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What the acceptance in lieu of Churchill's paintings tells us about pre-eminence

How do you know what makes an artwork outstanding? This is the question our tax authorities have to grapple with when they accept works of art after death

Art acquired by the nation in lieu of tax has been in the news lately. Thirtyseven of Winston Churchill's paintings have been accepted recently in lieu of inheritance tax, while over 40 works by Frank Auerbach have been accepted too. Two very different twentieth century painters provide a reminder of one of the key issues when it comes to negotiating the acceptance by the state of works of art in lieu of inheritance tax.

With the approval of the secretary of state for culture, media and sport, HMRC may agree to accept a heritage asset in lieu of inheritance tax on death. The item is taken at its market value, as negotiated with HMRC, and HMRC has an annual budget of £30 million for acceptance of heritage property in lieu of tax.

What makes the scheme attractive though is that a lower rate of tax is applied to the item itself. The result: in effect, a credit against tax of 70% of the value of the item taken in lieu, compared with a normal 60% for the value of an item net of inheritance tax.

An item accepted in lieu of inheritance tax will be allocated to a public collection which will often be directly involved in the negotiations. A lifetime long-term loan to an interested museum can be a prelude to a successful offer in lieu on death.

To be accepted, the assets offered must be of pre-eminent quality. What does this mean? Must it be a Rembrandt?

First, the scheme applies not just to art. The Arts Council's 2014 Report on the Cultural Gifts Scheme and Acceptance in Lieu includes not only a good many paintings but also a 17th century leather waistcoat (battledress for an age when mobility was becoming more important than armour), land at Mount Stewart, the Northern Ireland seat of the Marquesses of Londonderry, porcelain and an architectural model.

Pre-eminence is assessed by reference to four questions:

- association with our history and national life,
- artistic and art-historical interest,
- importance for the study of art or art history, and
- association with a particular historical setting.

What do the Churchill and Auerbach paintings tell us about the assessment of pre-eminence?

EH Gombrich said of Winston Churchill, in an article for The Atlantic, that as a painter he was 'born into a generation whose artistic idiom was more easily accessible to the amateur than was any previous style of paintings'.

Compare his view of the of the River Meuse painted in 1946 with Auerbach's EOW Looking into the Fire II which is illustrated in the Arts Council's 2014 report. There is no doubt that the one is more accessible than the other. One can speculate on the counterpoint of the tranquillity of the Meuse as painted and the fact that in the mind of the painter the very name of the river must have resonated with the German breakthrough on 13 May 1940 but, when all is said and done, we have Churchill the amateur who likened his own painting to 'a joyride with a paintbox', an antidote 'to the strain of things'.

In contrast, Auerbach is a professional's professional, with exhibitions around the world. The Tate's website has a brief biographical note telling us among other things that the light in Auerbach's paintings has been likened, despite the 'piling on of paint', to that which glows 'through the late, great, thin Turners'. According to Dr Ernst Vegelin at the Courtauld Institute, 'Frank Auerbach is one of Britain's greatest living artists.'

The grounds for the assessment of the Auerbach works (offered by the estate of Lucian Freud) as being pre-eminent are reported as being 'especial artistic or art-historical interest' and 'especial importance for the study of [a] particular form of art, learning or history', that is, the second and third grounds for pre-eminence.

The press releases have not revealed the Acceptance in Lieu Panel's grounds for accepting the Churchill paintings but they would certainly fulfil criteria one and four. The 35 allocated to Chartwell are clearly closely associated with that historical setting. The mere identity of the amateur painter makes them all closely associated with our history and national life.

We can leave the merits of the amateur painter's work to be debated by the critics but the acceptance of these paintings provides a useful reminder of what it is to be pre-eminent in the context of the Acceptance in Lieu scheme. If painting was to Churchill the means by which he was able to 'bear the strain of things', many of these paintings could well be considered among the items most closely associated with our history and our national life.

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