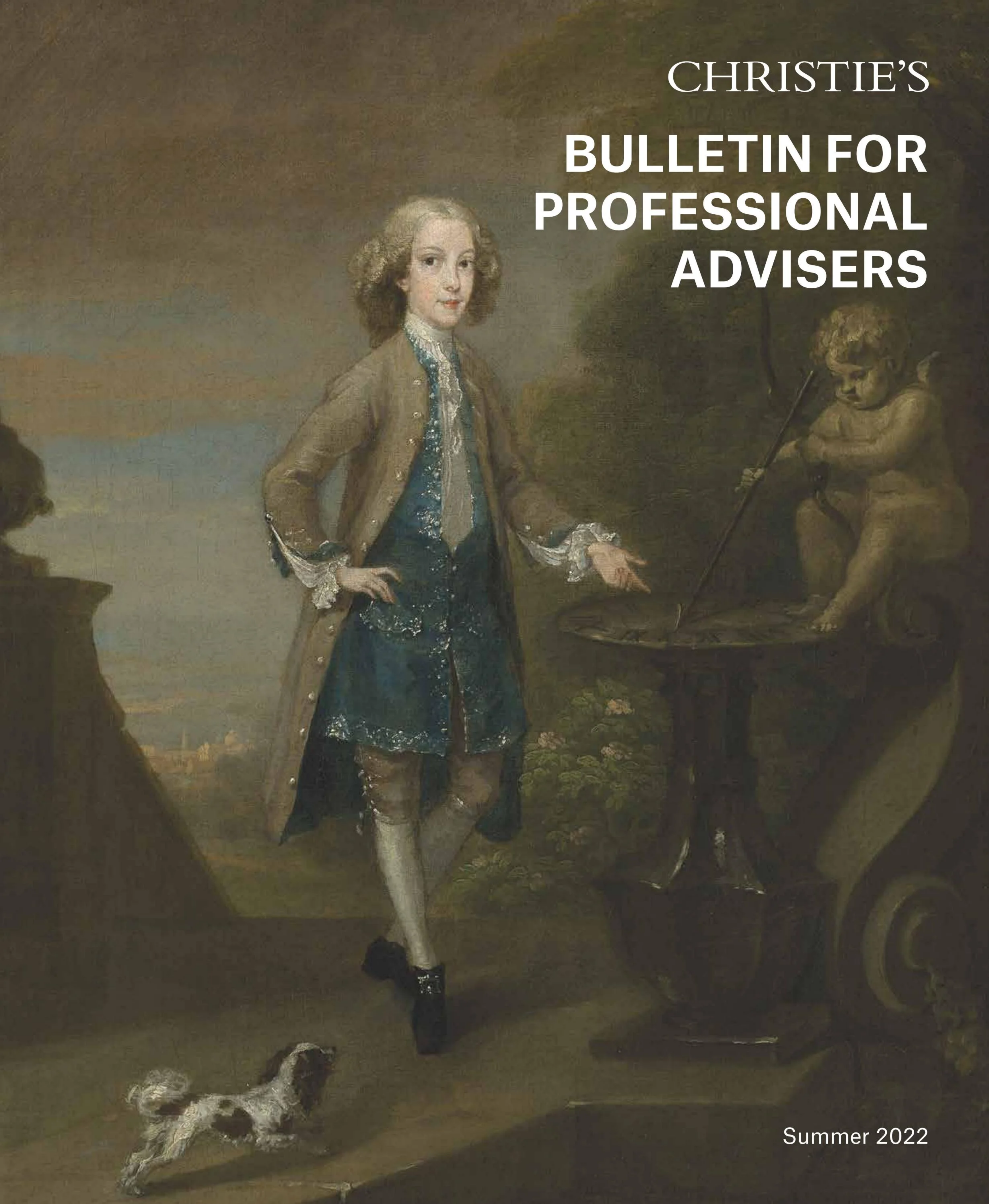


CHRISTIE'S
**BULLETIN FOR
PROFESSIONAL
ADVISERS**



Summer 2022

SELL WITH CHRISTIE'S PRIVATE AND ICONIC COLLECTIONS

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Benjamin Goldsmid, with a
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**The Collection of the late
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London, May 2022



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Cover

WILLIAM HOGARTH (1697-1784)
Portrait of Horace Walpole,
later 4th Earl of Orford (1717-1797),
aged 10 (detail)
oil on canvas
17 x 14 in. (43.2 x 35.6 cm.)
Negotiated by Christie's
and accepted in lieu of tax,
permanently allocated to
Strawberry Hill

Editorial

The start of the summer season signals the beginning of a busy period for the London art world, and the capital is set to be busier than ever with the Platinum Jubilee celebrations held for Her Majesty Queen Elizabeth II in early June.

Alongside Christie's usual season of summer sales is an auction and additional exhibition on the theme of 'The Art of Literature', exploring the links between works of art and the novels, poetry and stories that have inspired them. This aims to bring together works from multiple collections, and the theme of collections and collectors runs through a number of articles featured in this edition of the Bulletin.

The front cover of this issue features a charming portrait depicting Horace Walpole aged 10 by William Hogarth which has recently been acquired by Strawberry Hill as a hybrid offer in lieu. Silvia Davoli, curator at Strawberry Hill, discusses the recent research that has been undertaken on Horace Walpole's famed collection, and how the Acceptance in Lieu scheme has benefitted this unique museum and contributed to the reunification of the objects with their previous home.

By way of tribute to the late Sir Nicholas Goodison, Anastasia Tennant has taken the opportunity to review his legacy, and she has looked back at the recommendations that the Goodison Report suggested, focusing on those that have been implemented. It is surely a fitting tribute that many of the collections of museums and galleries across the UK (including Strawberry Hill) have benefitted from the legislation introduced following this landmark report. We are also delighted to report that The Collection of Sir Nicholas Goodison – British Art: Innovation and Craftsmanship was offered

at auction at Christie's on 25 May 2022 and realised £7,996,212 against a pre-sale estimate of £3,201,700–4,880,800.

Elsewhere, Racheal Muldoon discusses a newer collecting category – non-fungible tokens (NFTs), in the context of a landmark case which was brought to establish whether NFTs could be considered to be legal property. Clearly the decision made will have broader legal and tax implications for any future collectors, and we continue to watch this space with interest.

Scarlett Walsh reports on the amazing rediscovery of a masterpiece by Antonio Canova. Unlike NFTs where ownership can be tracked through the Blockchain, at some point during this work's history, the attribution to the Italian neoclassical master was lost completely. The story of the collectors who have owned this piece and collections that it has passed through before its recent reattribution is truly fascinating.

We also feature an article reviewing the recent changes to the Export Licensing rules, and the implications of the binding offer mechanism introduced in January 2021. Ruth Cornett has provided a helpful reminder of the current process, and the amendments that have been made together with a brief note on Christie's experience of these changes thus far.

Finally, regular readers of the Bulletin will have noted that I have taken over the editorship from Dominic Thurlow-Wood, who has left Christie's to take up a new role. I would like to thank Dominic for all his work on the Bulletin, especially during such a turbulent period, and wish him every success for the future.

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Export licensing: implementation of the new rules for binding options



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Prior to joining Christie's, Ruth Cornett worked as a tax adviser in a number of professional firms in the City and the West End of London. After training as an art historian and working as a curator in the V&A, Ruth changed careers in 1992, studying law and qualifying as a Chartered Tax Adviser (CTA) in 1998. Ruth has advised a broad spectrum of clients on a range of tax matters with a particular emphasis on capital gains tax, inheritance tax and income tax. To consolidate her expertise in these areas, Ruth qualified as a Trust and Estate Practitioner (TEP) in 2008. Ruth lectures frequently for Christie's Education and STEP on tax and heritage matters, has contributed to leading publications in this field and sits as an observer on the Tax and Political Committee of Historic Houses (HH).

