

# Art and the Market: Examining the Intersections between Museums, Philanthropy, Commerce and the Law

The Guildhall York, 11th - 12th May 2023

Organised by Dr Richard McClary, History of Art Department, and Dr Marta Herrero, School of Arts and Creative Technologies, with funding from the British Academy on behalf of the Department for Business, Energy and Industrial Strategy and the University of York.

## Conference Programme:

### Thursday 11th May 2023

**9-9:30** - Arrival and welcome refreshments

**9:30-10:00** - Welcome from University of York Vice Chancellor Charlie Jeffrey and conference organisers Dr Richard McClary and Dr Marta Herrero.

**10:30-11:00** - KEYNOTE LECTURE

1. **Filip Vermeulen**, Erasmus School of History, Culture and Communication, Rotterdam:

*Crossing Boundaries: Dealers and the Internationalization of the Art Trade in Early Modern Europe*

#### Abstract:

Professional art dealers first made their appearance during early modern times in the Low Countries, most notably in Antwerp during the late sixteenth century. From then on and in an ever more complex marketplace, these intermediaries would play an increasingly seminal role in the establishment of an art market ecosystem in Europe. As arbiters of taste, they mediated between artists and their work and collectors by lowering search and transaction costs. Furthermore, in an arena where art quality is difficult to ascertain, art dealers assisted art lovers in making informed decisions about what to purchase and admire. And by probing new markets abroad, they significantly contributed to the internationalization of the art trade in early modern times.

My presentation will map the historical development of these middlemen against the backdrop of a burgeoning European art market. I will examine how art dealers were instrumental in shaping the trade in visual arts and the impact they thereby had on taste formation. I will present a tentative typology of art dealers as they emerged over time, ranging from the local sellers of cheap prints to gentlemen dealers and the vertically integrated art dealing firms which operated internationally, and which have laid the foundation of the global art market system today.

**11-11:30** - Mid-morning refreshments

11-12:30 - Session 1:

## ENTREPRENEURIAL PHILANTHROPY AND THE ART MARKET: A HISTORY OF CROSS-SECTOR COLLABORATION

### 1. Clare Blatherwick, Clare Blatherwick Jewellery:

*The Fascination of Jewellery*

#### Abstract:

Looking at the collections of two contemporary, but very different women and examining their approaches to their jewellery and objects, this richly illustrated talk looks at how the backgrounds of Marjorie Merriweather Post and Evalyn Walsh McLean influenced their choices and the messages those pieces sent in respect of status, wealth and politics. Whilst the women themselves are not necessarily household names, many of the pieces in their collections are internationally renowned.

### 2. Frances Fowle, University of Edinburgh:

*Stanley Cursiter and the Maitlands: Developing a strategy for acquiring modern French Art at the National Galleries of Scotland.*

#### Abstract:

In 1960 Alexander Maitland, an Edinburgh lawyer, donated an important collection of Impressionist and Post-Impressionist art to the National Galleries of Scotland in memory of his wife Rosalind. This was the culmination of thirty years of collaboration between the Maitlands, Stanley Cursiter (then director of the National Gallery of Scotland) and the dealer Arthur Tooth & Sons. During a period when the market for Impressionism was fast developing, Cursiter was eager to build up the collection of modern French art, while negotiating the conservatism of the Board of Trustees and a modest budget for acquisitions. His solution lay in an unwritten partnership with the Maitlands, who inherited their wealth, as well as their philanthropic spirit from Victorian enterprise. As this paper shows, through liaising with key dealers such as Alex Reid, and pioneer collectors like Sir Michael Sadler, Cursiter developed a strategy whereby the Gallery acquired major Impressionist works around which the Maitlands could model their own collection. Nevertheless, as correspondence between the couple and the National Galleries shows, it was often Rosalind who was the more risk-taking and entrepreneurial.

### 3. Marta Herrero, University of York:

*Art exhibitions, entrepreneurship, and philanthropy: Francis Howard's National Loan Exhibitions in London's Edwardian Art Market, 1909-1914*

#### Abstract:

Between 1909 and 1914 American artist, art critic arts administrator, Francis Howard, organised two 'National Loan Exhibitions' (NLEs), at London's Grafton Galleries and Grosvenor Gallery respectively. Proceeds from entry tickets and the sale of exhibition catalogues were donated to support purchases for the National Gallery's and Tate Gallery's collections. This presentation explores some of the ways Howard garnered support for the exhibitions: from his choice of artworks, to the network of influential individuals and of organisations, such as the National Art Collections Fund. It will argue that Howard deployed this exhibition/fundraising model and his expertise as an art dealer and administrator to gain influence over the collecting policies of the National Gallery, and of the type of contemporary

art to be exhibited at the Tate Gallery. The presentation will conclude by examining how Howard practiced an entrepreneurial philanthropy; a mindset and practice seeking to maximise financial profit for a philanthropic end via the deployment of cross-sector collaborations, between London's commercial art market and the nonprofit artworld.

