



Yates, D. (2015) Museums, collectors, and value manipulation: tax fraud through donation of antiquities. *Journal of Financial Crime*, 23(1), pp. 173-186. (doi:[10.1108/JFC-11-2014-0051](https://doi.org/10.1108/JFC-11-2014-0051))

This is the author's final accepted version.

There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

<http://eprints.gla.ac.uk/108812/>

Deposited on: 23 October 2015

Enlighten – Research publications by members of the University of Glasgow
<http://eprints.gla.ac.uk>

Museums, collectors, and value manipulation: tax fraud through donation of antiquities

Donna Yates

Private antiquities collectors and the museums that display antiquities enjoy a mutually beneficial relationship based on philanthropic donation. Collectors who donate objects to museums gain a number of social accolades and museums improve and supplement their collections. As the improvement of museum collections and, thus, public access to antiquities has been deemed by most governments to be a public good, a variety of tax incentives have been introduced to inspire donations. These incentives are usually based on the assessed value of the object being donated. However, the valuation of antiquities is subjective and problematic and the operations of both the antiquities market and the museums sector are traditionally opaque. Because of this, tax incentivisation of antiquities donations is susceptible to fraud.

In this paper I will discuss the key aspects of the international trade in antiquities and the practice of philanthropic donation of object to museums that allow for certain types of tax deduction manipulation. I demonstrate this with a case of tax deduction manipulation from Australia and a case of tax fraud from the United States.

1. Symbiotic relationship between museums and antiquities collectors

Since the establishment of the idea of the public museum in the 18th century, a reciprocal relationship has existed between these institutions and wealthy collectors of antiquities. Museums were founded to serve the public good and progressively moved elite-maintained culture from the private to the public domain (Bennett, 1995:94; Hooper-Greenhill, 1992: 174). A museum's goal then, as it is today, was "to accumulate, preserve, and display art works as a value on behalf of society, and in order to educate the public in their appreciation" (Zolberg, 1981: 103). As European phenomenon, museums were the repositories of the material culture of empire and the advances of science. The wonders of the Classical world, which were thought to be the foundation of European greatness, the curios of the Colonial world, which documented conquests achieved, and scientific collections, which formed a 'totalizing order of things' (Bennett, 1995: 96).

The cores of the collections of these new "national" museums were the objects of empire that fell into government possession (e.g. the Louvre, which also contained many pieces that were "nationalised" post revolution, See Hooper-Greenhill (1992)). Yet from the outset these institutions depended on the donation of objects from wealthy individuals. These collectors turned donors not only received the positive social benefits of being seen as benefactors of art and education, they often obtained various financial gains from their philanthropic activities.

For example, in the 1753 Sir Hans Sloane, a British physician, bequeathed his massive collection of over 71,000 antiquities and other items to King George II "for the nation" (British Museum, n.d.). Via an act of Parliament, this collection became The British Museum, which opened with free entry to "all studios and curious Persons" 1759. Sloane, of course, was dead at that point, but the bequest came with a clause: "the nation" would pay £20,000 to

Sloane's heirs, no small sum in the money of the day (ibid). The government did not exactly buy Sloane's antiquities, but a payment was made.

Moving to the modern day, museums still depend on the donations of wealthy benefactors, both in the form of monetary donations and in the form of art and artefact collections. Donations of objects are of particular importance to museums due to the increasing cost of purchasing art and antiquities on the market, and the desire to spend monetary donations on other things such as security, display, conservation, etc. The need to attract objects is great and museums are known to "court" collectors as potential donors. On the small scale, museums may pamper collectors, provide specialised tours, and perform other actions that bring collectors into the "cultured" world of the museum.⁸ On a larger scale, for particularly wealthy donors with opulent collections, museums may offer trusteeships, and thus donors and patrons are become the museum's governors (Zolberg, 1981: 104). In a saturated market, where museums are competing for the collections of a limited number of donors, these institutions are engaging in a number of schemes to attract patrons. The Guggenheim, for example, holds an annual "Young Collectors Party", which is preceded by an exclusive dinner for those already donating to the museum, bringing the Guggenheim "one step closer to cementing relationships with these rising philanthropists and their friends" (Gelles, 2014). At times museums go even further and "attempt to control the private collecting of prospective donors by "helping" them select [objects]", with the hope that the collector will eventually donate those objects to the museum (Zolberg, 1981: 112). This practice comes close to violating the law in many jurisdictions.

It is clear what the museums gain from this relationship: donations of money and objects which further their standing among their peers and, ostensibly, benefit the public that they serve. Collectors turned donors, in theory, receive social rewards for their philanthropy: they gain standing among their peers and can claim responsibility for public benefit (e.g. White, 1998: 175). However, due to the value of art and artefacts on the international market, cultural accolades are not deemed enough reward for this public benefaction. Many governments consider the donation of cultural objects to museums to be a public good and offer a variety of tax incentives, usually deductions, to donors. This is not quite the lump payment to Hans Sloane's heirs, but it is in a similar vein. If we accept that museum collections are a public good, then everyone wins. Collectors get social and tax benefits, museums get objects, and the public gains a variety of intangibles such as knowledge, education, entertainment, and inspiration. Yet, the situation is far more complicated.