Readers of this Bulletin may be familiar with the UK's export licensing rules for works of art and items of cultural property, which have been in place since the early 1950s. The process is designed to strike a balance between the needs of the art market for an efficient and fair system for the movement of objects and the national wish to preserve and retain those items particularly important to the UK. For most of the time since implementation, the system has worked well, but following a number of cases, in January 2021 the export system changed and, just over a year later, it is perhaps time to review how well the new procedures are working and to reflect on the experience of implementation.

Prior to January 2021, applicants for export licences followed a well-trodden path. An application for export was submitted to the Export Licensing Unit at the Arts Council (the ELU) and, if the object had been in the UK for over 50 years and was over the relevant value threshold for its category, the application was referred by the ELU to the national adviser for that category. The role of the national adviser is to consider the Waverley criteria and whether the object could be said to meet at least one of those criteria. The Waverley criteria, so called after the chairman of the committee which drew up the export procedures in the 1950s, are as follows:

1. Is an object closely connected with our history and national life?
2. Is an object of outstanding aesthetic importance?
3. Is an object of outstanding significance for the study of some particular branch of art, learning or history?

If the national adviser believes that the object for which an export licence is being sought meets any one of the criteria, he or she will raise an objection and the matter is

referred to the Reviewing Committee on the Export of Works of Art and Cultural Objects (more usually referred to as the RCEWA) for consideration at a formal hearing.

On receiving the national adviser's objection, a hearing date must be found for consideration of the application. The RCEWA meets 10 times per year and each case takes approximately one hour to conclude; as a quasi-judicial process, it is essential that all parties are properly represented, and the application given full consideration. Inevitably there may be delays in establishing the date of the hearing due to the availability of participants and the number of other cases under consideration.

The RCEWA consists of 7 standing members, a chairman and, for each case, independent experts are appointed; these experts are co-opted to the RCEWA for the purposes of the relevant case. The independent experts must have no connection with any party to the case, namely the applicant or national adviser. Grounds for the objection to export, provided by the national adviser together with the applicant's case for export, must be submitted in advance in a prescribed format and shared by the ELU to all parties prior to the hearing.

The RCEWA considers the evidence from the parties and makes its decision whether at least one of the Waverley criteria has been reached. If the decision is that none of the criteria has been reached, the export licence will be issued shortly after the hearing. If the decision is that one or more have been satisfied, the RCEWA will make a recommendation that the Secretary of State should defer the grant of the export licence to allow time for UK-based institutions or private individuals

HENRY CONSTANTINE RICHTER (1821-1902)
Osphranter Rufus. [Great Red Kangaroo]
pencil and watercolour heightened with white on paper
21 3/8 x 14 3/4 in. (54.3 x 37.5 cm.)



*Red? ...
Rattle ...
... ..*

who will keep the object in the UK, to raise funds for the matching price. The deferral period is split into two stages. The first deferral period allows interested parties to notify the RCEWA that they are submitting a serious expression of interest, and the second allows the party further time to raise the funds for purchase.

The above procedure pre-supposes that the value of the object has been established either by way of a sale/purchase or an agreement to a forthcoming sale, pending the grant of the export licence. Where the value on the export licence application is an estimate, the RCEWA is likely to recommend that the Secretary of State takes his or her own advice. All applications for export must include a value for the object in pounds sterling, but where applicants have paid in another currency (converted to sterling for the purposes of a purchase), the applicant can elect for the matching amount to be paid in their preferred currency, converted at the exchange rate on one of the following dates:

- date of the sale,
- the date of the application or
- the date of the hearing.

The choice is given at the date of the hearing, however it is important to note that future currency movement is ignored.

While the nation cannot underwrite the exchange rate risk, it does recognise the need to be fair to all parties and to compensate owners who may have transacted in non-UK currency, hence the choice of relevant exchange dates. This is a new development in the export licensing process and has been welcomed by applicants.

The ability to choose the exchange rate date is one of the changes which came into effect in January 2021. The most significant of the changes is the binding option procedure.

Applications for export submitted since 1 January 2021 now include a procedure which gives certainty to institutions or individuals who wish to keep the work of art in the UK. Notification of the serious expression of interest must be submitted before the end of the first deferral period and applicants are again asked if they will accept a fair matching offer. It is no longer enough for applicants to announce that they will do so; applicants must now grant an option to the interested party, to permit that party to call for a sale of the object to them. This call option ranks above any other offers to purchase which might arise during the second deferral period. The precedent for the option is attached to the legislation where the interested party is a UK institution, but no such precedent is provided for individuals. The timing is also crucial; the regulations provide for a 15 working day window in which to negotiate the terms of the binding option (despite the provision of a precedent) and that includes the provision of another condition report by the exporter to the interested party. This does seem somewhat unfair on applicants, but the rationale is that if the object has deteriorated while the application has been proceeding, the interested party should know about it and it serves to encourage applicants to look after their object until the end of the process. Once the option has been agreed, the second deferral period begins.

Each party to the option must sign it and a further precedent is provided for the action of calling in the option. As soon as an option holder has the funds they may exercise their right to call for the object to be sold to them, they do not have to wait until the end of the second deferral period; by calling for the option early, the option holder will take possession of the object and the applicant will be reimbursed. For institutions the exercise of the option is likely to be towards the end of the second deferral period, to allow

the option holder as much time as possible to raise the funds, whereas for a UK individual, it may be reasonable to assume that they have the funds on standby. Note that failure to exercise the call option by the end of the second deferral will cause the option to lapse; at that point any other individual or institution can make an approach to keep the item in the UK, but there is no requirement to grant another call option. Any individual who wishes to exercise their call option must have made arrangements with an institution in the UK to allow the public to see the object for at least 100 days per annum; acceptable arrangements to fulfil this requirement will be borne in mind by the Secretary of State.

We have had experience of the call option process during the last year, in which two albums of drawings and watercolours by John and Elizabeth Gould, and Henry Constantine Richter were purchased by a private individual. Although the introduction of this new process was supposed to accelerate the whole export licensing procedure, our experience so far is that it does not. With so many participants involved in the hearing and the availability of independent experts inevitably an issue, we have not seen any cases being turned around swiftly. The new scheme is helpful in that it gives some time for matching funds to be found and, once found, an institution will know that it no longer has the risk of the client changing his/her mind and deciding to retain the object. While this scheme is still in its early days, we can only hope that with practice the speed at which cases are turned around will improve.

Changing perceptions: non-fungible tokens are legal property



Racheal Muldoon
Barrister, The 36 Group

Racheal is a barrister at the London-based chambers, The 36 Group, where she is a member of the 36 Commercial team. As well as appearing in litigation in court, Racheal advises her domestic and international clients on matters encompassing commercial, cyber and art law, drawing on her experience as Senior Legal Counsel at The British Museum and Counsel at The Financial Conduct Authority.