**12:30-13:30** - Lunch

**13:30-15:30** - **Session 2:**

## **LEARNING FROM THE PAST: HISTORIOGRAPHY OF THE ART MARKET**

### **1. Isabelle Gadoin, Sorbonne Université:**

*From art lovers to collectors, intermediaries and dealers: the many faces of Victorian amateurs of Islamic art and the progressive constitution of an art market*

#### Abstract:

The paper will look at the many different strategies followed by Victorian amateurs to secure the best possible pieces of Islamic ceramics, metalwork and carpets in the last quarter of the 19th century, a moment of time when the very notion of "Islamic" art had not yet been defined and the terminology hesitated between "Oriental", "Muslim" and "Arab" art, among many other vague denominations. It will show how a few enterprising travellers with very different profiles (from members of the military posted in the East to officials filling diplomatic bags with "curios", or artists launching unofficial excavations) started creating small selling networks which at first completely short-circuited the art market. In those early hours of the creation of collections of Islamic art, even museums tended to trade with lonely individuals just as much as with the official art market, acquiring some of their objects in conditions which appear highly questionable today. The paper will centre on a few figures of those shady intermediaries, some of whom, in the name of art, always refused to call themselves "dealers" – although making a living on the sale of art. It will point some of the ethical difficulties posed by those practices at the basis of some of the most impressive Western collections of Islamic art.

### **2. Richard McClary, University of York:**

*Opaque Aspects of the Market for Islamic Art in London in the Interwar Years: Spero, Kehyayian and Gulbenkian's 1923 Iznik Tile Deal Examined*

#### Abstract:

While the increasing number of auctions that were becoming a means of exchanging objects of Islamic material culture in the interwar years in London are relatively well-known, the private transactions that occurred between dealers, collectors and agents are far more opaque. Using unpublished letters and invoices in the Gulbenkian Foundation archive, a little more light can be cast on this aspect of the art market. Through a long and protracted process of negotiation between the owner, the dealer, the agent and the buyer, a number of topics with wider relevance are examined, including attitudes to provenance, trust and value. The negotiations and transaction at the centre of this paper involved the purchase of over 500 Iznik tiles that had been removed, in at best dubious circumstances, from a range of Ottoman buildings. They were acquired for the Paris-based oil magnate Calouste Sarkis Gulbenkian in 1923 in what was one of the largest such transactions to take place in the

interwar years. In addition to a study of the deal itself, a selection of the tiles themselves will be examined, in order to better understand some of the interventions that such decontextualized architectural elements undergo once they leave the buildings they were originally installed on, and enter the commercial art market.

### **3. Katalin Andreides, Andreides Law:**

*Introducing TREE - a project aimed at transforming restitution policy in Eastern Europe*

#### Abstract:

The international framework that is supposed to protect cultural heritage and cultural integrity concentrates on three core objectives: i) protection against aggression targeting cultural property, cultural identity and common heritage of mankind, ii) protection against looting and illicit trade of cultural property and iii) restitution claims concerning looted works of art and cultural goods. This international (and EU) regulatory framework operates with public international, administrative and criminal law instruments.

The contribution aims to identify some weaknesses of the fragmented, incomplete nature of the existing international and regional (EU) protection and public enforcement system. Contracting states typically provide for significantly differing implementations and operate with varying definitions of cultural property. Confusion is also common about key concepts such as destruction, looting and illicit trafficking.

This analysis will cover how an ineffective regulatory framework may place unreasonable burden on those who collect, study or trade in art. While guarantees of property and valid legal acquisitions are firmly established by international instruments and national constitutions based on the rule of law, newly introduced “ex post” changes to rules unavoidably interfere with the requirement of legal certainty and may harm legitimate expectations of public and private collections. The proliferation of restrictions and due diligence requirements affect art market various segments differently. This may lead to a distortion in the dynamics of the international art trade.

Finally, an enhanced analysis of cross-border restitution claims will be considered. Over the past decade these claims have played a central role in the legal and political understanding of the protection of, and legal trade in, art and cultural property. This assessment will focus on the special case of the Nazi-confiscation that was followed by the Communist era nationalisations in Central and Eastern Europe. The study will explore how specific regional history and politics led to a controversial concept of restitution and compensation, and generated practices that still refuse to review the question of ownership. Central and Eastern European experiences may be useful to explore innovative ideas to address the complex legal and policy issues surrounding the question of restitution and to investigate to what extent wartime looting may feed the Western art trade.