2. Issues with the donation of antiquities to museums

One of the most pressing problems associated with the relationship between museums and collectors is that the global trade in antiquities, is murky at best and almost entirely criminal at worst. There is a significant amount of evidence that links the trade in antiquities to looting of cultural sites, trafficking of cultural goods, and illicit or illegal sales (Bowman 2008; Brodie & Renfrew, 2005; Brodie et. al, 2013; Campbell, 2013; Chippendale & Gill, 2000; Felch & Frammolino, 2011; Hardy, 2014; Mackenzie, 2011; Mackenzie and Davis, 2014; Renfrew, 1993; Watson & Todeschini, 2006; Yates, 2014; Yates, 2015). Nearly every country that is considered an antiquities 'source'

has enacted legislation preventing the buying, selling, or export of most or all ancient items, and some of these countries did so over a century ago (for regional examples see: Gutchen, 1982; Shapiro, 1995; Yates, 2011). To be clear, most of the antiquities that have been acquired by collectors and museums in the past and that are on the market now are at least illicit³ in some way, and many are held illegally.

When it comes to the acceptance of potential donations of antiquities, museums should carefully consider issues of ethics and the legality of the objects. A museum that accepts an antiquities donation may be accepting property that was looted and thus, on behalf of the public, may have just accepted stolen goods. The legal and logistical entanglements caused by the acceptance of an illicit antiquities donation may cost the museum a significant amount of money and challenges the idea of museums as bastions of public good (see Felch & Frammolino, 2011; Watson & Todeschini, 2006). However the museum may not want to turn down a questionable donation because of desire to compete with other museums for the best collection, or because of a sincere belief that a museum is the best place for the object. Also, in the cutthroat world of donor attraction, museums may not feel they are able to turn down a donation of questionable artefacts for fear of ruining a lucrative donation stream or, even worse, the donor may already be a trustee (Ostrower, 2002).⁴ Refusals of donations, then, are done “with proper deference to the wealth of the prospective donor” (Zolberg, 1981: 113), if they are done at all. We must ask, if antiquities have a strong potential to be stolen, illegal, or otherwise illicit, is it right for donors who give these items to museums to be rewarded with tax incentives?

Because of historic particulars, both the museums and the art market have developed into sectors with minimal transparency or oversight. The private acquisition of art and antiquities has primarily been the enterprise of the wealthy and powerful. Historically, the re-sale of these items was seen as evidence of the financial ruin of wealthy families: thus the famous auction houses (e.g. Christies, Sotheby’s, Bonhams) were founded as a way for beleaguered collectors to unload the family treasures anonymously, without public shame, and for financially sound collectors to acquire those treasures anonymously, without appearing to be crassly profiting from another’s misfortune (Lacy, 1998; Watson, 1998). The privacy of donors to museums has also been traditionally maintained, with ‘private donation’, whatever the reason may be, being a perfectly acceptable notation on a museum display card or annual statement.⁵ As museum donation is considered a public good, donors are given options to hide their identity for their own reasons so that good can be achieved. This may also shield them from public criticism. Such a situation provides an opportunity for those who wish to hide questionable behaviour.

Auction houses and antiquities dealers are under no obligation to reveal the identities of their consignees or their buyers. Museums are under no obligation to reveal the identities of their donors. The only time that identity must be revealed is during the claiming of a tax deduction for the donation. In most circumstances, tax documentation for individuals is not public: only the government sees who is donating what. Public anonymity is maintained.

If we accept anonymity as an aspect of the art and museum sector that will not change, a possible response would be mandatory government auditing and due-diligence in all museum acquisitions before any incentivised donation can take place. In some jurisdictions there are audits of tax deduction claims for antiquities donations valued above a certain amount, but this, too, is a problem.

The monetary worth of art is an extreme case of assumed and applied value. Antiquities have no use value, have no original cost or creator, and are usually the only one of their kind in the world: assigning a price tag to an artefact is entirely subjective and not reproducible.⁴ To some extent, the value of an artefact depends on what prices similar objects achieve at public auction. Yet this is complicated, not the least because each artefact is unique and is not easily compared with any other artefact. Even in auction catalogues, the 'price estimates' offered by houses do not relate to how much the piece is valued at, rather they are marketing tools meant to either drive up the price for the piece or to attract consignees.

Appraisals of antiquities are formed by the opinions of 'experts'. Based on the condition, authenticity, and history of the object and based on the 'experts' understanding of art market trends, they assign the artefact a subjective price tag. No two experts will come up with the same price tag for the same object. It is very difficult to challenge an expert's opinion on price. Unless the object is actually put up for sale at a public auction, who is to say that a valuation is either high or low? How can an honest valuation be separated from a dishonest one?