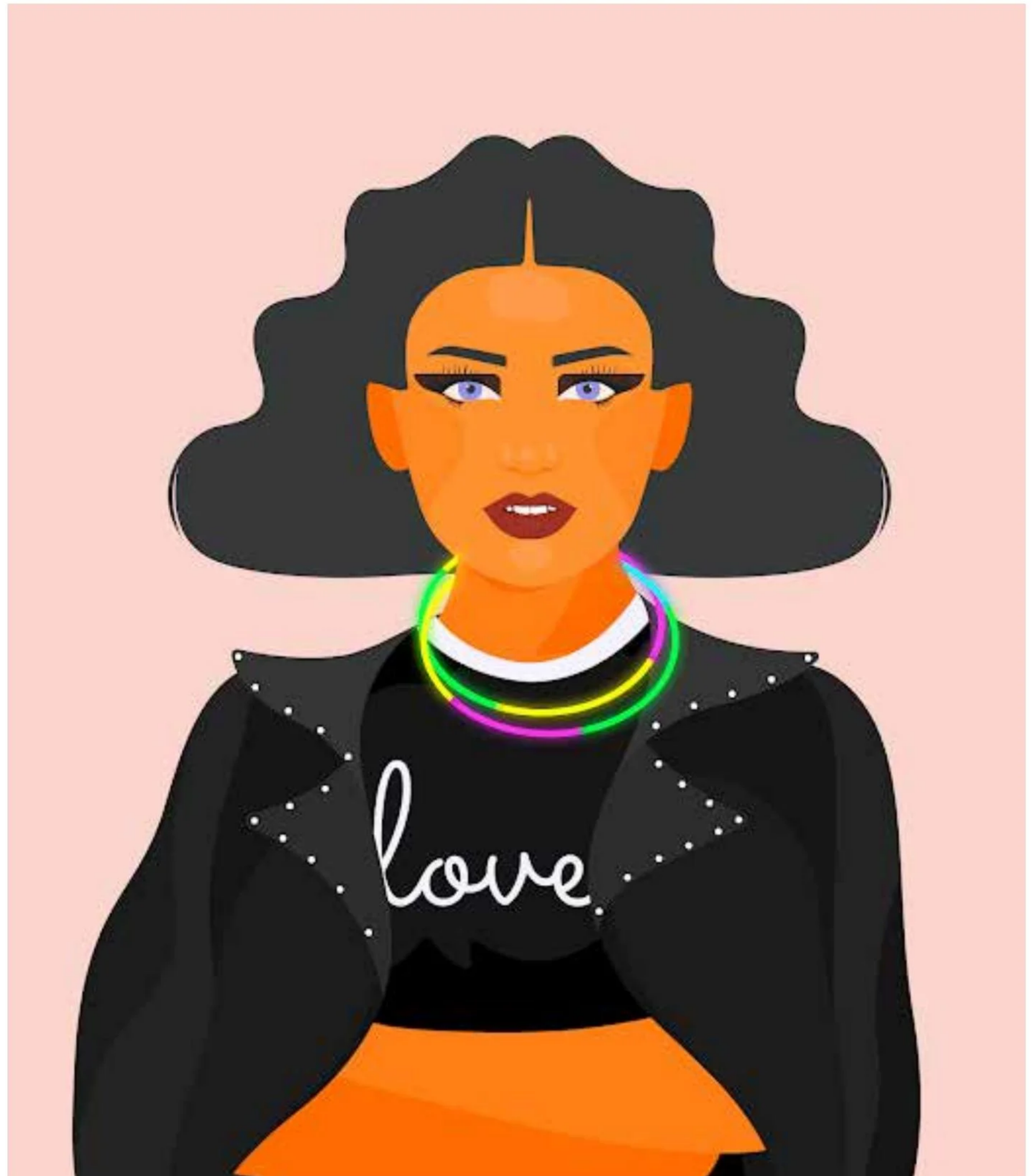
Non-fungible tokens, or ‘NFTs’. Merely uttering these words in certain circles can attract fervent criticism. The principal charge levelled against NFTs is that they amount to no more than valueless digital images capable of being downloaded by anyone at the click of a mouse; the modern-day ‘emperor’s new clothes’.

Equally, the unprecedented acceleration in the demand for NFTs since 2019, and their increased presence across auction

house catalogues, is dismissed as ‘doomed to fail’ in a repeat of the ‘Tulip Mania’ frenzy of the Dutch Golden Age.

But what if the critics are wrong?

On 10 March of this year, something unprecedented happened. For the first time, a court of law was faced with the question of whether an NFT is property. I had the privilege of representing Ms Lavinia Osbourne in front of a High Court judge who ruled that NFTs are property



BOSS BEAUTIES #680

under the law of England and Wales in *Lavinia Osbourne v (1) Persons Unknown (2) Ozone Networks Inc trading as OpenSea*.

The implications of this landmark judgment cannot be overstated. Before focussing on the facts of the case and the implications of the judgment, I will first address what an NFT is given the considerable misinformation in the public domain concerning these assets.

What is an NFT?

An NFT is a unique piece of code that represents something, whether tangible (e.g. a diamond ring), or intangible (such

as Beeple's digital collage, *EVERYDAYS: THE FIRST 5000 DAYS*). NFTs can convey a plethora of rights to holders. To this end, they are fundamentally misunderstood.

The most common mistake is to conflate NFTs and digital art as one and the same. This fails to appreciate that (i) NFTs are standalone assets, in and of themselves, distinct from what they represent; (ii) versatile in that they can represent anything, not just digital artworks; and (iii) capable of giving holders rights, whether, for example, that be under an intellectual property licence, or access to goods and

services, as one might enjoy as part of a conventional membership scheme.

Therefore, the sale of an NFT can manifest in several ways, but most commonly in:

- (i) the sale of an NFT *only* of an original digital asset;
- (ii) the sale of an NFT *only* of a physical asset; or
- (iii) the sale of an NFT or either a digital or physical asset *and* the underlying asset itself (for instance, an NFT representing a Chanel handbag and the handbag itself).

Further going to an NFT's versatility is the ability to fractionalise something and have it represented in parts by way of multiple NFTs. On Valentine's Day this year, Vienna's Belvedere Gallery 'dropped' (i.e. released for sale) 10,000 NFTs representing 100 x 100 grid sections of a high-resolution image of Gustav Klimt's masterpiece, *The Kiss (Lovers)* for €1,850 apiece. This is but one example of how NFTs are a vehicle for releasing liquidity from an underlying asset which cannot be sold (whether owing to the imposition of a trust or otherwise), without losing any rights to it whatsoever. I foresee that fractionalisation has considerable potential for many, such as the tokenisation of the contents of stately homes to release liquidity, given their considerable upkeep.

NFTs belong to an asset class referred to as cryptoassets, which also includes cryptocurrency. Unlike cryptocurrency, NFTs are 'non-fungible', meaning that they are not interchangeable, nor can a token be divided up once it has been minted.

An NFT is held in a cryptocurrency wallet on an immutable digital ledger of transactions called the Blockchain. The Blockchain is a form of distributed ledger technology ('DLT'), which is not controlled by any one entity,



BOSS BEAUTIES #691

but rather made up of several thousands of servers called ‘nodes’, located around the world. For an entry to be made on the Blockchain, all these nodes must agree with each other, thereby verifying the transaction.

NFTs are governed by something called a smart contract. This covers the rights it gives the holder as well as the circumstances in which it can be transferred.

The interplay between an NFT and the Blockchain ensures that there is a record of the time of creation; authenticity; provenance; the previous and current holders; and the whereabouts of the NFT on the Blockchain at any time (amongst other things). Crucially, as I will address in the context of this landmark case, this evidential trail can be reviewed and relied upon in litigation.

Another common misconception about NFTs is that the holder will always benefit from unlimited rights to the underlying asset they represent. The smart contract ought to set out the package of rights (if any) conveyed to the holder, including for instance a limited intellectual property commercial use licence. However, as the increasing number of copyright infringement lawsuits in the US indicate, many dealers are continuing to sell NFTs without an understanding of the suite of rights involved.

Ms Osbourne’s case

On 17 January 2022, Ms Osbourne’s MetaMask wallet was accessed without her knowledge or consent, and her two NFTs representing the digital artworks titled ‘Boss Beauties #680’ and ‘Boss Beauties #691’ removed. Over a month later, Ms Osbourne noticed that her NFTs were missing. An intelligence and tracing report was compiled by MITMARK’s Head of Intelligence, Robert Moore, which identified from an audit of the blockchain that the NFTs had been moved through several

wallets before ending up in two wallets linked to two separate OpenSea platform user accounts (OpenSea is the largest cryptoasset market platform in the world).

I made an urgent application on 10 March 2022 behind closed doors to the High Court for an interim injunction to freeze the NFTs in the two wallets identified by MITMARK. Applications of this kind are commonplace in the courts, however, the subject matter was not. The greatest threat to the application’s success was the fact that by that point, NFTs had not been recognised as property which could be frozen by way of an injunction. The closest the courts had come to deciding that this was possible was in the case of *AA v Persons Unknown* [2019] EWCA 3556 (Comm). In that case, the High Court of England and Wales held that cryptoassets are property capable of being the subject of an injunction. There was no mention of NFTs in the judgment as the case concerned the recovery of cryptocurrency only.

