

The Arts Politic

Inaugural Issue
Summer 2009



THE ECONOMY ISSUE

In this issue:

- judyBACA
- coryBOOKER
- jeffCHANG
- dudleyCOCKE
- maydaDELVALLE
- arleneGOLDBARD
- ericLEWIS
- annMARKUSEN
- randyMARTIN
- susanSOMERS-WILLETT
- maryperrySTONE
- ayeletWALDMAN
- ardathgoldsteinWEAVER



and many more.

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CONTENTS

THE ECONOMY ISSUE:

Our guide to making the arts a resounding priority during these uncertain economic times.

LETTERS FROM THE EDITORS | 3

Founding Editors, Danielle Kline and Jasmine Mahmoud, bid you welcome to the inaugural issue of *The Arts Politic* with letters that address the impetus for this magazine and your role in the greater arts politics dialogue.

LETTER TO THE POLICYMAKER | 4

Engaged citizen and Minnesota resident, Judy Clifford, writes to her state senator, and other policymakers, in support of the "Legacy Amendment."

OPENING ACTS | 5

BRIEFS & TRENDS. BOTTOM LINE: "Twitter Challenge with Mayor Cory Booker." **DIALOGUE** with artists and activists from the historic White House arts meeting and Poetry Jam. **COLUMNS** by Brandon Woolf, who revisits early 20th-century tax language to carve out a better understanding of present-day nonprofit arts operational structures, and by RonAmber Deloney, who examines HBO's latest show to question global representations of blackness.

SPECIAL REPORT: THE ARTS & THE ECONOMY | 21

With **ESSAYS** by Arlene Goldbard, Greg Londe, Ardath Goldstein Weaver, and Doreen Jakob that explore cultural recovery as national recovery, 1950s CIA-led arts funding initiatives, economic-termed arts development in North Carolina, and a critique of arts-led economic policies. **TAP*MAP** features regional perspectives about the economy's effect on art making and arts communities. The Founding Editors close with a **POLICY BRIEF** detailing strategies for an economic-and-whole-scale recovery of the arts.

EXHIBITION | 42

Visual artwork by Jeremy Novy, Nat Soti, Alonso Sanchez, Dennis Redmoon Darkeem, Jim Costanzo, Beth Loraine Bowman, Tomas Oliva, Erin McElroy & Art Hazelwood.

POETRY | 49

By Rebecca Manery, Lily Mulholland & Dudley Cocke.

LIBRARY | 51

BOOK/TALK: Victoria Grieve speaks about her latest book, *The Federal Art Project and the Creation of Middlebrow Culture*, and FAP's relevance to contemporary arts policy.

BOOK/TALK: Susan Somers-Willett (poet, and author of *The Cultural Politics of Slam Poetry*) talks about the White House Poetry Jam and the troubling commercialization of slam poetry. **FILM/TALK:** Filmmakers Liz Turner and Reese Dillard (*Left Alone*) discuss the economic implications of anti-same-sex marriage laws. **FILM & BOOK BRIEFS.**

DATEBOOK | 56

A summer of arts politics workshops, concerts, plays, webinars & festivals.

REMEMBERING | 57

TAP remembers Augusto Boal, Director, Drama Theorist & Interventionist; and Mary Perry Stone, Artist, Federal Art Project.

ENDNOTE | 59

By Randy Martin Chair, Department of Art and Public Policy at Tisch School of the Arts, New York University.

The Arts Politic

Issue 1: Summer 2009

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The Arts Politic is a print-and-online magazine dedicated to solving problems at the intersection of arts and politics. Cultural policy, arts activism, political art, the creative economy—*The Arts Politic* creates a conversation amongst leaders, activists, and idea-makers along the pendulum of global civic responsibility. A forum for creative and political thinking, a stage for emerging art, and a platform for social change, *The Arts Politic* provides a space that is intelligent, that is visionary, that is thoughtful, that will *TAP* new ideas from the frontlines to get things done.