2.1 The stage set for scheming

To recap, potentially illicit antiquities are donated for tax benefits based on subjective valuations within an under-regulated system that considers secrecy and privacy to be paramount. Furthermore, these donations are hailed by nearly everyone as philanthropic and in the public good, further shielding actors from close scrutiny. It seems obvious that some people would seek to abuse this system, and they have. There have been a number of tax fraud cases concerning the donation of antiquities to museums for tax benefits. These represent an interesting way that perpetrators of tax fraud mask their actions under the aegis of respectability as represented by the museum.

In the next section I will present two antiquities-related tax deduction manipulation schemes. The first case, which occurred in Australia in 1979/1980, was determined to not actually be illegal, but exposed a now-closed loophole that was against the spirit of the law. The second, which occurred in the United States over a number of decades but was only exposed in 2008, was determined to be against the law and investigations related to that case are ongoing at the time of writing. In both circumstances individuals whose sole motivation was tax benefit donated antiquities with dubious and possibly illegal origins to museums. Also, antiquities dealers facilitated both cases. These intermediaries were able to visualise the whole system and profited from it.

Although these two cases represent actions of bad actors knowingly committing questionable acts, and although many donations of antiquities to

museums are made without manipulation or bad intentions, these and other cases show that the possibility to abuse this system exists. Because of the closed nature of the art, antiquities, and museum world, manipulations of this kind may exist on a larger scale than we know.

3. Latin American artefacts and the National Gallery of Victoria, Australia

In 1978 the Australian Government's Ministry for the Arts established the Cultural Gifts Program (sometimes referred to as 'taxation incentives for the arts scheme') based on section 78 of the Income Tax Assessment Act (1936). The primary purpose of the Cultural Gifts Program is to encourage private collectors of cultural property (including antiquities) to donate objects to public institutions in return for favourable tax deductions and exemptions. This is different from the similarly named 'Cultural Bequests Program' in that it is meant to encourage donation while the collector is still alive. The collector as donor, then, gets a financial reward for 'helping develop Australia's public cultural collections [...and] helping to preserve Australia's cultural heritage for the benefit of present and future generations' (Ministry for the Arts, n.d.).

Yet the tax code as written created two loopholes in the Cultural Gifts Program. First, the appraisal of cultural objects to be donated was left unregulated, meaning that donors and museums could contract their own preferred experts to provide valuations of any piece and, thus, determine the size of the tax deduction given to the donor. This valuation did not have to take into account how much the donor paid for the artifact in question. In other words, donors could select a friendly appraiser to inflate the value of the object, and inflate their own tax break. A museum could promise a high valuation of an object through their preferred appraiser in exchange for the donation. Second, there was no guidance in the law about how long a potential donor had to hold a cultural object before it could be donated. Under favourable conditions, a donor could acquire an object on paper and donate it within moments, qualifying for the tax deduction but never actually possessing the piece.

In or around 1979 a syndicate of 22 Melbourne-based business people along with Costa Rican antiquities dealer Leonardo Patterson discovered these two loopholes and set about to exploit them (Davis, 1981; Elias, 1981).

In 1979, Patterson imported a large collection of stone and ceramic objects thought to be from a number of Central American countries into Australia (Elias, 1981; 1984). The exact nature of their removal from the ground in their countries of origin, their export, and their import is unknown, and the objects could be considered illicit. No provenance prior to their appearance in Australia is recorded either in contemporary press accounts or on the National Gallery of Victoria website³⁰ and the dealer involved is known for questionable behaviour. Patterson was later convicted of felonies on two occasions related to the trafficking of Central American antiquities into the United States (Elias, 1984), and has faced similar charges in other jurisdictions (Ventura, 2013). He has also been implicated in a number of high profile international antiquities smuggling cases that resulted in return agreements, but no criminal charges (BBC, 2006; Peruvian Times, 2008).

After the artefacts were imported, the syndicate paid \$1.2 million AUD for the objects (Elias, 1984). It is presumed they paid this money to Patterson. Almost immediately after the purchase of the items, an antiquities appraiser who appears to have been selected by Patterson valued the collection of antiquities at \$3.7 million AUD, an increase of \$2.5 million AUD (Davis, 1981; Elias, 1981). The antiquities were then immediately donated to the National Gallery of Victoria, where they remain today, listed as "Presented anonymously, 1980". All requests made to the National Gallery of Victoria for information regarding the objects, their donation, and the tax incentives involved were refused. The syndicate claimed the full \$3.7 million AUD deduction during the 1979/1980 and 1980/1981 tax years (House of Representatives (Australia), 1982).

In 1981 the existence of this loophole was revealed to the Australian public (Davis, 1981; Elias, 1981). Contemporary reports claim that other collectors, dealers, and galleries benefited financially from this loophole while it was open, including some arrangements where the works in question were 'donated' to a gallery but then 'lent' back to the donor for the rest of their life (Davis, 1981). As a stop-gap measure, Australia's Taxation Commissioner announced that the government would apply the lower figure of either how much a cultural object was valued at or how much the donor originally paid for the object when assessing tax deductions (Davis, 1981).