The issue then was that cryptocurrency is distinct by its very nature from an NFT, not the least due to its fungibility. I approached this challenge by taking the court to Lord Wilberforce’s definition of property in *National Provincial Bank v Ainsworth* [1965] 3 WLR 1 to show that NFTs have the requisite indicia of property.

The judge in Ms Osbourne’s case granted the application in full, finding that her NFTs constituted property capable of forming the subject of an interim injunction. The NFTs were subsequently frozen on the OpenSea platform, and the case is ongoing.

Enforcement

The judgment sets an important precedent in recognising that NFTs are property under the law of England and Wales, such that holders can enforce their rights of ownership in the courts in the event of

theft, and other infringements of proprietary rights. It is a further example of the High Court leading the way internationally by assisting cryptoasset holders to secure the return of their digital assets.

This legal recognition legitimises the status of NFTs as an asset, removing any doubt that an NFT is an ‘overly expensive receipt’ or other abstract construct. This legitimisation, coupled with the ease with which NFTs can be followed on the Blockchain will, I anticipate, lead to a flurry of applications for injunctions in this jurisdiction given the ever-increasing number of wallets being compromised.

It remains to be seen whether courts in other jurisdictions will follow suit and recognise NFTs as property. Therefore, for the moment at least, England and Wales is the most advantageous jurisdiction in the World when it comes to the protection of cryptoasset holders’ rights.

Broader implications

This case’s formal recognition of NFTs as property has removed ambiguity as to their tax status. It seemingly follows that NFTs are taxable in England and Wales in the usual way for capital gains and inheritance tax purposes, and for other taxes.

Finally, the judgment ostensibly removes any bar to the potential for NFTs to (i) be held on trust; (ii) used as collateral to secure a loan; (iii) be insured; (iv) be gifted; (v) form part of an inheritance... the list goes on.

Closing remarks

The High Court’s judgment in this case greatly undermines the many criticisms levied against NFTs. It can no longer be said that NFTs are valueless. To the contrary, they are a class of cryptoasset constituting property with rights recognised in the jurisdiction of England and Wales.

Strawberry Hill's recent acquisitions thanks to the Acceptance in Lieu Scheme and Arts Council England



Dr. Silvia Davoli

Curator, Strawberry Hill House & Garden

Dr. Silvia Davoli specialises in the history of collections and patronage with a particular focus on the 18th and 19th centuries. She is a research associate at Oxford University and Curator at Strawberry Hill House (the Horace Walpole Collection). Silvia is also associate editor of the *Journal of the History of Collections* (Oxford University Press). She is currently working on a book on the Italo-French collector Henri Cernuschi that will be published by Brill Publications in 2022.

The Strawberry Hill Trust was formed in August 2002 with a mission to restore Horace Walpole's gothic villa and open it to the wider public. The Trust has secured over £10 million in funding to restore the building and garden. The House has been open to the public since 2010, but it has been more or less an 'empty shell'. Since 2013 I have had the task of retracing Walpole's collection, which was dispersed at auction in 1842. Walpole's fascination with History and Art led him to build over a period of some 40 years between 1747 and 1790, a collection of more than 4,000 objects encompassing: Renaissance

majolica, Sèvres porcelain, miniatures, enamels, glasses, old master drawings, historical relics, antique Roman sculpture, modern furniture and decorative arts, coins, medals, arms and armour, and 16th, 17th and 18th century Italian, Dutch, French and, in particular, British portraits and genre paintings. The collection of art played an essential part in the perception of the villa and its unique design. Every room was conceived as a theatrical set where the objects and the architecture interacted in order to recreate a precise atmosphere. Over the years I have been able to retrace some 250 works of art



WORKSHOP OF FRANÇOIS CLOUET

A group portrait of Catherine de' Medici with her children, Charles IX (1550-74), Henri III (1551-89),

Marguerite de Valois, Queen of Navarre (1553-1615), and François-Hercule, Duc d'Anjou and Alençon (1555-84), 1561

oil on canvas, 78 x 54 in. (198 x 137.2 cm.)

Strawberry Hill Collection Trust, Accepted in lieu of Inheritance Tax by H M Government and allocated to Strawberry Hill, 2020

that once belonged to Walpole. The success of the provenance research, coupled with the wealth of information we had about the villa and its contents at the time of Walpole, induced Michael Snodin, the co-curator of this exhibition, and myself to undertake an even more ambitious project, to return some of Walpole's lost treasures to the House after more than 150 years. The exhibition *Lost Treasures of Strawberry Hill: Masterpieces from Horace Walpole's collection* (2018-19) was a great success. However, with the end of the exhibition, the emptiness of the house became even more apparent.

From the beginning, one of the museum's missions has been to reacquire works of art from the collection when the opportunity arises. The provenance research, coupled with the exhibition, have, in this context, certainly served to develop interest and unearth connections that had long been forgotten. This long-term strategy has recently started to pay off. During the last two years Strawberry Hill has received, through the Acceptance in Lieu Scheme (administered by Arts Council England) some truly exceptional donations of great importance to our small museum.

Just one year ago we received the first masterpiece. The extraordinary portrait of Catherine de' Medici and her children attributed to the studio of François Clouet (1561).

The significance of this imposing portrait of the family of, perhaps, the most powerful woman in 16th century Europe, Catherine de' Medici, cannot be overstated. It depicts the last members of the Valois dynasty, whose rule of France — which began in 1328 — was defined in the 16th century by the French Wars of Religion, and was extinguished upon



FERDINANDO RUGGIERI (C.1691-1741)

Studio d'architettura civile sopra gli ornamenti di porte, e finestre... tratte da alcune fabbriche insigni di Firenze

Florence, 1722-28. 3 volumes, folio

Strawberry Hill Collection Trust, Accepted in lieu of Inheritance Tax by H M Government and allocated to Strawberry Hill, 2021

the succession of the House of Bourbon in 1589. The painting is both historically unique — as the only surviving contemporary portrait of Catherine and four of her 12 children — and artistically rare — as very probably the first full-length composition of its type, pioneering a genre that would become something of a standard in royal portraiture. Surprisingly, there is no reference to this particular painting in Walpole's copious correspondence. The first mention of the painting is in Walpole's *Description of the Villa* and its contents published in 1774. The portrait was displayed at Strawberry Hill in the Long Gallery, over the door that leads to the Round Drawing Room. This painting is representative of Walpole's fascination with the de' Medici family. He himself considered writing a history of this family and their fantastic art patronage. The portrait is now on display in the Gallery at Strawberry Hill in all its splendour. At the same time as Catherine's acquisition, two others 'lost treasures' found their way back to the House: the three folio volumes *Studio d'architettura civile sopra gli ornamenti di porte, e finestre ... tratte da alcune fabbriche insigni di Firenze, 1722-28* by the Florentine architect Ferdinando Ruggieri (c.1691-1741) and the copy of the miniature self portrait of the painter Isaac Oliver by the antiquary and engraver George Vertue (1684-1754). These objects are important for different reasons. As it is well known, many of the books that were once part of the library at Strawberry Hill ended up in the US at the Lewis Walpole Library. The return of the Ruggieri's volumes gives us the exceptional opportunity to show them in the bookcases that were originally designed to accommodate them. The portrait of George Vertue, on the other hand, allows us to celebrate a man who had a great influence on Walpole. Indeed, it was through Vertue's studies and research that Walpole managed to publish *Anecdotes of Painting in England* (1762-71), the first history of British art ever published.

