Georgia O'Keeffe Foundation (Museum) v. Fisk University."

agreement. Fisk University would attempt to fundraise to generate the funds needed for their capital improvements. If no donor stepped forward within 30 days, the university could sell *Radiator Building: Night, New York* to the Georgia O’Keeffe Museum.<sup>56</sup> The trial court rejected the settlement and encouraged Fisk to explore other potential solutions that would keep the collection intact.

Fisk continued to seek out possible remedies, which more closely adhered to Georgia O’Keeffe’s wishes. The most difficult and restricting contingencies requested that the collection never be sold and never split up. A tremendous opportunity came Fisk’s way when Alice Walton, the heiress to the Wal-Mart Corporation, became interested in the collection. Walton had become a new name within the art world, but she was quickly making a name for herself. In 2005, she had founded the Crystal Bridges Museum of American Art in Bentonville, Arkansas and became an active participant in building her museum’s collection.<sup>57</sup> Walton was also familiar with untraditional means of acquiring works, including sharing agreements. In April of 2006, Walton came into the spotlight when she was in talks to purchase Thomas Eakins’ painting *The Gross Clinic*, from Thomas Jefferson University in Philadelphia. Walton proposed to buy the painting jointly with the National Gallery of Art, for a sum of \$68 million.<sup>58</sup> Eventually Walton and the National Gallery of Art lost out, and the painting was purchased jointly by the Philadelphia Museum of Art and the Pennsylvania Academy of Fine Arts.

Attorney General Robert Cooper offered the courts a proposed solution to keep the Stieglitz Collection in Nashville. In the proposal, the Frist Center for Visual Arts and

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<sup>56</sup> Emery, “Settlement Would Allow Fisk University to Sell 2 Painting From Its Stieglitz Collection.”

<sup>57</sup> Lacayo, “The Impermanent Collection.”

<sup>58</sup> Ibid.

the State of Tennessee would create a partnership to temporarily house and maintain the collection. The Frist Center for Visual Arts had previously developed a professional relationship with Fisk when the Stieglitz Collection had been temporarily stored at their facility.<sup>59</sup> Once Fisk University was financially stable, they would regain custody of the collection. The courts rejected this proposal, as it was not a permanent resolution.

Cooper filed a subsequent proposal with the collaboration of a philanthropic Fisk alumna Carol Creswell-Betsch. Creswell-Betsch was the daughter of Pearl Creswell, the Carl Van Vechten Gallery's first curator. Creswell-Betsch generously offered to establish an endowment at the Community Foundation of Middle Tennessee to "benefit, in perpetuity, the display and care of the Alfred Stieglitz Collection at the Van Vechten Gallery at Fisk University."<sup>60</sup> According to Cooper, the endowment, based on donations from individuals, local organizations, and corporations, would produce at least \$131,000 per year.<sup>61</sup> Fisk president Hazel O'Leary had previously indicated that \$131,000 was the amount of income needed to properly care for the Stieglitz Collection annually.<sup>62</sup> This proposed endowment would ensure that the Stieglitz Collection remain at Fisk University, serving its intended purpose for the school. The courts rejected Cooper's proposal, as it only addressed funds regarding the collection, and did not consider the operating needs of the university as a whole.

In November of 2010, the Tennessee Court ruled that Fisk University was allowed to sell 50% of the Stieglitz Collection's interest to Crystal Bridges Museum. Of the \$30 million dollars received from the sale, \$20 million was to be designated for a

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<sup>59</sup> Pogrebin, "Fisk to Appeal Ruling on Stieglitz Sale."

<sup>60</sup> Dinkins, Richard H. "In Re Fisk University."

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

collection endowment. If invested, the fund would generate an estimated \$1 million per year in interest, providing Fisk with an adequate annual income to properly care for and display the Collection.<sup>63</sup> The remaining \$10 million could be used at the University's discretion. Both Fisk University and the Tennessee Attorney General found fault with the decision. Fisk President Hazel O'Leary made a statement on the decision, saying, "this restriction effectively confiscates proceeds from the approved sharing agreement and places Fisk in a more risky position than before."<sup>64</sup> Fisk Chairman Robert W. Norton also expressed concern over the ruling. He added, "The order will result in an excessive endowment for the art collection while ignoring the need to endow Fisk's outstanding academic programs for which it has received national recognition."<sup>65</sup>