Lots and lots of thanks to: Connie Choi; Quida Draine; Zack Elway; Deborah Kline; Janie Kucera; Randy Martin and the Department of Art and Public Policy at Tisch School of the Arts, NYU.

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Published by Danielle Kline and Jasmine Mahmoud.

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Front cover image by
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STATE OF THE ARTS //
BRANDON WOOLF

Our Fishy Nonprofit Sector

The American arts economy can be likened to a Rube Goldberg contraption in which a cat, lured by a mouse, jumps on a seesaw that tosses a fish into the beak of a stork. The stork thereby gets fed, but the method leaves something to be desired.

— Karl E. Meyer, *The Art Museum*

Rube's stork certainly has received a lot of attention in recent months. As the economic recession has worsened and losses in the stock market have continued to mount, dozens of the nation's arts organizations have been forced to close their doors or summon trustees for emergency planning meetings due to major cash shortages. There has been an influx of op-eds and other articles by experts who worry that we are more than likely to see additional closures and cancellations if the "crisis" deepens. A recent report from the Center on Philanthropy at Indiana University lamented the lowest level of confidence in the fundraising climate in over a decade.

And yet, since the launch of the Obama campaign, the President has been increasingly vocal about the importance of arts and culture (broadly defined) in and for American society and about his commitment to directing schools of fish upstream. His is just one voice in what has been a welcome wake of cries for increased government involvement in the arts. There was Quincy Jones' call for a Cabinet-level Arts Czar and an accompanying online petition, which has garnered 242,384 signatures to date. There was the \$50 million in recovery funds earmarked for the National Endowment for the Arts as part of the economic stimulus bill. There were the (by now) common arguments to legitimate the \$50 million by means of articulating the large role the arts play in the larger American economy (in the vein of: 100,000 arts groups that employ six million people and contribute approximately \$167 billion annually to the economy). Then, of course, there was the expected persistence of partisan mudslinging: need we return to FDR's "big government" Works Progress Administration? Or, need we maintain our faith in the reign of the all-powerful market?

There is a certain irony to these partisan alternatives, mainly because the majority of American arts organizations are neither (completely) public nor (completely) private. Rather, they are deeply imbricated in a more nebulous *third sector*: Nonprofit, not-for-profit, noncommercial, the third sector, tax-exempt, and that pervasive moniker, 501(c)(3), brand the articles of incorporation of so many of the nation's art organizations: 55 percent of the nation's theatres; 87 percent of art museums and art galleries; 93 percent of the orchestras, opera companies, and chamber music groups. Instead, then, of entering the dialogue by proposing steps the new President could take to "renew" the arts or proposing a new series of legitimating arguments for the inherent value of the arts, my goal is more modest. I want to look back in history toward the origins of this third sector—and thus, the origins of the federal income tax—in an effort to understand how the arts first came to be thought of as nonprofit, charitable, and

ALTHOUGH THE MAJORITY OF THE ARTS ORGANIZATIONS IN THE U.S. ARE RECOGNIZED AS NONPROFIT, THE ARTS ARE SURPRISINGLY ABSENT FROM THE LANGUAGE OF THE TAX LEGISLATION.

tax-exempt. My hope is to think about the implications of positioning the arts in this way, in this space, within the tax code, and to examine some of the motivations for maintaining this arts-policy-cum-tax-policy until the present day.

Traditions of tax exemption for *charitable* activities have a long history and can be traced back to the English common law. The "Preamble to the Statute of Charitable Uses" of 1601 both codified a legal definition of "charity" and mandated that funds be set aside for charitable purposes. Similar exemptions for "charitable" purposes appear in section 501(c)(3) of the current *Internal Revenue Code (IRC)*, and they date back to the Revenue Act of 1913, which was enacted immediately after the instantiation of the federal income tax. The most current form of section 501(c)(3) grants tax exemption to:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals.