The reunification of Walpole's works of art with Strawberry Hill has also continued through generous loans and last July we dedicated a small exhibition to the most famous piece of oriental porcelain owned by Walpole, the large goldfish bowl where Walpole's favourite cat, Selima (whose name was inspired by the character of Princess Selima in the theatrical opera *Tamerlane*) drowned while trying to capture a goldfish. The reason behind the tub's great fame is linked to the fact that it was immortalised in the mock-elegy *Ode on the Death of a Favourite Cat, Drowned in a Tub of Gold Fishes*, written by the poet Thomas Gray at the request of his friend Horace Walpole in 1747. The Ode was eventually published in an elegant quarto volume illustrated by the draughtsman Richard Bentley. The result is what art historian Kenneth Clark has called 'the most graceful monument to the Gothic Rococo'. According to the 1784 *Description of Strawberry Hill*, the bowl was located in the Little Cloister, on the outside of the house, to the right of the main the entrance. For conservation reasons we could not afford to have the tub displayed outside, but we exhibited it on an octagonal pedestal in the entrance hall, not too far from where it was originally placed.

But the biggest surprise was surely the recent offer of the portrait of young Horace by William Hogarth. The painting was commissioned by Horace's father, Sir Robert Walpole, the first British Prime Minister, in 1727-28 when his son was aged 10. It depicts the young Horace Walpole in a landscape pointing at a sundial with a Cupid statue pointing to the Roman numeral X on the dial. It is the earliest significant portrait of Horace Walpole and apparently the earliest-known commissioned picture of an identifiable sitter by Hogarth.

Both Walpole and Hogarth are among the most defining figures in Georgian

society. Their works and their many achievements have contributed to shape a certain idea of 'Britishness' in both literary and artistic fields worldwide.

When I saw this little gem for the first time, I was thrilled. The portrait fully encapsulates Walpole's spirit and Hogarth's early maturity. The boy engages the spectator in a way that makes one suspect that he took an intelligent interest in the process of being painted.

This painting has never been part of the collection at Strawberry Hill but it represents a unique opportunity for several reasons. Not only does it allow us to celebrate Walpole as the creator of the House, it also in the context of its own family history, enables us to appreciate Walpole and Hogarth at the same time, their contribution to the 18th century British art world and culture, and their relationship. Both Walpole and Hogarth, in different ways, challenged the prevailing 18th century classical ideal of the canon in art and played a defining role in shaping an authentically English school of painting and architecture. Their ideas had a considerable impact on subsequent generations. Horace Walpole himself eventually became an enthusiastic collector of Hogarth, in his own words 'a great and original genius', he notably owned the portrait of the murderess Sarah Malcolm now held at the National Gallery of Scotland.

The addition of these works of art to our collection, many of which are undoubtedly masterpieces, has dramatically raised the profile of our museum and transformed our perception of Strawberry Hill in perpetuity. Our hope is that these donations may continue to benefit our museum and, in so doing, pay tribute to Horace Walpole and his inexhaustible creativity and extraordinary energy and imagination.

The legacy of Sir Nicholas Goodison



Anastasia Tennant
Senior Policy Advisor,
Arts Council England

Anastasia Tennant is Senior Policy Adviser in the Museums and Cultural Property Team at the Arts Council where she provides advice and guidance across its statutory cultural property responsibilities. Previously she worked as a private client and tax lawyer in private practice; as an in-house lawyer at the National Trust; and for nine years as a Director in Christie's Heritage & Taxation department before joining the MLA in 2009 whose functions were transferred to the Arts Council in 2011.

I first met Sir Nicholas Goodison when I was working in the Heritage and Taxation Department at Christie's. He asked me if Capital Gains Tax was payable on the sale of a siphon barometer. I proceeded to get my teeth into the subject of chattels and CGT, particularly the definition of machinery. I wrote that a barometer was as much a machine as a clock, and that it was wrong, as a matter of law, to draw a distinction between what might be termed 'moving part chattels' that have some inbuilt means of propulsion and those which operate by gravity, pressure or other natural means and that a piano, the rolling stock on a toy railway, and a barometer, were as much machines and accordingly exempt from Capital Gains Tax under this head as a watch or a steam locomotive that pulls the rolling stock.

In *Chamberlayne v Collins* (1894) 70 LT 217 Davey LJ at page 218 observed that 'there is always greater danger in giving definitions, but I think I may say that "machinery" implies the application of mechanical means to the attainment of some particular end by the help of natural forces.' In that case the Court of Appeal held that a switchback railway operating by gravity, amounted to operative machinery in construing a

restrictive covenant and indeed Lopez LJ said that 'a railway impelled by steam must be admitted to be machinery, and on this point I think no distinction can be drawn between the cases of the motive power being steam and being gravitation.'

We proceeded to strike up a lasting friendship. In 2009 I moved to what he said was 'the side of the angels' to work with Gerry McQuillan at the then Museums, Archives & Libraries Council in the Acquisitions, Exports & Loans Unit. We are now at the Arts Council known as the Museums & Cultural Property (MCP) Team. We have a unique facet in that we act as a bridge between public and private ownership, pursuing a pattern of even-handedness which seeks to balance the interests of both parties.

Essentially, we are Sir Nicholas Goodison's baby. In 2004 he recommended to Treasury that a one-stop shop should be established to administer all statutory cultural property functions — export licensing, the evaluation of pre-eminence for conditional exemption, acceptance in lieu, cultural gifts, private treaty sales and the government indemnity scheme and to provide free (and be a major



PIETRO LORENZETTI (ACTIVE 1306(?); DIED PROBABLY 1348)
Christ between Saints Peter and Paul, c.1320
tempera on panel
12 5/8 x 27 3/4 in. (32.2 x 70.4 cm.)

source of) impartial advice and guidance to owners and museums on all these programmes whose aim is facilitate and provide public access to the UK's national heritage. I tried to find a copy of the report online but none of the links to it work — I am told the issue is 'link rot', an anathema for future generations of historians. Thank goodness I have a hard copy.

Sir Nicholas said in his letter to the Chief Secretary of State when submitting his recommendations that 'if adopted, [they] will lead to more people giving works of art and other objects of cultural interest to national and regional public collections. They will lead to fewer important objects being lost abroad. I believe that they will particularly help to improve regional collections, and so enable them to offer people all over the country better opportunities for learning and enjoyment.'

They have. Witness the steady increase in pre-eminent and associated items accepted in lieu since then: in 2003/04 the AIL Panel's annual report listed 23 cases of objects whose gross values totalled £21.7 million and whose acceptance settled £15 million. With the introduction of the lifetime Cultural Gifts Scheme in the 2012 Finance Act, as advocated by Sir Nicholas in his report, in 2013/14 we reported 30 cases at a total gross value of £49.4 million whose acceptance settled the limit of our annual tax forgone budget of £30 million. For the tax year 2014/15 following the introduction of Sir Nicholas's lifetime giving scheme the Chancellor raised the annual tax forgone budget for AIL and CGS to £40 million, and this was reached in 2019/20 when 52 cases were reported with a combined open market value of just under £65 million.

As he told me in 2013, 'not all of my recommendations have been adopted, perhaps "most of..."'. The most notable are:

- the creation of our unit as a 'one-stop shop' for all matters to do with saving and providing public access to our national heritage;
- the introduction of the Cultural Gifts Scheme which gives a tax incentive to living donors (individuals and companies who are liable to UK tax) to donate important works of art and other heritage objects (including collections and groups) to be held for the benefit of the public or the nation in return for a tax reduction based on a set percentage of the value of the item donated: 30% for individuals and 20% for companies. This is working well both in attracting donors and enriching the UK's cultural heritage. There have been 95 donations completed since the scheme began and the number of offers is increasing both from private and corporate donors — the latter mainly art dealers who have given important works in honour of curators such as an album of drawings for works by Hesiod by John Flaxman (a gift from Daniel Katz Ltd to the British Museum in honour of Ian Jenkins, Senior Curator of Ancient Greece who sadly died in November 2020).
- the loss of the *douceur* where an object is acquired after export deferral by a museum. This resulted in the Ferens Art Gallery, Hull, being able to acquire a painting by Pietro Lorenzetti (active 1306(?); died probably 1348), *Christ between Saints Peter and Paul*, tempera on panel 32.2 cm by 70.4 cm. painted c.1320, at the tax remitted compensating price of £1,729,190 instead of the gross deferral price of £5,197,500; and, most recently,
- the introduction of binding offers so that where public institutions make a serious expression of interest in making a matching offer to purchase an export deferred item, they are assured that the owner will not renege on their promise to accept it. Binding offers were introduced in January 2021 and to date 2 cases have completed successfully: one of two albums containing 129 drawings and watercolours and four unpublished lithographic proofs by John Gould (1804–1881), Elizabeth Gould (1804–1841) and Henry Constantine Richter (c.1821–1902) that were bought a private individual who entered into an agreement with the Natural History Museum to put them on public display there and provide the required public access to them under the 'Ridley' rules; the other of a painting by Baldassare Tommaso Peruzzi (1481–1536), *The Nativity*, oil on panel, 100.6 by 76.4 cm, painted circa 1515 which was bought by the Ulster Museum, National Museums Northern Ireland.

