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Provenance vs. Authenticity: An Archaeological Perspective on the Post-2002 “Dead Sea Scrolls-Like” Fragments

Dennis Mizzi

University of Malta, Msida MSD 2080, Malta

dennis.mizzi@um.edu.mt

Jodi Magness

University of North Carolina at Chapel Hill, Chapel Hill, NC 27599

magness@email.unc.edu

Abstract

This article adds an archaeological voice to the current debate surrounding the authenticity of recently acquired “Dead Sea Scrolls-like” fragments. In our opinion, since these fragments are above all archaeological artifacts, considerations of provenance should take priority over authenticity. We begin with a survey that contextualizes this debate in relation to other types of archaeological artifacts, and consider the importance of context as well as ethical, legal, moral, and economic issues relating to the acquisition and publication of unprovenanced artifacts. We conclude that any artifact that lacks verifiable documentation of its provenance—whether or not it is authentic—should not be studied or published by scholars. Finally, we urge professional organizations and publishers to establish or strengthen policies preventing the publication of such artifacts, even after primary publication or presentation elsewhere.

Keywords

“Dead Sea Scrolls-like” fragments – unprovenanced artifacts – looted antiquities – forgeries – antiquities trade – Schøyen collection – Museum of the Bible

In the past two decades, a number of previously unknown scroll fragments inscribed in Hebrew or Aramaic have surfaced on the antiquities market.* Many have found their way into the possession of private collections, museums, and academic institutions,¹ the main impetus behind their acquisition being the belief that they are “Dead Sea Scrolls.”² Several of these fragments have now been published.³

Despite the fact that the publication of some of these scroll fragments goes back to the early 2000s, it is only now, following the publication of the Schøyen and Museum of the Bible collections in 2016, that serious doubts have been raised regarding their authenticity.⁴ Yet, it seems to us that the current debate

* We are grateful for the comments and suggestions made by the two anonymous reviewers and the editor, Molly Zahn.

- 1 A comprehensive list of these fragments with a summary of their history of acquisition has been published online by Justnes, “A List of Unprovenanced, Post-2002 Dead Sea Scrolls-like Fragments”; Justnes and Kjeldsberg, “The Post-2002 Dead Sea Scrolls Fragments.” See further Tigchelaar, “A Provisional List,” 173–88; Davis et al., “Nine Dubious ‘Dead Sea Scrolls’ Fragments,” 192–94; Davis, “Caves of Dispute,” 233–38.
- 2 See, for instance, Schøyen, “Acquisition and Ownership.” See also the press release by Azusa Pacific University at <https://www.apu.edu/media/news/release/14307/>, published online on 3 September 2009, which states that “[j]oining the Oriental Institute at the University of Chicago, APU becomes only the second institution of higher education to own original fragments from the Dead Sea Scrolls.” Paul Gray, the vice provost for graduate programs and research and dean of the University libraries, goes on to say that “[t]his acquisition will set Azusa Pacific University apart from all other Christian institutions of higher education in the world.” See further Justnes, “Fragments for Sale.”
- 3 See, for example, Charlesworth, DJD 28:231–33; Eshel and Eshel, “New Fragments from Qumran”; Eshel, Eshel, and Broshi, “A New Fragment of XJudges”; Tov, “New Fragments of Amos”; Elgvin, Davis, and Langlois, ed., *Gleanings from the Caves*; Tov, Davis, and Duke, ed., *Dead Sea Scrolls Fragments in the Museum Collection*. The publication of the fragments housed at Azusa Pacific University is apparently forthcoming in the PTS DSSP series (so Davis et al., “Nine Dubious ‘Dead Sea Scrolls’ Fragments,” n. 4). For an exhaustive bibliography of all published fragments, see Justnes, “A Lightly Annotated Chronological Bibliography.” A few scroll fragments, also claimed to be “Dead Sea Scrolls,” had surfaced a couple of decades before the present “boom” in “Dead Sea Scrolls-like” fragments. See, for example, Puech, “Fragment d’un rouleau de la Genèse”; idem, “Les manuscrits”; Émile Puech and Annette Steudel, “Un nouveau fragment du manuscrit 4QInstruction.”
- 4 See, for example, Davis, “Caves of Dispute”; idem, “Gleanings from the Cave of Wonders”; Tigchelaar, review of *Gleanings from the Caves* (edited by Elgvin, Davis, and Langlois); Justnes, review of *Dead Sea Scrolls Fragments in the Museum Collection* (edited by Tov, Davis, and Duke); Langlois, “Fake Scrolls at the Museum of the Bible.” The question has also been addressed in many seminars, workshops, and conferences that have been held in the past two years, including the ISBL in Berlin (2017) and Helsinki (2018), where specific sessions were dedicated to this matter. Nonetheless, the seeds of doubt had already been sowed a few years prior by Tigchelaar in his “Notes on the Three Qumran-Type Yadin Fragments.”

confuses two separate issues: authenticity and provenance.⁵ The scroll fragments under discussion are cultural artifacts, which means that before we even endeavor to determine whether or not they are modern-day forgeries, we must address the question of how to deal with unprovenanced antiquities. Work on the former should not start without first setting policies on the latter. Unfortunately, this has not been the practice in the case of the so-called post-2002 “Dead Sea Scrolls-like” fragments, resulting in the publication of material prior to a full consideration of the epistemic, legal, and ethical implications.