Fisk University appealed the decision regarding the use of funds. They asserted that \$10 million would not suffice and the school would need significantly more to remedy their financial struggles. Tennessee Attorney General Robert Cooper's objected to the decision, but on the grounds of the court's interpretation of donor intent. Though the collection would remain intact, as O'Keeffe requested, a portion of the ownership was sold, violating a prominent condition of the gift. The appeals court reversed the earlier decision that limited the use of funds from the potential sale of the collection. As the approval for the Fisk-Crystal Bridges partnership moved forward, Fisk would be entitled to free use of \$20 million generated from the sale. \$10 million would be placed in a protected endowment designated for the care of the Stieglitz Collection.<sup>66</sup>

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<sup>63</sup> Pogrebin, "Fisk to Appeal Ruling on Stieglitz Sale."

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Dinkins, Richard H. "In Re Fisk University."

In early 2012, Cooper attempted to appeal the court's decision. He asserted that the partnership between Fisk University and the Crystal Bridges Museum disregarded donor intent.<sup>67</sup> According to Cooper, O'Keeffe's specific intention was to provide the students of Fisk and the people of Tennessee with the opportunity to learn from the Stieglitz Collection. Moving the collection to Arkansas would deny both the Fisk and Tennessee community that chance. The Tennessee Supreme Court decided that they would not hear an appeal case, paving the way for an ultimatum ruling.<sup>68</sup>

In August of 2012, after a seven-year court battle, the Davidson County Chancery Court officially approved a sharing plan for the Alfred Stieglitz Collection of Modern Art. Fisk University was now allowed to sell a 50% stake in the collection to the Crystal Bridges Museum of American Art for \$30 million dollars. Though the courts rejected an appeal attempt, Tennessee Attorney General Robert Cooper still voiced his opposition to the decision. Cooper's main concern was the future of Fisk University, arguing that this deal may inhibit future donations to the school.<sup>69</sup> The partial loss of the collection coupled with the disregard for Georgia O'Keeffe's wishes may have some donors hesitating to contribute to the university.

Fisk and Crystal Bridges were able to come to an agreement to share physical custody and maintenance of the collection. The artwork would rotate between the institutions every two years. Two years became the agreed amount time, as it theoretically allows each Fisk University student the opportunity to visit the collection in the Carl Van Vechten Gallery during the average four-year span of a college student.<sup>70</sup>

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<sup>67</sup> Grant, "Fisk Faces Yet Another Challenge over Sale of Collection."

<sup>68</sup> Ng, "Tennessee Court Rules in Favor of Fisk University's Stieglitz Sale."

<sup>69</sup> Kennedy, "Battle Over Art Collection Held at Fisk Is Settled."

<sup>70</sup> Grant, "Fisk Faces Yet Another Challenge Over Sale of Collection."

Alice Walton, the founder of Crystal Bridges Museum, pledged an additional \$1 million to renovate Fisk's gallery space.<sup>71</sup>

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<sup>71</sup> Kennedy, "Battle Over Art Collection Held at Fisk Is Settled."

## Chapter 4: University and College Art Galleries and Museums: The Monetization of Campus Collections

The founding of the Carl Van Vechten Gallery at Fisk University inserted the school within the extensive network of university museums and galleries. Many higher education institutions have used museums and galleries, with varying types of collections, to support and further advance their educational missions. Founded in 1683, the Ashmolean at the University of Oxford is regarded as the first university museum.<sup>72</sup> Elias Ashmole gifted the institution, now dedicated to art and archeology, to the university “because the knowledge of Nature is very necessary to human life and health.”<sup>73</sup> The building was equipped with lecture halls and demonstration rooms, solidifying the idea that museums serve an educational role.<sup>74</sup> The museum was open to the public, serving a dual role as an academic and community resource, a model that subsequent university museums’ would strive to follow.<sup>75</sup>

Newly formed American institutions also began incorporating galleries and collections into their educational landscape. In 1832, John Trumbull, a painter during the American Revolutionary War, gifted 100 of his historical artworks to Yale College. Though the school, now known as Yale University, did not have a formal museum, the gift encouraged administrators to create a designated space for the artwork. This collection and its housing would develop into the Yale University Art Gallery, the

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<sup>72</sup> Vitelli, “One Object, Many Meanings: Museum Collections as Academic Assets,” 87.

<sup>73</sup> Ashmolean Museum of Art and Archaeology: University of Oxford. “History of the Ashmolean.”