Sir Nicholas's review also suggested that the *douceur* arrangement for items sold to museums by private treaty, which was available for individuals, should be extended to corporations. This happened in 2009 and now if a company owns objects, including archives, that are of national importance, or that are associated with buildings in public ownership or even land and buildings of the requisite standard, and decides to sell them, the tax system provides a financial incentive to sell them to a UK public museum or other organisation or body that holds heritage property for public enjoyment. The first such tax free acquisition from a company was that of the Wolsey Angels bought in 2015 by the V&A for £4,619,381 after the tax remission.

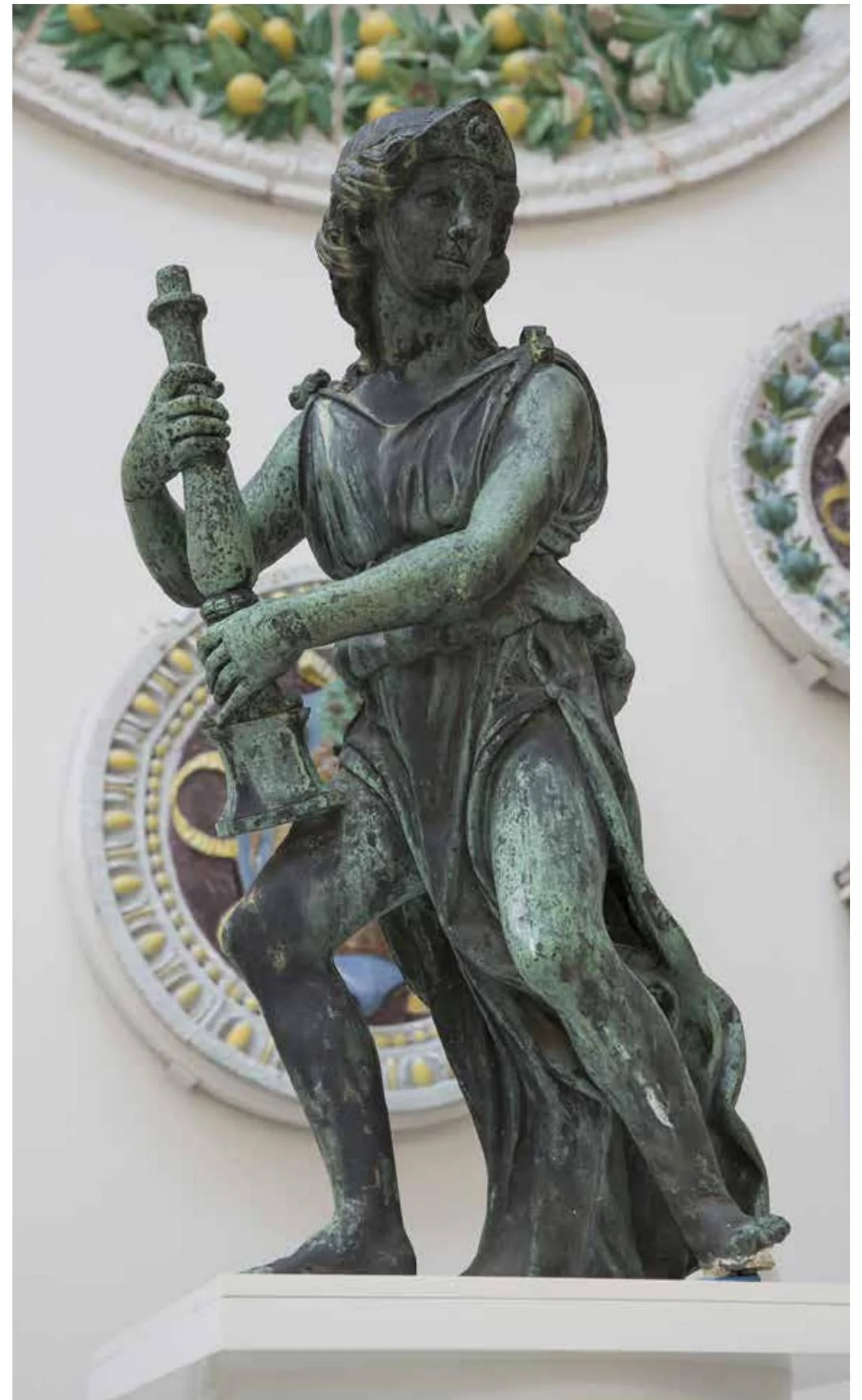
It is clear from all this that thanks to Sir Nicholas the team at the Arts Council is now the information point for potential sellers or donors, individuals and businesses alike, of objects of national interest to the UK's museums, galleries, libraries and archives.

The one thing that Sir Nicholas advocated should be subject to a separate review was

funding: 'the core funding of museums and galleries was not part of my brief. The subject arose again and again during discussion. It needs further study, looking for more imaginative solutions to museums' finances.' This is still a major issue, particularly for export deferred objects and even more so in the case of those objects of high value which, in an age of escalating values, appear to move

upwards almost inexorably, ahead of inflation and ahead of other items of their type.

Although Sir Nicholas sadly died in July 2021, the legacy of his report and his unwavering support for the arts have enriched and will continue to enrich institutions, museums and galleries across the UK; we are all beneficiaries of his knowledge, foresight and wisdom.



BENEDETTO DA ROVEZZANO (1474 - C.1552)
Two candle-bearing angels 'The Wolsey Angels', c.1524-29