**15:30-16:00** - Afternoon refreshments

## **Friday 12th May**

**9-9:15** - Arrival and welcome refreshments

**9:15-10:45** - **Session 3:**

### **TRAJECTORIES OF VALUE: ART, LOOTING AND THE LAW**

**1. Emma Waring, University of York:**

## *Contracts make the (art) world go round: the vital role of formal contracts in the art market*

### Abstract:

Formal contracts are found everywhere in the art market, whether commissioning, loaning, purchasing, selling or gifting artworks. Such contracts have also become an expression of contemporary artistic practice, being both the medium of the work and a means of revealing and documenting negotiations and relations between the parties. Yet, despite their ubiquity their use in the art market remains contested, sometimes viewed with disinterest or outright suspicion due to the disparities of relative bargaining power and information deficits between parties, as well as the lack of meaningful art market based remedies for breach of contract. However, the traditional reliance in the art market on a parallel extra-legal system of informal understandings based on reputation and goodwill, is no longer tenable. The expansion of the art market and its participant-base, as well as the significance of documenting transactions from both a provenance and money-laundering perspective means that written formal contracts are increasingly vital. Goodwill and reputation will always remain important aspects of a functioning art market, but the role of formal written contracts needs to be better understood and appreciated, particularly for their ability to reveal (before it is too late) misaligned ambitions and expectations.

### **2. Till Vere Hodge, Payne Hicks Beach:**

#### *Legal and moral issues in the context of resolving claims to looted artworks*

### Abstract:

The talk will introduce different categories of claims to looted artworks and explore the legal and moral issues by which these claims are typically assessed. This will be done by reference to Till Vere-Hodge's own practice as a dedicated art and cultural property lawyer. The starting point for the legal analysis of a claim will be a brief consideration of legal title, statutes of limitation and acquisitive prescription. Legal title will be compared with moral considerations. Consideration will be given to the extent to which the framework for dealing with Nazi-looted artworks may inform other sub-categories of World War II related losses and instances of looting from different historical contexts, such as the colonial context. The talk will use two case studies: First, practical insights will be given into some best practice standards for private collections in relation to dealing with "red-flag" artworks, provenance research and reaching amicable settlements to make a "red-flag" artwork marketable and saleable. By contrast, a second case study will be used to demonstrate how careless decision-making can lead to outcomes that are diametrically opposed to the ones which restitution policy generally aims to achieve. The second case study concerns the so-called Benin Bronzes.

### **3. St John Simpson, British Museum:**

#### *Stopped, identified, displayed, returned: case studies from Iraq, Iran and Uzbekistan*

### Abstract:

This paper looks at how the British Museum works with law enforcement agencies, the trade and private individuals to secure the safe return to their home country of antiquities which have been stolen or trafficked. It uses a case-study approach to give examples from different countries and shows how this process builds collaboration and trust. It underlines how museums can play a major role in informing the public about the ethics of collecting and that they are able to play an effective but neutral role in a sensitive political landscape.

**10:45-11:15** - Mid-morning refreshments

**11:15-12:45** - **Session 4:**

**CONTEMPORARY AND HISTORICAL TRANSNATIONAL EXCHANGES:  
INTERNATIONAL PERSPECTIVES ON ART AS A COMMODITY**

**1. Mark Westgarth**, Leeds University:

*'A Joy Forever?' - Art as Commodity in the 19th century*

**2. Renate Buijze**, Erasmus School of History, Culture and Communication, Rotterdam:

*The extraordinary tax treatment of philanthropy for art and culture*

Abstract:

With few exceptions, European countries stimulate charitable giving to Public Benefit Organisations (PBOs) via tax incentives (Philea, Philanthropy Europe Association 2021, pp. 37-38). In most countries art and culture are considered public-benefit purposes and thus, donors of PBOs active in art and culture can also benefit from a tax benefit on their donation.

Both the Netherlands and Italy provide specific tax benefits in personal income tax for donations to art and culture, creating a preferential tax treatment for donations to arts and culture in comparison to donations to other charitable purposes. Why are donations to the arts in these two countries treated differently than donations to other charitable causes and how can this be justified?

If we take a closer look at the tax benefits, the set-up highly differs. In the Netherlands, donations to organizations recognized as a so called 'Cultural PBOs' can be deducted from taxable income for 125% of the value of the donation, with a maximum increase of €1.250. In Italy, the Art Bonus allows a tax credit of 65% on donations to public cultural heritage aimed at specific interventions. In Italy, the Art Bonus is linked to an online platform that keeps track of causes supported and donations made, whereas in the Netherlands no publicly available records can be consulted. Why do both countries use such different set-ups and what are the advantages and disadvantages of each of the systems?

**3. Michael White**, University of York:

*Gifts That Keep on Giving: Marcel Duchamp's Readymades*

Abstract:

While many of Duchamp's so-called readymades came about through the appropriation of commercial objects, they were themselves rarely if ever subject to commercial sale. The majority found their way directly to the artist's friends and patrons without passing through a gallery or art dealer, some explicitly as gifts. Conceived in New York at a moment when the market for contemporary art there expanded very rapidly, the readymades have a surprisingly oblique relationship to it. This paper considers some reasons why that might have been the case.

**12:45-13:45** - Lunch

**13:45-15:30** - **Session 5:**

**ROUND TABLE DISCUSSION led by Dr Kathryn Brown**

**15:30-16:00** - Afternoon refreshments