Neither in its original enactment in 1913 nor in the following decades, however, have reasons for the exemption of certain organizations (over others)

been discussed at length in legislative or judicial commentaries. Further, and though the majority of the arts organizations in the U.S. are recognized as nonprofit, the arts, as such, are surprisingly absent from the language of the tax legislation. There is no *explicit* provision that qualifies arts organizations as exempt in 501(c)(3). And yet, since the inception of the federal income tax, arts organizations—for the most part—have been classified as tax-exempt. I am curious about this *missing*—or is it?—arts discourse. When and how did arts organizations garner the recognition of being worthy of exemption? How is this exemption justified? What are the implications for arts organizations and for artists working within and alongside these organizations?

In order to better understand the historical workings—and deficits—of the nonprofit arts, I want to consider, as an example, a formative moment in which the language of the code itself was in flux. In his opening address to the nation after re-election, on April 2, 1917, President Woodrow Wilson "stated that his [ambitious] fiscal policy was to pay for the war [the first World War] while it was being waged, so far as possible." A—perhaps *the*—primary question for those in attendance was: how much of the money necessary to pay for the war in Europe should come from taxes and how much should come from government bonds? No matter the ratio, the estimated costs of the war were tremendous, which meant inevitable and significant tax increases. Taxpayers were nervous.

One section, in particular, of Wilson's proposed War Revenue Act of 1917 stands out:

Contributions or gifts actually made within the year to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of 15 per cent of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions.

This section of the Act originated as an amendment proposed by Senator Hollis of New Hampshire. At first glance, due to the familiar language, the amendment seems relatively innocuous. After all, since the Revenue Act of

1913, this same list of organizations had been afforded exemption from income tax. But, upon closer reading, we see that Hollis is not reaffirming the tax-exempt status of these organizations. He is not proposing some additional form of aid or subsidy. Rather, Hollis proposes a different—and brand new (*at that time*)—kind of exemption. He proposes a deduction for the *individuals* who have donated to these organizations. Hollis proposes the amendment that will later become section 170(c)(2) of the *IRC*.

Why was it necessary for Hollis to advocate for individual tax deductions on charitable contributions? We have become used to a system that conflates exemption for charitable organizations and individual deductions for contributions unquestioningly; in our current system, sections 501(c)(3) and 170(c)(2) go hand-in-hand. But there was a time in which the two were not associated. After proposing his amendment, Hollis spoke to the Senate:

BECAUSE OF THE VERY NATURE OF THE TAX CODE, ARTS ADVOCATES ARE ENCOURAGED TO STAND AGAINST POLICIES (LIKE EXPANDED HEALTHCARE COVERAGE) THAT MIGHT BENEFIT WIDER POPULATIONS. THESE ARE THE REALITIES OF OUR NONPROFIT ARTS SECTOR.

I believe the Senate will see the necessity for voting that exemption in war times. I have myself been on the other side of this proposition that colleges, hospitals, and charitable institutions should be supported by private contributions. I myself had the privilege of going to a large school. Before I went there I supported myself entirely for two years. I went there and received a tremendous amount of benefit; I enjoyed my experience there; but what I contributed in tuition did not begin to pay my share of the expense, and I never felt comfortable that I had been there because of private bounty. I have tried since I graduated to make it up by contributions to class funds and teachers' funds, and so on, so that I feel that I am square with the college. [...] [B]ut what have we done? We have permitted these institutions to grow up and become firmly established on the plan of depending upon private contributions. Now, however, the war affects those institutions more seriously than it does any other character of institution.

Hollis' testimony gives rise to additional questions: For whose benefit was Hollis advocating? Was he interested in the benefit—and survival—of the charitable organizations listed in the amendment, as he explicitly stated? Or was he lobbying for a particular interest group—those who, for example, made his education possible?