In this paper, we unpack some of these implications, reminding readers that first and foremost we are dealing with archaeological artifacts. In this manner, we also introduce an archaeological voice into this ongoing dialogue—a perspective that has been sorely missing in the field. Our aim is neither to point fingers nor hurl accusations, but to offer some reflections for consideration moving forward. We hope that this intervention generates a productive discussion leading to a set of well-defined guidelines and procedures.

1 Unprovenanced Artifacts: To Publish or Not to Publish?

For the benefit of readers who may not be familiar with the broader discussion on the subject, we offer an overview of the debate concerning the publication of unprovenanced artifacts. This has been raging for several years, represented by two camps with diametrically opposed views. Both agree on the imperative to preserve and disseminate cultural heritage. Both agree that the looting of archaeological sites and the illegal trade in artifacts is criminal. But they disagree on how scholars and institutions should deal with unprovenanced and potentially looted material *after the fact*.⁶

On one side of the spectrum, there are those who take a hard stance, arguing against the acquisition, study, and/or publication of unprovenanced artifacts. Out of context, archaeological objects lose significant information pertaining

5 The term “provenance” refers to two facets of an object’s documented history: 1) its archaeological context; and 2) its post-discovery history of acquisition and ownership. In the literature, these two dimensions are sometimes distinguished through the use of the terms “provenience” and “provenance,” respectively. To avoid confusion, we opt to use only the term “provenance,” specifying which type of provenance is meant when necessary. When the terms “provenance” and “unprovenanced” remain unqualified, it means we use them in their all-encompassing sense.

6 For general overviews of the debate with a discussion of the two perspectives, see Wylie, “Archaeology and the Antiquities Market”; Sease, “Conservation and the Antiquities Trade”; Harding, “The Problem of Illicit Antiquities”; Anderson, *Antiquities*, esp. 34–56.

to their stratigraphic position as well as their association with other artifacts and their built or natural environment, which is often as important as (if not more important than) the objects themselves. Moreover, the argument goes, any work dealing with artifacts of unknown or dubious origin only serves to legitimize and promote further the looting of sites and the trade in illicitly obtained antiquities by increasing both the demand for and the value of such objects.⁷ In turn, the entire process fuels the production of forgeries “since forgeries can only remain undetected where there is a substantial corpus of antiquities without proper archaeological provenience.”⁸

At the other end of the spectrum, there are those who minimize the value of archaeological provenance, arguing that this is hardly essential for the appreciation of an artifact. This position is especially common among epigraphers, numismatists, textual scholars, and art historians, many of whom argue that the amount of historical information that could be drawn from certain decontextualized antiquities is so great that the question of context is of secondary importance. To not study such objects, it is argued, would be irresponsible and leads to the loss of critical historical information. Moreover, it is claimed that the adoption of a hard stance against unprovenanced artifacts will only force the antiquities trade to go underground, thus ensuring that traded objects will remain hidden in private collections rather than shared with the public.⁹

At first glance, this second point of view is deceptively convincing—perhaps even “self-evident,” as David Owen puts it¹⁰—but in fact it both

7 These arguments have been expounded at length by various scholars, and so we do not feel the need to reiterate the details. See, for example, Renfrew, *Loot, Legitimacy and Ownership*; Joffe, review of *Messages from the Past* (by Deutsch) and *Biblical Period Personal Seals* (by Deutsch and Lemaire); Brodie, “An Archaeologist’s View of the Trade”; idem, “Scholarship and Insurgency?”; idem, “Congenial Bedfellows?”; Rollston, “Non-Provenanced Epigraphs II”; idem, “Navigating the Epigraphic Storm”; Walker Tubb, “Irreconcilable Differences?”; Elia, “Scholars for Sale”; Fincham, “The Fundamental Importance of Archaeological Context”; Gerstenblith, “Restrictions on Publication of Undocumented Texts”; Mazza, “Biblical History at What Cost?” Similar views are expressed by the various contributors to Meyers and Meyers, ed., *Archaeology, Bible, Politics, and the Media*. In addition, several publishers and archaeological societies have now taken a position against the publication or first presentation of unprovenanced material (see further below).

8 Elia, “A Seductive and Troubling Work,” 66. See also Gill and Chippindale, “Material and Intellectual Consequences.”

9 For more detailed expositions of these arguments, see, for example, Boardman, “Archaeologists, Collectors, and Museums”; Ede, “Who Owns Objects?”; Watt, “Antiquities and the Importance—and Limitations—of Archaeological Contexts”; Owen, “Censoring Knowledge.” Cf. also the editorial position in the foreword to Lubetski and Lubetski, ed., *New Inscriptions and Seals Relating to the Biblical World*, xi–xiv. And cf. Shanks, “What To Do with Unprovenanced Artifacts.”