<sup>74</sup> Vitelli, “One Object, Many Meanings: Museum Collections as Academic Assets,” 88.

<sup>75</sup> Ashmolean Museum of Art and Archaeology: University of Oxford. “History of the Ashmolean.”

nation's first college-affiliated art museum.<sup>76</sup> Other universities followed suit, such as Vassar College, one of the nation's oldest women's colleges, which created a purpose built gallery at the time of its founding. Many colleges and universities continued the tradition throughout the 19<sup>th</sup> century.

Professional associations such as the American Alliance of Museums (AAM) and the International Council of Museums (ICOM) strongly encourage museums to have elected Boards of Trustees.<sup>77</sup> University museums and galleries often lack this type of formal leadership. Aside from a director, department heads, and higher-level administrators, most institutions rely on the guidance of advisory boards and committees. This leaves many museums under the indirect supervision of the university's Board of Trustees, an entity responsible for all aspects of the university's viability.

The university is often referred to as the "parent organization" of the university gallery. For the parent organization, maintaining a collection is viewed as a small portion of the much larger university mission.<sup>78</sup> It must be noted that Fisk University lacked an advisory board, leaving all decision making power to the university's Board of Trustees.

University's boards can let themselves be guided by the museum or gallery staff, but have no obligation to adhere to museum standards and best practices. I must note that museums of any size and category do not hold a legal obligation to adhere to these guidelines, but rather an ethical responsibility. Guidelines recommended by organizations such as the American Alliance of Museums (AAM), the Association of Art Museum Directors (AAMD), and the International Council of Museums (ICOM) provide the framework for museums to operate professionally and ethically within the greater

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<sup>76</sup> Jaffe, "The John Trumbull Memorial Exhibition at Yale."

<sup>77</sup> *Code of Ethics*, American Alliance of Museums

<sup>78</sup> Lacayo, "Hard Sell."

museum community. Deviation from those standards can result in professional sanctions or a loss of an organizational accreditation.

The Association of Academic Museums and Galleries (AAMG) and the College Art Association (CCA), groups created specifically for the assistance of college and university museums and galleries, are affiliates of these larger organizations and encourage their members to adhere to standards set in each professional code of ethics. These organizations have created standards for the operations of a university museum, as well as their parent organization.<sup>79</sup> Unfortunately, university museums have little recourse when the boards of their parent organizations make major decisions regarding the museum and its collection. The parent organization structure has worked well for many institutions, but a handful of university museums have fallen victim to the decisions made by their universities' Boards of Trustees. In times of financial crisis or uncertainty, university museum collections can be susceptible to being sold to recoup endowments or fund profitable university projects. Fisk University is one of several instances that demonstrate this vulnerability of campus collections.

In 2009, Brandeis University President Jehuda Reinharz announced that the university's Rose Art Museum would be permanently closing by the end of the summer. The school's Board of Trustees planned to sell the museum's entire inventory at auction. The announcement came as a shock to the museum world, as well as Brandeis students, faculty, and donors. The most surprised by the decision was Michael Rush, director of the museum. The decision, made without the consultation of any museum staff or advisory board members, was in response to an economic recession. Brandeis claimed

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<sup>79</sup> College Art Association. "Statement Concerning the Deaccession of Works of Art."

the fiscal downturn damaged their endowment and affected donor generosity.<sup>80</sup> Reinharz asserted that the choice was made with the partnership of the Massachusetts Attorney General, who, as discussed earlier, oversees all matters related to charitable trusts and gifts. This claim was false, which prompted an entire overview of the decision by the Attorney General's office.<sup>81</sup> Donors, including members of the Rose family, who founded the museum in 1961, brought complaints against the school. Several museum employees resigned in protest, including Director Michael Rush.<sup>82</sup> After the outcry from donors, students, faculty members, the concerned public, and the museum community, Brandies cancelled their plan and kept the Rose Art Museum intact.

The situation at Randolph College more closely resembled that of Fisk. The institution, formerly known as Randolph-Macon Woman's College, faced financial uncertainty in January of 2007. The school faced a potential loss of academic accreditation due to its instability, which prompted a search for avenues to generate income. In an attempt to increase tuition income, the school began enrolling men into the college for the first time in its history. Amid the crisis, Randolph College turned to the collection of the Maier Museum of Art, their university museum. The college had been collecting art since 1920, and sought to sell several of these cultural assets.