The loophole was closed via the Income Tax Assessment Amendment Act 1982 which prevented 'unintended benefits from being secured' for antiquities donations and 'formalised procedures for the appointment of valuers' of antiquities. Congressional bills (e.g. House of Representatives (Australia), 1982) make it clear that the modifications to the Tax Act were made in direct response to the actions of the syndicate, Patterson, and the National Gallery of Victoria.

The modifications required that cultural property valuers be approved by the Secretary to the Department of Home Affairs and Environment. Approval is based on professional qualifications and standing within the professional community (Australia, 1982). Because of the syndicate's actions, the Act was also amended to say that if:

1. Cultural objects were acquired by the donor within 12 months of making the gift except in instances of inheritance, OR
2. Cultural objects acquired by the donor for the sole purpose of making a gift to a public institution, OR
3. Cultural object acquired subject to an agreement that they would be gifted

that the amount paid for the cultural object by the donor or the amount assessed by the registered valuer, whichever is less, is the official value of cultural property for tax purposes.

The act was not retroactive and it is assumed that the syndicate of 'donors' was able to keep their claimed tax deductions. The Act has since been modified and as of the time of writing, value of the cultural objects for tax purposes is defined as the average of two market valuations made by

registered valuers made within 90 days of the donation. However, in the cases mentioned above, the lesser amount (valuation or amount originally paid) prevails (Australian Government, 2009: 1).

4. Thai antiquities and California museums

Tax deductions for charitable donations are allowed in the United States under the assumption that the donation would match or exceed the amount of money the government would have to appropriate from public funds to effect the same public benefit. The specifics of United States law concerning the charitable donation of artefacts to museums are complex beyond the scope of this discussion. However, a donation of antiquities to a museum in the United States must satisfy three general requirements to qualify for a tax deduction: the donation must be to a qualifying institution (e.g. a non profit museum); the donation must be of qualifying property; and the donation must display proper intent and not be made in exchange for goods and services (Thompson, 2009). Donors claiming tax benefits may deduct the fair market value of qualifying museum donations, yet the assessment of an antiquity's value is inherently subjective. Donors, naturally, seek the highest valuation for the objects they wish to donate in the best of situations, and manipulate the assessed value in the worst.

The IRS has a series of procedures to verify that donations to museums qualify for the tax deduction claimed. These are increasingly more onerous based on the stated value of the antiquity (see Thompson, 2009: 244). Antiquities of a stated value above a certain amount require an appraisal be submitted along with a tax deduction claim. This appraisal must be made by a valuer who meets specific education and experience criteria. The appraisal must take place within two months of the donation and must include the methods that the expert used to value the piece (Thompson, 2009: 245). If the claimed value of the artefact is high enough, the IRS art advisory panel may review these appraisals. The panel, composed of uncompensated art experts, raises the value of the appraised art donations about as often as they lower it (ibid). The panel may look at photos of the antiquities, but they do not see them physically and are unable to get a complete sense of the objects true condition.

Despite these safeguards, the opaque nature of the antiquities and museums trade, the subjectivity of expert valuations, and the illicit nature of much of the antiquities market can shield tax fraud in the United States. The following is an extreme example.

In 1979 or 1980 Robert Olson of Cerritos, California, began to import Thai antiquities into the United States (United States District Court, 2008a), allegedly with the help of Armand Labbé, then-curator of the Bowers Museum (Felch, 2008). Many of these were ceramic vessels from the site of Ban Chiang in the Udon Thani province, which is now a UNESCO World Heritage site (see Brodie, 2012).

Since 1961, previously-unknown antiquities have been considered property of the Thai state, and all Thai antiquities, even those in private hands, cannot be exported without a license from the government (Thailand, 1961). Furthermore, a 1972 Thai government decree made it illegal to export pottery

from the site of Ban Chiang specifically in an effort to curb the widespread looting (Brodie, 2012). According to both the Thai government and his own statements to an undercover Federal Agent, the antiquities Olson imported lacked licenses and, thus, all of the artefacts left Thailand in violation of Thai law. Olsen also told the undercover Federal Agent that his shipping company, Bobbyo Imports, would bribe Thai officials and improperly declare antiquities on United States customs paperwork: the authentic antiquities were declared as reproductions upon entry into the United States (Thompson 256).

Olson supplied objects extensively for Jonathan and Cari Markell, antiquities dealers who ran Silk Roads Gallery in Los Angeles. The Markells began dealing in Thai antiquities in 1988, originally supplied solely by Olson, but later sold items they bought themselves in Thailand (United States District Court, 2008a). The Markells' suppliers reportedly disguised ancient objects as modern replicas to fool customs in both Thailand and the United States (ibid).