Hollis's (circuitous) argumentation mirrors a more widespread anxiety—voiced in hyperbolic editorials and letters to the editor published in the months prior to the passage of the Act—about the ramifications of increased taxes. Instead of advocating for subsidies to the organizations themselves, he sheathed his motivations within a call for the well-being of public, charitable institutions. The argument went: an established

history of philanthropic giving could be interrupted by increased taxes because individuals in the habit of contributing to charitable causes would now offset increases in their tax liabilities by reducing philanthropic giving; this reduction would, in turn, be detrimental to the entire American public. Therefore, as the outcry preceding the Hollis amendment made clear, the only “patriotic” solution was to allow the wealthy to continue to enable (and fund) the “well-being” of the nation through private philanthropy. Notice how these arguments repeatedly utilize conceptions of the *public good* to legitimate personal deductions. But, we are bound to ask, *which* public will benefit from tax deductions on gifts to charitable organizations?

The Hollis affair also sheds light on the strategies used to justify educational institutions, in particular, as worthy of tax exemption. Since arts organizations were not—and are not—listed explicitly as one of the types of organizations considered tax-exempt, it was—and is—necessary to justify the legitimacy of exemption through other means. This justification occurred, almost exclusively, by advocating for arts organizations to be considered *educational*. Just as universities are educational, and thus charitable because they are “deemed beneficial to the community,” arts organizations were legitimated as providing a form of education to the public, and were thus deemed worthy of charitable exemption. This methodology was explicitly confirmed—and legislatively instantiated—in 1919, just a few years after the Hollis affair. So, it was by means of “education” that the arts first officially entered the charitable discourse. But such a notion of “art-as-public-education” evokes additional questions: Who is art meant to educate? What “public” benefits from the arts-as-education? What kinds of art are educational? Does a conception of art-as-education reify a set of objective standards of taste determined by a particular class of funders?

Fast-forward 90 years. In certain ways, Hollis' spirit is still pervasive on Capitol Hill. The very structure of the nonprofit sector—and the tax code itself—binds arts organizations within this particular relationship between taxes and charitable giving. As Robertson Williams at the Urban Institute and Brookings Institution's Tax Policy Center explains, President Obama's commitment to rolling back Bush-era tax cuts is likely to increase charitable

giving among wealthy donors, because in times of increased taxes, it is cheaper to give money to charities. In spite of the President's objections, there has also been talk of attempts to repeal the estate tax in 2010. And according to the *Chronicle of Philanthropy*, the logic would also hold (in reverse): a repeal of the estate tax could lead to significant, long-term decline in donations from the wealthy. Most recently, Obama has proposed a limit on charitable deductions for wealthy taxpayers in an effort to help pay for his health reform plan. As Howard Gleckman (also from the Tax Policy Center) explains: “As tax policy, [Obama's] idea has some merit. Deductions benefit high earners more than ordinary working people. Think of it this way: If you're in the 35 percent bracket, a \$100 deduction is worth \$35. If you are in the 10 percent bracket, it is only worth \$10.” The tremendous backlash against the President was not surprising: Republicans and Democrats alike, philanthropists and arts

advocates ensured that the proposal was dead before it ever had a real life on the floor of Congress.

But why? According to Americans for the Arts, 43 percent of annual revenue for arts nonprofits comes from private philanthropy. In 2007, private sector giving to the arts surpassed \$13.5 billion. Because of the very nature of the tax code itself, it is in the best interest of arts organizations to share a concern for the purses of wealthy elite. Because of the very nature of the tax code itself, philanthropists and arts advocates alike are encouraged—implicitly, and in many cases without recognizing the implications—to stand against policies (like expanded healthcare coverage) that might benefit wider populations. These are the realities of our nonprofit arts sector. And it is easy to understand how these realities persist unquestioned. Who wouldn't want to “help a good cause” in exchange for a tax break? Yet, these are the realities and the histories that—in the midst of our excitement with the new Administration—must be reexamined. In addition to constructing arguments about the value of the arts, we must consider the implications, mechanisms, and motivations of a tax code constructed with particular interests in mind. Before we dream up new policy to benefit the arts, we must decipher *whose* arts. As we “hope” toward a new future for the arts, we must consider the longstanding, implicit imperatives that encourage artists, arts organizations, funders, even storks eager to become better singers, painters, and actors. **TAP**