Like Fisk, these artworks were gifted to the university with stipulations, including that they never be sold. The governance of Randolph College pursued legal avenues and requested relief under the *cy pres* doctrine. Eventually, the matter was settled in court and the college was given approval to sell several works from its permanent collection,

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<sup>80</sup> Dillon, "The Rose Art Museum Crisis," 87.

<sup>81</sup> Ibid.

<sup>82</sup> Lanza, "Breaking Up Is Hard to Do: The Sale of a Charitable Art Donation," 488.

including works by well-known American artists George Bellows and Edward Hopper.<sup>83</sup>

The cases of the Rose Art Museum and the Maier Museum of Art illustrate the vulnerable position of university collections. University collections are tangible assets, but not financial ones.

In May of 1965, Alfred K. Guthe, the director of the Frank H. McClung Museum at the University of Tennessee, addressed AAM's annual conference, delivering a speech on the distinct, dual role of the university museum. He stressed that the success of a university museum not only lies in its integration into the academic community, but in the way it serves the local community as well. Depending on the geographical area, a university museum may be the only cultural center available to a community. Nashville, Tennessee is currently home to several cultural institutions, including the Frist Art Center and the Vanderbilt Museum of Fine Arts.<sup>84</sup> But for much of Fisk's existence, the Carl Van Vechten and the later formed Aaron Douglas Gallery, were institutions in Nashville with permanent art collections that were open to the public. The concept of the university museum as a community institution creates a dual, and sometimes muddled, identity for the organization. These museums must develop relationships with the university, as well as the outside public.<sup>85</sup> As discussed in a later chapter, Fisk University governance, including President Hazel O'Leary, emphasized the idea that the gallery's mission was to support the university, its students, and its faculty. President O'Leary made no mention of the greater Nashville community, a group that also benefits from the preservation of the Stieglitz Collection. Higher education governance must embrace the idea that university museums are a distinct entity, and supporting the mission of the university is

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<sup>83</sup> Stout, "Struggling Colleges Debate the Propriety of Selling Their Art."

<sup>84</sup> Frist Art Museum, "The Frist Art Museum."

<sup>85</sup> Dillon, "The Rose Art Museum Crisis," 84.

not their solitary organizational goal. Public outcry over the publicized situations at Brandies University, Randolph College, and Fisk University demonstrate the university museum's importance to the public at large.

## Chapter 5: An Ethical Analysis

In this analysis, I will not be addressing the ethics of Georgia O’Keeffe’s gift to Fisk University. One can speculate whether it is ethical to gift objects to an institution that has little means to care for and maintain the gift. Some may question the ethical nature of placing a stipulation on a gift, which can be construed as a donor attempt to retain control. This analysis will examine ethical questions based on the final court settlement regarding the Alfred Stieglitz Collection of Modern Art: was there an ethical use of generated funds, did the court remedy honor donor intent, and did Fisk violate the public trust?

Legally, Fisk University was unable to sell any object from the Alfred Stieglitz Collection of Modern Art without court approval, due to the conditions attached to the gift. However, Fisk’s legal ability to sell a portion of the collection has little bearing on the ethics of the decision. The museum community and its many professional organizations have created guidelines to help lead institutions through the often-controversial process. The term “deaccessioning” describes the act of removing an object from a museum’s permanent collection.<sup>86</sup> Technically, Fisk University did not permanently remove artworks from its collections. They merely sold a portion of the ownership. It is an unorthodox museum practice to sell a partial stake of collection objects and the museum community has yet to create standards of how to navigate the unusual situation. Because of this absence, Fisk must be judged on the ethical standards that do exist. The professional codes of ethics and best practices set forth by the

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<sup>86</sup> Buck and Gilmore, ed., *Museum Registration Methods 5<sup>th</sup> Edition*, 100.

American Alliance of Museums (AAM)<sup>87</sup>, Association of Art Museum Directors (AAMD)<sup>88</sup>, and the College Art Association (CCA)<sup>89</sup> all address deaccessioning but none addresses the sale of a partial stake in the collection.