At some point the Markells developed an elaborate tax fraud scheme that involved these Thai antiquities. Taking advantage of the tax deductions for charitable 'in-kind donations' to museums, Olson and the Markells would supply 'buyers' with Thai antiquities, inflated appraisals, and connect 'buyers' with a museum that wanted the piece. The buyers would then instantly donate the artifact. The appraisals were made by a friendly valuer or Markell himself, but were signed with the name of a Bangkok-based ceramics curator who met US government expertise requirements; her signatures may have been forged (United States District Court, 2008a)^{viii}.

Thus a museum would receive an artefact they wanted free of charge, the buyer-turned-donor (who never intended to own the artefact) would receive a tax deduction, and Olson and the Markells would make their normal profits from the artifact sale.

This scheme was exposed in 2008 after a multi-year investigation into the Markells and Olson. From 2003 until 2007 an undercover federal agent purchased a number of antiquities from the group. As early as 2004, Markells had spoken to the undercover agent about his tax scheme, and starting in 2006, the undercover agent began to focus on the dealers (United States District Court, 2008a). The Thai antiquities that the undercover agent purchased from Markells were appraised by the dealers' valuers at well above the price paid for them and were then donated to the Los Angeles County Museum of Art (LACMA), The Pacific Asia Museum (PAM), the Bowers Museum^{ix}, and the Mingei International Museum, all located in California. All told, the undercover agent paid Olson \$12,000 USD for Thai antiquities which were then appraised for tax purposes at \$43,000 USD (Felch, 2014). As a result of this investigation 10,000 Thai artefacts were seized from several United States museums (Felch, 2013). See Brodie (2014: 29) for a break down of the amount that was spent on each artefact vs. how much it was appraised for.

The museums were active facilitators of the scheme: the undercover agent held six telephone calls, exchanged eleven emails and nine letters, and had an in-person meeting with museum staff concerning his twenty-one objects 'donated' to the Mingei International Museum alone (United States District Court, 2008a). Tax returns were prepared claiming the appraised value of the

pieces as a donation, allegedly in violation of 18 U.S.C. Section 371 and 26 U.S.C. Section 7206 (2) which prevent conspiracy to assist in the preparation of false tax returns (United States District Court, 2008a).

This scheme was not detected by the IRS because of the relatively low appraised value of the objects being donated. Most were purposefully appraised for just under \$5000 USD (Brodie, 2014: 29), the Internal Revenue threshold at the time for closer scrutiny. Specifically, a qualified appraisal was required to be submitted with to the donor's tax return for antiquities donations valued at more than \$5000 USD, and a photograph was required for gifts of property valued at more than \$20,000 USD (United States District Court, 2008a). By valuing the objects at just under \$5000, the buyer-turned-donor would receive about \$700 USD in tax savings per item (Wald, 2008), less than what they paid the dealers for the piece, and was unlikely to be audited.

This scheme also hinged on the participation of museums (Brodie 2014). The institutions involved were woefully lax in researching the origins of the donations they accepted, and comparable museums would have rejected them outright. Indeed, the artefacts that the undercover agent would eventually donate to the PAM were first rejected by a different institution, possibly due to questions about the legality of the pieces (United States District Court, 2008b). PAM staff indicated that they thought Thai objects such as those offered for donation were illegal to export from Thailand but accepted the artefacts anyway after the undercover agent assured them that he did not, personally, dig them up (*ibid*). The only objects that the PAM rejected were those that contained human remains or ivory (*ibid*).

In another example of negligent museum acquisition practice, Markells responded to an inquiry made by the director of the Mingei about the provenance of the material to be donated with an email that stated that the objects came from the collection of deceased LACMA conservator Benjamin Bishop Johnson (United States District Court, 2008a). This was a so-called false provenance or false history, meant to mask the true illicit origins of the antiquities. This statement was apparently accepted with no further investigation on the part of the Mingei; Markells provided no proof of the provenance he asserted. Markells told the undercover agent on several occasions that the Johnson story was a lie (United States District Court, 2008a). Furthermore Johnson, himself, was implicated in several high-profile antiquities smuggling cases, including the smuggling of gold objects looted from the famous Peruvian site of Sipán, making attribution to him suspect (see Yates, 2013).

Olson and Jonathan Markell were charged with one count of conspiracy to import looted antiquities and three counts of making false customs declarations in 2008 (Felch, 2014). Both the Markells were indicted on federal tax charges related to the inflation of the value of the Thai antiquities (*ibid*). These charges are pending.

Following the raids, the Mingei offered to return 67 questionable antiquities to Thailand (Felch, 2014). In June 2014 it was announced that 542 vessels stolen from the site of Ban Chiang in the collection of the Bowers Museum

would be returned to Thailand (Felch, 2014). The return was effected as part of a non-prosecution agreement reached with federal authorities. At the time of writing, the other museums with Thai antiquities involved in this donation scheme have not yet returned the pieces in question.