The mystery of the missing Magdalene: Canova's lost masterpiece rediscovered



Scarlett Walsh

Junior Specialist,
Early European Sculpture,
Christie's

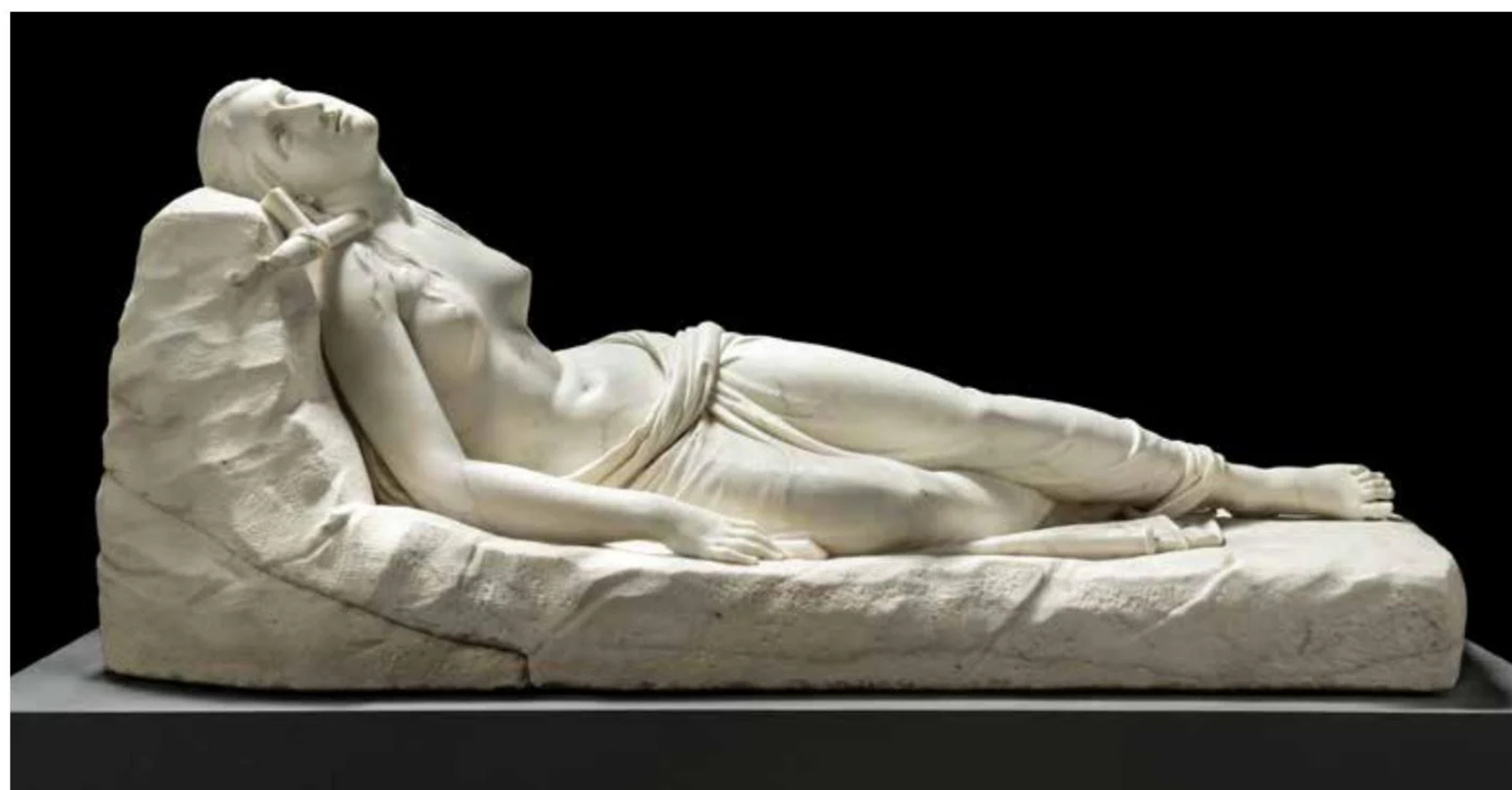
Scarlett Walsh joined Christie's in 2018 as a Global Graduate Trainee based in London. The programme saw her work across six departments ranging from Old Master Paintings to Books & Manuscripts to Post-War & Contemporary Art. She joined the Early European Sculpture Department as a Junior Specialist in the spring of 2020. Scarlett graduated from the University of Cambridge with a BA in History of Art, followed by a Master's degree from The Courtauld Institute of Art where she specialised in the visual culture of medieval Italy, with a particular focus on Sieneese artists.

Until its unveiling at Christie's, King Street in March 2022, Antonio Canova's life-size marble of the *Recumbent Mary Magdalene*, one of the great artist's last works, was considered missing by the wider art world. The sculpture, which had started life as the jewel in the collection of a British Prime Minister, was described as missing by Canova scholars as early as 1911, less than a century after its completion. Thanks to the existence of the artist's preparatory plaster model, what the marble looked like was never a mystery — its whereabouts, however, were a different story. This fascinating tale from fame to obscurity follows many twists and turns from the moment Canova finished it in Rome 1822, just months before his death, to its happy rediscovery announced two centuries later in London. It is safe to say this *Mary Magdalene* has had a journey worthy of a novel. Her story connects famous and colourful figures of Britain, past and present who'd otherwise be unlikely to share a sentence. The sculpture's encounters originate with a Prime Minister and Duchess in the 1820s to a scullery maid turned entrepreneur and activist in

the 1930s and culminate with a run-in with the British pop artists in the 1960s.

Sculptor Antonio Canova was born in Possagno, a small town in northern Italy, and rose from humble origins to become the most famous artist in Europe by the dawn of the 19th century. Immensely popular in his day, he is widely considered the greatest exponent of Neoclassical sculpture who managed to imbue his works with a sense of restrained grace, inspired by (but not blindly copying) sculptures from Ancient Greece and Rome. He received commissions from some of the most famous personalities of his era, carving for European monarchs and becoming a favourite of Napoleon and the Bonaparte family. Canova's celebrity and influence were instrumental in maintaining Rome as a European centre for contemporary art into the 19th century. As Lord Byron wrote in 1818, 'Europe — the world — has but one Canova'.

Among English collectors, who at that time were enthralled by the art of classical antiquity, Canova held a special place. The artist was seen by some as having the



ANTONIO CANOVA (1757-1822)

Recumbent Magdalene, 1819-22

marble

29 ½ x 69 ¼ x 33 ¼ in. (75 x 176 x 84.5 cm.)

Estimate: £5,000,000-8,000,000

Old Masters Evening Sale, London, 7 July 2022

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ability to match or even improve on the skill of the ancients and like many of his contemporaries, had an intimate knowledge of their works due to his role as a restorer. For young aristocrats on their Grand Tour, Canova's workshop became a must-visit destination, alongside the longstanding tradition of visits to ancient ruins and collections of Renaissance masterpieces. When Canova visited London in November 1815 he was entertained by the Prince Regent (later George IV) who commissioned the marble group *Mars and Venus*, now in the Royal Collection. It was also for an English collector, the 6th Duke of Bedford, that the artist completed a version of his celebrated *Three Graces* in 1817. The sculpture was housed in a purpose-built 'Temple of the Graces' at the Duke's home Woburn Abbey and set on a rotating pedestal so that it could be admired from all angles.

The concept of a *Reclining Magdalene* appears to have been present in the artist's mind as early as 1805 when he experimented with ideas for the composition in sketches. It was not until September 1819, however, that the artist had it finalised in a plaster model, exhibited at his studio. Whilst there it was admired by the first pivotal figure in the *Magdalene's* tumultuous provenance tale: Elizabeth Cavendish, Duchess of Devonshire. Moving to Rome in the early 19th century after the death of her husband, the 5th Duke, Elizabeth became an integral patron of the arts and arbiter of taste. She funded excavations in the ancient Forum, held Salons and, most importantly for our story, befriended Canova. From Rome she facilitated the commission in 1819 of a marble *Recumbent Magdalene* for her brother-in-law the British Prime Minister Lord Liverpool. Following Canova's death she wrote to promise the patron that the piece, which was costing him £1,200, had been completed by the artist himself rather than left unfinished. The Duchess declared

to the Prime Minister in November 1822 that he had 'the last strokes' of Canova's chisel. Their surviving correspondence, whilst also tending to practical concerns, betrays a great affection for the artist, characteristic of the esteem he enjoyed in English society. The following month, the Duchess wrote to Liverpool 'he was as you say, both as an artist and as a man worthy of all love and admiration. He has left a blank which cannot be filled up'.

The next chapter in the *Magdalene's* story begins in 1856 when the sculpture was bought at auction in London from Christie's by the 1st Earl of Dudley, known as Lord Ward. He had a keen interest in the arts, was a collector and served as trustee of the National and Portrait Galleries. Only a year after the sale at Christie's, Lord Ward chose to include his new purchase in the works

he lent to the Manchester *Art Treasures* Exhibition. The exhibition was an enormous undertaking, intended to showcase the finest art in Britain that comprised some 16,000 pieces and attracted 1.3 million visitors, including Queen Victoria.