There are two steps to the deaccession process: removal and disposal. While it is legal to deaccession objects, barring any donor restrictions, museum ethics dictate that there must be just reasoning to remove an object from an organization's permanent collection. The following reasons are often cited for deaccessioning a permanent collection item:

- The object is not within the scope of the mission. Institutional missions can change over time, rendering some objects unsuitable for the collection.
- The care of the object is beyond the capability of the museum.
- The object is not useful for exhibition, research, or educational programs in the foreseeable future.
- The object is a duplicate of another item in the collection.
- The object is a poor or unauthentic example in the collection.
- The object is physically deteriorated or contains hazardous materials.
- The piece was originally acquired illegally or unethically.
- The object may be more appropriate as the part of another institution's collection.
- The object in question has a stringent donor restriction that the museum is no longer able to meet.<sup>90</sup>

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<sup>87</sup> American Alliance of Museums, "AAM Code of Ethics."

<sup>88</sup> Association of Art Museum Directors, "Professional Practices in Art Museums."

<sup>89</sup> College Art Association, "Statement Concerning the Deaccession of Works of Art."

<sup>90</sup> Buck and Gilmore, ed., *Museum Registration Methods 5<sup>th</sup> Edition*, 102.

Once an institution has just cause to remove an object, they must choose an appropriate method of removal, which include sale, exchange, gift, or destruction.<sup>91</sup>

Initially, Fisk University announced that they would be seeking legal aid to sell two paintings from the Alfred Stieglitz Collection of Modern Art to help alleviate the university's financial struggles.<sup>92</sup> Further into their legal proceedings, Fisk representatives made claims that they did not have sufficient funds to properly care for the entirety of the collection, a reason that could have justified the deaccession attempt. Fisk University provided documentation to the Tennessee Courts that an average of \$131,000 per year was needed to sustain the Stieglitz Collection.<sup>93</sup> However, these funds needed for the care of the collection represented a small percentage of the financial need of the university. Fisk's priority for selling two objects from the collection were to endow academic chairs and repay debts accrued.<sup>94</sup> According to museum best practices, deaccessioning objects for the purpose of generating funds is not a valid motive. If there were no sale restrictions placed on the Stieglitz Collection, Fisk University had a frail ethical justification for attempting to remove *Radiator Building: Night, New York* and *Painting No. 3* from their holdings.

While public institutions should find ethical cause to remove an object from their ownership, the more troubling and ethically questionable actions are related to the use of funds generated from the sale of deaccessioned objects. In 2012, the Tennessee Court approved a \$30 million sale agreement between Fisk University and the Crystal Bridges Museum of American Art. The courts ruled that \$10 million of those proceeds needed to

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<sup>91</sup> Ibid.

<sup>92</sup> Feld, "Who Are the Beneficiaries of Fisk University's Stieglitz Collection?" 883.

<sup>93</sup> Dinkins, Richard H. "In Re Fisk University."

<sup>94</sup> Ibid.

be placed in a designated fund, only to be used for the direct care of the Stieglitz Collection. The remaining \$20 million could be used at the university's discretion. A later negotiation reduced the amount in the discretionary care fund to \$4 million.<sup>95</sup>

The American Alliance of Museums Code of Ethics explicitly denounces the use of deaccession funds for unrelated expenses. The code states:

Proceeds from the sale of nonliving collections are to be used consistent with the established standards of the museum's discipline, but in no event shall they be used for anything other than acquisition or direct care of collections.<sup>96</sup>

The AAMD shares similar guidelines in regards to the use of funds from deaccessioned objects. These standards have been created to deter organizations from treating their collections as monetized assets, used to reimburse the financial pitfalls of an institution. Objects of cultural importance, like the Stieglitz Collection, should never be used to compensate for mismanagement at the hands of institutional governance.<sup>97</sup> Museums of all sizes will risk their sustainability and reputation if they view deaccessioning as an emergency fallback.<sup>98</sup>

When Fisk University petitioned the Tennessee Courts for *cy pres* relief from the restrictions imposed on the Stieglitz Collection, the goal was to devise a solution that would remain as close to donor intent as possible. Georgia O'Keefe's charitable intention, expressed through correspondence with Fisk president Charles Johnson, was to gift a portion of the Alfred Stieglitz Collection of Modern Art for the purpose of

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<sup>95</sup> Cooper, "Deaccessioning and Donor Intent – Lessons Learned from Fisk's Stieglitz Collection."

<sup>96</sup> American Alliance of Museums, "AAM Code of Ethics."

<sup>97</sup> Strout, "Struggling Colleges Debate the Propriety of Selling Their Art."