5. Concluding thoughts

The vulnerability of museum donation to manipulation has not fallen completely off the regulatory radar thanks, in part, to the exposure of museum donation loopholes in the press. That said, it is unclear how many similar schemes exist. Other types of art donation loopholes have been exploited by individuals seeking tax write offs such as so-called “fractional giving”, which was possible in the United States from 1988 until 2006. This allowed donors to donate a percentage (say 10%) of an artwork every year for a number of years to avoid tax deduction caps, a practice that many museums actively encouraged (Karayan, 2011: 460; 467). Many of the artworks that had been ‘donated’ during that time never left the collectors’ homes (ibid). Such a scheme calls into question the public gain from the pseudo-donation as the collector not only gets a tax deduction, but gets to physically keep the artifact as well.

Although there is a push to make such donation / tax benefit schemes illegal, as was already the case in the United States example and became the case in the Australian example, people still engage in them presumably because the risk of getting caught is low. A small-scale or one time donation fraud for tax purposes is not likely to be detected. This is a transparency issue. We must question the utility of allowing publicly funded institutions to engage in opaque, unregulated markets. As it stands, we are likely to only catch tax violations concerning antiquities donations if they are particularly egregious, if they turn up in other investigations (i.e. related to the import of illicit antiquities), or if those involved slip up.

One area that may be particularly susceptible to this type of crime is the developing world. Countries that have an emerging middle or wealthy class and whose national museums feel they must compete with older, more established institutions, may offer museum donation tax breaks without fully assessing potential manipulation. This, it seems, was the case with the Australian example (although it is not a developing country): the desire to reward donations to the national museum system of this ‘new’ country was so great that lawmakers did not think through the consequences. Few lawmakers or tax regulators have specialist knowledge of the art and antiquities world, but they too believe in the public benefit aspect of the donation of cultural property. Countries in which tax codes have been passed that contain loopholes for price manipulation of museum donations should be examined for evidence of this type activity and those loopholes should be closed.

Finally, we must ask if the donation of antiquities to museums is actually a public good that is worthy of tax incentives. The likelihood that an artefact being donated has a questionable history is very high and it is hard to assert that the movement of illicit or illegal goods into public hands is a positive thing. Indeed, it shifts a major social and financial burden onto the museums and, thus, the public. Any repatriation request from a country of origin will

take the museum's time and, more importantly, the museum's money (which, in many cases, is public money). A collector that donates an illicit antiquity to a museum receives their tax benefit whether or not the objects is eventually repatriated, and the public loses both the past and tax revenue.

Funding

The author has received funding for this research from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007-2013) / ERC Grant agreement n° 283873 GTICO, the Leverhulme Trust, and the Fulbright Program.

References

- Atwood, R. (2003), "The Monkey's Head", available at: <http://aliciapatterson.org/stories/monkeys-head> (accessed 12 April 2012).
- Australian Government (1982), Income Tax Assessment Amendment Act, 1982 No. 29 of, 1982, Section 9.
- Australian Government (2009), "Cultural Gifts Program Guide: Tax incentives for cultural gifts to Australia's public collections", Canberra: Commonwealth of Australia, available at: <http://arts.gov.au/sites/default/files/pdfs/cgp-guide-june09.pdf> (accessed on 26 June 2014).
- BBC News (2006) "Looted Peru treasure found in UK", 17 August, available at: <http://news.bbc.co.uk/1/hi/england/london/5259638.stm> (accessed on 26 June 2014).
- Bennett, T. (1995), *The Birth of the Museum*. London, Routledge.
- Bowman B.A. (2008), "Transnational Crimes Against Culture: Looting at Archaeological Sites and the 'Grey' Market in Antiquities", *Journal of Contemporary Criminal Justice*, 24, 225–42.
- Brodie, N. (2014), "The antiquities trade: Four case studies", Chappell, D. and Hufnagel, S., *Contemporary Perspectives on the Detection, Investigation and Prosecution of Art Crime*, Oxford, Ashgate, pp. 15–36.
- Brodie, N. (2012), "Ban Chiang", Trafficking Culture Encyclopedia, available at: <http://traffickingculture.org/encyclopedia/case-studies/1046/> (accessed on 26 June 2014)
- Brodie, N. and Renfrew, C. (2005), "Looting and the World's Archaeological Heritage: The Inadequate Response", *Annual Review of Anthropology*, 34, 343–61.
- Brodie N., Dietzler J., Mackenzie S. (2013), "Trafficking in Cultural Objects: An Empirical Overview", Manacorda S., *Prevenzione e Contrasto dei Reati Contro il Patrimonio Culturale: la Dimensione Nazionale ed Internazionale*, Vita, Pensiero.

British Museum (n.d.), "History of the British Museum", available at: http://www.britishmuseum.org/about_us/the_museums_story/general_history.aspx (accessed on 3 Nov 2014).

Campbell P.B. (2013), "The Illicit Antiquities Trade as a Transnational Criminal Network: Characterizing and Anticipating Trafficking of Cultural Heritage", *International Journal of Cultural Property*, 20, 113–53.

Chippindale C., Gill D.J.W. (2000), "Material Consequences of Contemporary Classical Collecting", *American Journal of Archaeology*, 104, 463–511.