Two decades earlier Lord Ward had bought the opulent Worcestershire mansion, Witley Court for £900,000 (about £48 million today). After years of renovations, Witley became the new home of the Dudley family and of Canova's *Magdalene*. It is at some point during her time at Witley that the *Magdalene's* authorship and subject were forgotten, she entered the house hot on the heels of *Art Treasures* fame and left it an unidentified classical figure. How exactly this happened can only be speculation, but was likely due to the tragic events that caused the sculpture to change hands in



Detail of the *Magdalene* from the reverse.

quick succession in the early 20th century. In 1920, Rachel Ward (née Gurney) Countess of Dudley, wife of the 2nd Earl, drowned whilst swimming in Connemara, Ireland. The tragedy together with mounting debts prompted the 2nd Earl to sell Witley and its contents to the carpet manufacturer Sir Herbert Smith that same year. Smith lived at the residence until misfortune struck again — fire broke out on the night of 7 September 1937 spreading from the east wing across much of the house. Rather than rebuild, Smith sold the house and auctioned off the contents the following year. The *Magdalene*, which had survived the fire in an unaffected part of the house, was listed in the catalogue as an unidentified 'classical figure of a dying woman holding a cross' and sold for 40 guineas, a fraction of what Lord Liverpool had paid.

The *Magdalene's* new owner, Violet Van der Elst, although unaware of her sculpture's secret, was no less fascinating a character.



Pauline Boty, the only female British pop artist, on the steps of Addison Road and Canova's *Magdalene* in the front garden, 1960s. Photographer unknown.

The life and times of the *Magdalene's* first female owner are worthy of an article in itself but, in short, Mrs. Van der Elst was a scullery maid who became a self-made millionaire. The daughter of a coal porter and washer woman she went on to create the first brushless shaving cream. Aside from her entrepreneurial success, Van der Elst was an avid art collector and activist and is most known today for her tireless campaigning against the death penalty. During the course of her life she owned many grand properties, including Harlaxton Hall which she furnished with her purchases. Towards the end of her life, in 1959, she sold her property in Addison Road, Kensington complete with 'classical figure' in the front garden to the antiques dealer Jonathan Manasseh.

It is at Addison Road in the 1960s that the *Magdalene* had yet another extraordinary twist in her tale. She shared the house with the young British pop artists Pauline Boty, Peter Blake, Derek Boshier and textile designer Celia Birtwell. In an interview in 2017, Birtwell recalled that she, then in her early 20s, rented the room from Manasseh for £3 a week. The house was a centre of the bohemian art world of the Swinging Sixties, and featured in Ken Russell's film *Pop Goes the Easel* in 1962. The *Magdalene* was an uncredited extra, shown in one shot being sat on by Blake. Although no longer feted by aristocracy, it is safe to say that the *Magdalene* still enjoyed glamorous company. A photograph of Boty on the steps of the house captures the *Magdalene* in the front garden. It is a wonder to think what might have happened had a Canova scholar or student wandered down the right street around Holland Park at that time. Perhaps they wouldn't have believed their own eyes.

When it was bought at auction at Sotheby's, Billingshurst in 2002, the secrets of the sculpture were very close to being discovered. Not at that auction itself (it sold

for just over £5,000 to the present owners still unidentified) but after the sale its photo in the catalogue was recognised. In 2017, art dealer Hilary Chelminski wrote an open letter in the *Antiques Trade Gazette* detailing this discovery in the hope that the new owners would see it and realise what they had in their possession. This plan ultimately worked and set off the chain of events, including the enormous amount of provenance research undertaken by Alice Whitehead (Francis Outred Ltd), that led to unveiling of the rediscovered masterpiece at Christie's in March.

That a life-size marble by an exceptionally famous artist could lie like Sleeping Beauty herself for near 100 years in gardens unrecognised is almost inconceivable. Its rediscovery is not only an important moment for Canova's oeuvre, filling a missing link in his magnificent body of work, but also a story that has provided a wonderful opportunity to delve into the lives of all those whom the *Magdalene* encountered along the way. Recognised once more as a masterpiece after a century of obscurity, it appears the *Magdalene's* luck has changed again in her favour, hopefully this time for good.

The *Recumbent Magdalene* will be on view at Christie's, King Street from 6 June 2022 until its goes under the hammer on 7 July in the Old Masters Evening Sale as part of Classic Week, London.



Witley Court on fire with some of the rescued contents piled outside, September 1937. Photographer unknown.

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HENRI FANTIN-LATOURE (1836-1904)

Roses trémières

oil on canvas

31 ¾ x 24 in. (81 x 61 cm.)

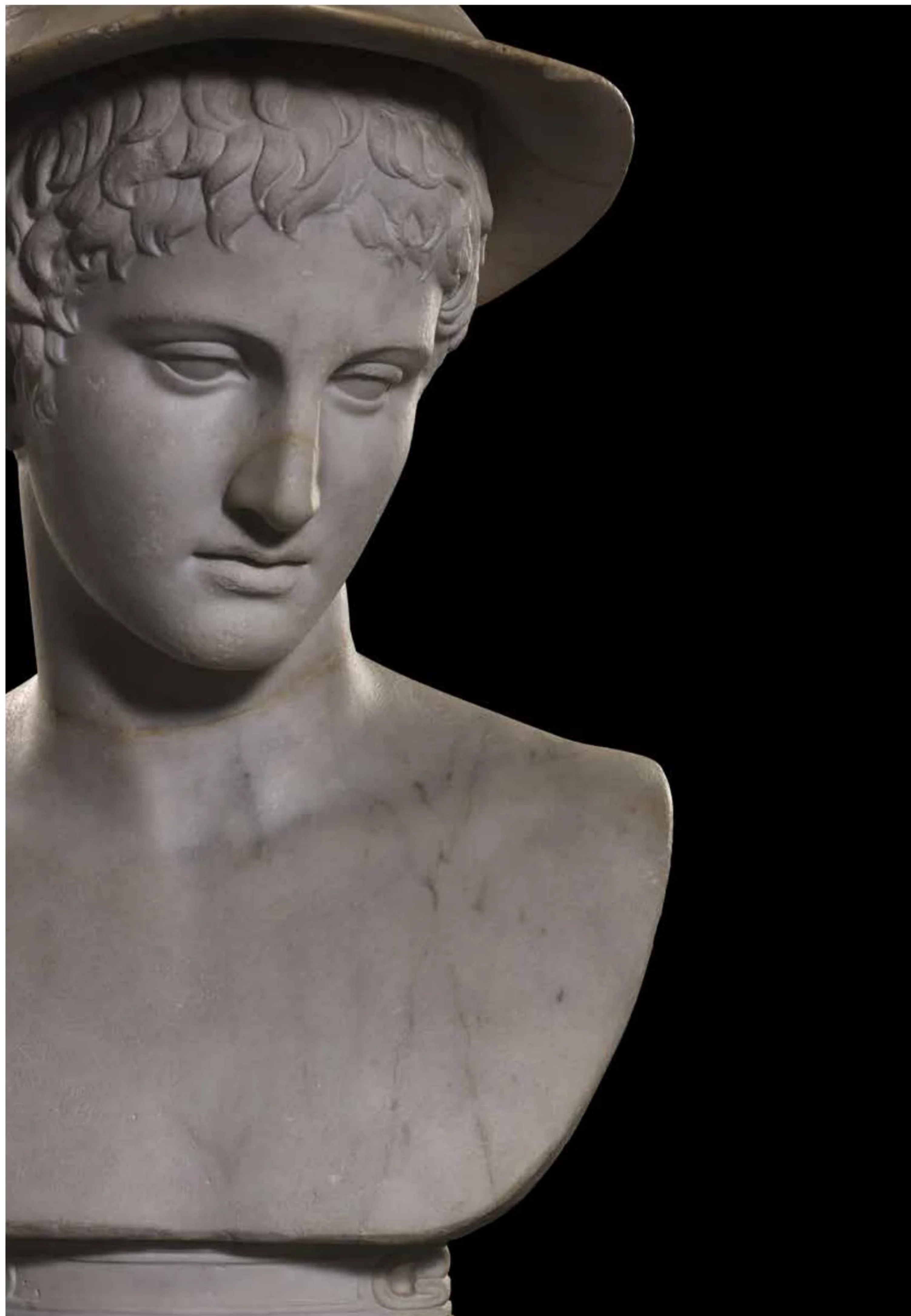
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