<sup>98</sup> Lacayo, "Hard Sell."

promoting the study of art.<sup>99</sup> The sentiment echoed the wishes of her late husband and creator of the collection, Alfred Stieglitz, a desire that was documented in his will. However, O’Keeffe’s choice of Fisk University implied additional intentions, including the type of public community she wished to serve. O’Keeffe purposefully gifted the collection to Fisk to provide access to art for a historically underserved population. As mentioned earlier, Fisk University was and is a predominantly African-American institution.

Tennessee Attorney General Robert Cooper felt very strongly that O’Keeffe’s main intention was to gift the Stieglitz Collection for the good of both Fisk University and the people of Nashville. The courts disagreed with Cooper, and stated that the agreement between Fisk and Crystal Bridges not only honored O’Keeffe’s charitable intention, but also greatly enhanced it.<sup>100</sup> There are three components of O’Keeffe’s wishes that the Fisk agreement needed to satisfy with their new arrangement: keeping the collection intact, having it at Fisk in perpetuity, and providing public access.

Crystal Bridges Museum and Fisk University are still maintaining public access to the collection, just intermittently. On the agreed rotating schedule, the Stieglitz Collection would be available to the Fisk Community, the public of Nashville, and the South as a whole. The sharing arrangement mirrors the display practices of larger institutions with many collection objects that are not always on view. Crystal Bridges has also implemented a new initiative to provide ongoing access of the collection through its digital platforms. The digitization of collection is an increasing trend among the

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<sup>99</sup> Clement, Frank G. “Georgia O’Keeffe Foundation (Museum) v. Fisk University.”

<sup>100</sup> Dinkins, Richard H. “In Re Fisk University.”

museum community, ushered in by the Metropolitan Museum of Art in early 2017.<sup>101</sup> This initiative also satisfies O’Keeffe’s desire to keep the collection intact and displayed together. At the time of the gift, O’Keeffe’s wishes of display were in reference to the physical exhibition of objects. Now, museums create “digital exhibitions” as an alternative for traditional exhibition means. Online curation allows long-term access to a collection regardless of geographical location. Digital access also allows Crystal Bridges to care for the collection to ensure its long-term preservation. Many of the artworks are works on paper, which are often light sensitive and need time to “rest.” Though O’Keeffe wanted the Stieglitz objects exhibited intact, continuous display for works of art are rarely safe for the life of the object. O’Keeffe’s charitable intention was for the Stieglitz Collection promote the study of art in perpetuity, which is only possible through the best practices of collection care.

When the final decision regarding the Stieglitz Collection at Fisk University was rendered, many museum organizations and professionals expressed their frustration and released statements regarding the decision of the Tennessee Appeals Court. The Association of Academic Museums and Galleries (AAMG), an organization in which Fisk’s University Galleries are a current member, addressed the issue of the public trust as well as their concern for Fisk’s professional reputation. AAMG’s statement included the following:

We believe that this action irrevocably damages the public’s trust in the university and its art galleries... Museum supporters, including donors of works of art, are unlikely to continue their support of a museum that has no control over its

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<sup>101</sup> Cascone, “With ‘Open Access,’ the Met Museum’s Digital Operation Has a Bona Fide Hit on Its Hands.”

professional practices. Further, such disposal of work undermines the mission of the academic museum, whose collections directly support pedagogical programs and the appreciation of art for the general public.<sup>102</sup>

AAMG addresses the idea of the “public trust,” the concept that Fisk University and its galleries have a responsibility to their greater community. The idea of the public trust encompasses the idea of shared authority and ownership of public collections. Fisk is a private higher-education institution, yet their university galleries are available to the public. The Alfred Stieglitz Collection of Modern Art has become a part of the cultural heritage of both Fisk University and the city of Nashville. AAM’s Code of Ethics states that acquisition, disposal, and loan activities must adhere to an institution’s public trust responsibilities.<sup>103</sup>

The concept of shared ownership is important to the ethical considerations of disposal. According to professional standards, the most ethical option is to transfer or sell objects to another museum or public institutions. This would ensure that the artworks remain accessible to the public. Partnering with Crystal Bridges Museum guarantees that the Stieglitz Collection will remain accessible to the public for the foreseeable future. When institutions seek to sell objects, there is a possibility that the objects are purchased for private ownership, removing them from public access. Though the initial attempt to sell only two objects from the Stieglitz Collection violated a gift restriction, it did demonstrate Fisk’s desire to keep a portion of the collection within their holdings. Fully removing objects from the collection would have violated the public’s trust.