Constable, A. (2008), "Ancient artifacts returned to owner", *Santa Fe New Mexican*, 30 May.

Davis, I. (1981), "Government to Close Tax Loophole on Art Gifts", *The Age*, 15 October.

Elias, D. (1981), "Mexican art 'gift' may bring \$1.5m tax bill", *The Age*, 23 April.

Elias, D. (1984), "FBI arrests pre-Columbian art dealer on fraud charges", *The Age*, 5 June.

Felch, J. (2008), "Intrigue but not glamour for smuggling case figure", *Los Angeles Times*, 31 January, available at: <http://articles.latimes.com/2008/jan/31/local/me-olson31> (accessed on 26 June 2014).

Felch, J. (2013), "Stolen-artifacts case has cost much, yielded little, critics say", *Los Angeles Times*, 18 May, available at: <http://articles.latimes.com/2013/may/18/local/la-me-antiquity-indict-20130519> (accessed on 26 June 2014).

Felch, J. (2014), "Victory for Thailand in US", *The Art Newspaper*, 10 June, available at: <http://www.theartnewspaper.com/articles/Victory-for-Thailand-in-US/32753> (accessed on 1 November 2014).

Felch, J. and Frammolino, R. (2011), *Chasing Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum*, Boston, Houghton Mifflin Harcourt.

Gabber, J. (2011), "The forger's story", *FT Magazine*, 21 January, available at: <http://www.ft.com/cms/s/2/5905c640-2359-11e0-8389-00144feab49a.html> (accessed on 3 Nov 2014).

Gelles, D. (2014), "Wooing a New Generation of Museum Patrons", *New York Times*, 19 March, available at: <http://www.nytimes.com/2014/03/20/arts/artsspecial/wooning-a-new-generation-of-museum-patrons.html> (accessed on 3 Nov 2014).

Gutchen, M.A. (1982), "The Maya Crisis and the Law: Current United States Legal Practice and the International Law of the Maya Antiquities Trade", *Arizona Journal of International & Comparative Law*, 283.

- Hardy, S.A. (2014), "Using open-source data to identify participation in the illicit antiquities trade: A case study on the Cypriot civil war", *European Journal on Criminal Policy and Research*, Online First.
- Hooper-Greenhill, E. (1992), *Museums and the Shaping of Knowledge*, London, Routledge.
- House of Representatives (Australia) (1982), Income Tax Assessment Amendment Bill, 1982. 82/27, 24 March.
- Kaltenbach, C. (2011), "Walters receives artwork, promise of \$4 million bequest from New Mexico collector", *The Baltimore Sun*, 8 September.
- Karayan, C.A. (2011), "What artworks may come (to a museums near you): the state of fractional charitable giving that the intersection of museology and tax policy", *Southern California Interdisciplinary Law Journal*, 20, 459–488.
- Lacey, R. (1998), *Sotheby's: Bidding for Class*. New York, Little Brown & Co.
- Ostrower, F. (2002), *Trustees of Culture: Power, Wealth, and Status on Elite Arts Boards*, Chicago, University of Chicago Press.
- Oswald, M. (2011), "Museum to Repatriate Artifact", *Journal North*, 8 December.
- Mackenzie, S. (2011), "The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organised Crime in the International Antiquities Market", Manacorda S., Chappell D., *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, New York, Springer.
- Mackinzie, S. and Davis, T. (2014), "Temple Looting in Cambodia Anatomy of a Statue Trafficking Network", *British Journal of Criminology*, 54, 5, 722–740.
- Ministry for the Arts (n.d.), "Cultural Gifts Program", Website of the Ministry for the Arts, Australian Government, available at: <http://arts.gov.au/funding/tax/cgp/about> (accessed on 25 June 2014).
- Nelson, K. (2011a), "A Museum Returns an Ancient Artifact... with Style", *NM History Museum News Blog*, 8 December, available at: <http://www.nmhistorymuseum.org/blog/?p=1605> (accessed 7 August 2012).
- Nelson, K. (2011b), "Press Release: History Museum to Return Peruvian Artifact", 7 December, available at: http://media.museumofnewmexico.org/press_releases.php?action=detail&releaseID=198 (accessed 7 August 2012).
- Peruvian Times (2008), "Spain returns pre-Columbian artifacts from Patterson Collection to Peru" 27 October, available at: <http://www.peruviantimes.com/27/spain-returns-pre-columbian-artifacts-from-patterson-collection-to-peru/691/> (accessed on 26 June 2014).
- Renfrew C. (1993), "Collectors Are the Real Looters", *Archaeology*, 46, 16–7.

Shapiro, D. (1995), "The ban on Mali's antiquities: A Matter of Law", *African Arts*, 28, 4, 42–51.

Thailand (1961), "Act on Ancient Monuments, Antiques, Objects of Art and National Museums", B.E. 2504.

Thompson, E. (2009), "The Relationship Between Tax Deductions and the Market for Unprovenanced Antiquities", *Columbia Journal of Law and Arts*, 33, (2), 241–265.

United States District Court (2008a), Application and Affidavit for Search Warrant: Mingei International Inc. Southern District of California, Case '08 MJ0205.

United States District Court (2008b), Search Warrant on Written Affidavit at 8, United States v. Pacific Asia Museum, Central District of California, Docket No. 08-0118M.

Ventura, A. (2013), "El traficante Leonardo Patterson fue detenido por Interpol-España", *El Universal*, 10 April available at: <http://www.eluniversal.com.mx/cultura/71520.html> (accessed on 26 June 2014).

Wald, M.L. (2008), "Tax Scheme is Blamed for Damage to Artifacts", *The New York Times*, 4 February, available at: <http://www.nytimes.com/2008/02/04/arts/design/04frau.html?pagewanted=all> (accessed on 26 June 2014).

White, S. (1998), "A collector's odyssey", *International Journal of Cultural Property*, 7, 1, 170–176.

Watson, P. (1998), *Sothebys: The Inside Story*, New York, Random House.

Watson P., Todeschini C. (2006), *The Medici Conspiracy: The Illicit Journey of Looted Antiquities—From Italy's Tomb Raiders to the World's Greatest Museums*, New York, Public Affairs.

Yates, D. (2013), "Peru v. Johnson", *Trafficking Culture Encyclopedia*, available at: <http://traffickingculture.org/encyclopedia/case-studies/peru-v-johnson/> (accessed on 1 November 2014).

Yates, D. (2014), "Church theft, insecurity, and community justice: the reality of source-end regulation of the market for illicit Bolivian cultural objects", *European Journal on Criminal Policy and Research*, Edited by S. Mackenzie and N. Brodie, Pre-print available at: <http://link.springer.com/article/10.1007/s10610-014-9232-z>

Yates, D. (2015), "Displacement, deforestation, and drugs: antiquities trafficking and the narcotics support economies of Guatemala", Kila, J. and Balcells, M., *Cultural Property Crimes: an overview and analysis on contemporary perspectives and trends*, Brill, Leiden.

Zolberg, V.L. (1981), "Conflicting visions in American art museums", *Theory and Society*, 10, 1, 103–125.

ⁱⁱ By 'antiquities' I mean cultural objects from what are loosely termed to be 'ancient' cultures. These are usually items removed from the ground at an archaeological site rather than passed down or transferred from the original creator. I also use the synonymous term 'artefact'.

ⁱⁱⁱ This led to a particularly interesting case of forgery and, potentially, fraud. Mark A. Landis, of Laurel Mississippi, donated fake paintings to over 40 US museums over the course of 3 decades. Landis reportedly did this because he felt it helped the museums and because he liked how he was treated when they considered him a potential donor (Gapper 2011).

^{iv} The term 'illicit antiquity' is used when the legality or illegality of an artefact is undetermined in its currently location, yet it is reasonable to suspect that laws were violated sometime during the object's, extraction, exportation, importation, or sale. An object may be an illegal antiquity in one jurisdiction but an illicit antiquity in another.

^v One interesting example of a museum that broke free from this pressure is the New Mexico History Museum at the Palace of the Governors in Santa Fe. This museum had a long relationship with collector John Bourne and an agreement was in place for him to donate his antiquities collection. The museum displayed portions of the Bourne Collection throughout the 90s. However, allegations came to light that portions of the Bourne Collection were looted from the archaeological sites of La Mina and Sipán, Peru. The Bourne objects were seized by federal authorities but were eventually returned because of difficulties in proving their illicit origin (See Atwood 2003). In 2008 the museum announced that they would not accept the Bourne Collection (Constable 2008; Nelson 2011a, 2011b). In 2011, they repatriated a gold monkey head to Peru that had been donated by Bourne, stating they believed the item was Peru's 'cultural patrimony' (Oswald 2011).

Despite the implication that the Bourne collection was tainted, another museum accepted it as a donation. Starting in 2009 Bourne began to donate his collection to the Walters Art Museum in Baltimore. He also bequeathed that museum \$4 million (Kaltenbach 2011).

^{vi} In the Australian example presented in this paper, the items donated are still listed as coming from a private donor and the names of the individuals who donated the collection were not revealed in the press.

^{vii} Major sectors and stakeholder groups, such as archaeologist and most Indigenous groups, consider the commoditization of most, if not all, artefacts to be a violation of their understanding of the past being the heritage of all mankind.

^{viii} Requests for provenance information and documentation made to the National Gallery of Victoria were denied.

^{viii} This expert, Roxanna Brown, died in federal custody in Seattle after being arrested on charges related to this scheme (Felch 2014). This death was controversial and the United States government settled a lawsuit regarding the care she received in custody for \$880,000 (Felch 2013).

^{ix} The chief curator at the Bowers Museum at the time, Armand Labbé, was an early target of the federal investigation into this scheme, however he died in 2005 before the investigation finished. Labbé's successor would not accept a 'donation' from the undercover agent (Felch 2014).