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<sup>102</sup> Association of Academic Museums and Galleries. “AAMG Statement Regarding the Stieglitz Collection at Fisk University.”

<sup>103</sup> American Alliance of Museums, “AAM Code of Ethics.”

As discussed earlier, the governance of any institution brings with it a fiduciary responsibility to its stakeholders. In the case of Fisk University, the school's Board of Trustees held a responsibility to the university's students, faculty, and supporters, as well as the community of Nashville.<sup>104</sup> Due to its financial disarray, the university had to consider the health of the entire institutions. If Fisk University were to fall into financial ruin, what would happen to the collection? The health of the parent institution must be considered, as many university museums are under the purview of the school's Board of Trustees. Though museum ethics and standards dictate that collections should never be monetized for financial gain, dire situations are less ethically clear.

Brandeis University's treatment of the Rose Art Museum serves as an example of violation of the public trust in the wake of financial devastation. The university attempted to close the museum to help bolster the institutional financial health, which resulted in an outrage from the university and its supporters.<sup>105</sup> Closing the Carl Van Vechten Gallery would have likely resulted in a similar outcry, as the option would have violated the trust of the Fisk students, faculty, community supporters, and past donors. The closing of the university would have equally violated the public's trust in the institution. The partnership between Fisk and Crystal Bridges has prevented these potential circumstances, providing funds and resources for the upkeep of the gallery and its collections.

Ethical considerations of deaccessioning, donor intent, and the public trust are merely a small portion of the essential question: was the final solution the most ethical remedy for the fate of the Alfred Stieglitz Collection of American Art? The Crystal

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<sup>104</sup> Tam, "In Museums We Trust: Analyzing the Mission of Museums, Deaccessioning Policies, and the Public Trust," 855

<sup>105</sup> Ibid.

Bridges Museum is dedicated to American Art, yet the portion of the Stieglitz Collection that was gifted to Fisk contains a large portion of European and African art. There is a risk in selling a stake in a collection to an institution whose collection strategy does not encompass many of the objects in that collection.<sup>106</sup>

As Fisk's financial uncertainty was the priority of the ongoing legal proceedings, the care of the Stieglitz Collection became a secondary concern. The partnership between Fisk University and Crystal Bridges provided a remedy that enhanced the care for the Stieglitz Collection. Alice Walton's pledge of \$1 million to Fisk helped update the Carl Van Vechten Gallery to provide safer housing for the artwork. Fisk's facilities are falling into line with museum best practices, Crystal Bridges can grant additional resources that Fisk could never supply, including dedicated collection and conservation staff.

The Crystal Bridges Museum of American Art holds an accreditation from the American Alliance of Museums, implying that they have made a commitment to the ethical guidelines and best practice standards set forth by the organization. Though Fisk University violated the ethical guidelines on the use of sales funds, the final agreement between the university and Crystal Bridges allows for continued public access to the Stieglitz Collection and for the ongoing promotion of the study of art.<sup>107</sup> The collection is safe and cared for, and will always serve the mission of Fisk University.

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<sup>106</sup> Crystal Bridges Museum of American Art, "About Us."

<sup>107</sup> Burgess and Shane, "Deaccessioning: A Policy Perspective."

## Conclusion

The case of Fisk University, along with similar instances at Brandeis University and Randolph College, highlight the vulnerable position in which university museums and galleries find themselves. At Fisk, the final court ruling set an unsettling precedent for the future of university museums, allowing for the monetization of cultural assets. Fisk University was able to fashion a creative remedy in their partnership with Chrystal Bridges Museum of American Art, yet they violated museum ethics to do so.

Though Fisk violated museum ethics concerning the use of funds, the concern from the museum community prompted a reevaluation of the ethical guidelines and best practices for the industry. The susceptibility of university collections created an urgency to protect them and form ethical guidelines for parent organizations. The American Alliance of Museums' (AAM) Code of Ethics does not contain language specific to the governance and collection stewardship of university museums. After Fisk, the organization did create a task force dedicated to these unique issues.

Fisk University has made attempts to realign itself with the greater museum community. As of June 1, 2017, Fisk's University Galleries was an institutional member of the Association of Academic Museums and Galleries (AAMG), an Affiliate Professional Organization of the American Alliance of Museums (AAM) and an affiliate of both the Association of Art Museum Directors (AAMD) and the College Art Association (CAA). Fisk's current membership with this organizations is evident that moving forward they strive to adhere to the guidelines and best practices set forth by these bodies.

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