10 Owen, “Censoring Knowledge,” 125.

simplifies and misrepresents the actual concerns raised by the opposite camp. It is plainly not true that context is of secondary importance in the case of objects of artistic, epigraphic, or textual value. Certainly, we could still learn a great deal about artifacts without archaeological provenance, but the latter allows us to learn so much more, not only about the objects themselves but also the society which produced and consumed them. For instance, the interpretation of a Mesopotamian relief—irrespective of its artistic merits—would be greatly enriched once we learn something about its context. Was this placed in a palace or a temple? Where was it located exactly, and who was its intended audience? What was its connection to and how did it interact with other reliefs in the same architectural space or the larger context of the building in question? These questions are critical for a holistic understanding of our hypothetical relief. Deprived of information about its archaeological context, a multifaceted object laden with multiple layers of meaning is reduced to a mere *objet d'art*.

The same goes for textual artifacts. While the amount of information we can glean from unprovenanced cuneiform tablets, inscriptions, manuscripts, and coins is substantial, this does not negate the fact that the information is somewhat diluted, if not altogether of dubious value for historical reconstruction.¹¹ Downplaying the importance of archaeological provenance results in a prioritization of some facets of the past—and the associated academic disciplines—over others. Nathan Elkins makes the important point that “intellectually honest people recognize that the writing of history is a multidisciplinary process; our personal approach is not the only valid approach. The iconography, archaeology, text, inscription or coin alone is not the answer; they are different pieces of the puzzle that, when brought together, provide the history.”¹²

Moreover, this attitude has the unintended consequence of fetishizing certain types of artifacts at the expense of others, which by far constitute the largest percentage of the archaeological record. For instance, looters are interested in “valuable” artifacts that could fetch a good price, but not in keeping any of the associated mundane objects, such as pottery, which archaeologists value. In addition, looting destroys archaeological sites by ripping artifacts out of

11 The importance of archaeological context for the various types of artifacts has been discussed at length by others. For cuneiform tablets, see, for example, Földi, “Cuneiform Tablets and the Antiquities Market.” For bullae and cylinder seals, see Joffe, review of *Messages from the Past* (by Deutsch) and *Biblical Period Personal Seals* (by Deutsch and Lemaire). For ostraca and inscriptions, see Rollston, “Non-Provenanced Epigraphs II.” For coins and the antiquities trade, see Elkins, “The Trade in Fresh Supplies of Ancient Coins”; idem, “Looting and Ancient Coins.”

12 Elkins, “Looting and Ancient Coins,” 69.

their original context and destroying the surrounding remains in the process. Here, it bears reminding that the value of most mundane artifacts—unlike texts, coins, and art objects—derives solely from their archaeological context. This means that even if these are eventually recovered from the surface following a looting event, they would be of limited epistemic significance. The argument that publishing unprovenanced artifacts “saves” them for posterity ignores the fact that the process of looting destroys countless other artifacts and critical contextual data. Therefore, the publication of such antiquities may contribute to the destruction of cultural heritage.

And then there is the question of forgeries, which is all too often brushed aside because of a blind faith in science. At the end of the day, only a securely documented archaeological context provides the necessary certainty that an artifact has not been fabricated in modern times. The reality is that forgers are getting better at their job, creating fakes that are harder to spot and can even fool scientific testing.¹³ In Rollston’s assessment, “forgers have all the ‘tools’ needed to produce fine epigraphic forgeries” (even if they often commit a number of errors in the process), thus making “methodological doubt ... an imperative.”¹⁴ The recent case of the *Gospel of Jesus’s Wife* (*GJW*), which passed through a rigorous authentication process only to be proven fake by a detailed scrutiny of its chain of ownership, should serve as a cautionary tale in this regard.¹⁵

13 See, for instance, Rollston, “Non-Provenanced Epigraphs I”; idem, “Modern Epigraphic Forgeries”; Brumfield, “How to Spot Fake Cuneiform Tablets.”

14 Rollston, “Non-Provenanced Epigraphs I,” 193.

15 For the *editio princeps* of the *GJW*, see King, “A New Coptic Papyrus Fragment.” Note King’s statement that “[c]urrent testing thus supports the conclusion that the papyrus and ink of *GJW* are ancient” (135), and that “[t]he scientific testing completed thus far consistently provides positive evidence of the antiquity of the papyrus and ink, including radiocarbon, spectroscopic, and oxidation characteristics, with no evidence of modern fabrication” (154). See further Yardley and Hagadorn, “Characterization of the Chemical Nature of the Black Ink”; Azzarelli, Goods, and Swager, “Study of Two Papyrus Fragments”; Hodgins, “Radiocarbon Determination of Papyrus Samples”; Tuross, “Radiocarbon Determination of Papyrus Samples.” Soon after the publication of the *GJW*, doubts about its authenticity were raised by a number of academics both on online blogs and in academic journals. See, for example, Depuydt, “The Alleged *Gospel of Jesus’s Wife*” (and references there); Bernhard, “A Final Note about the Origin of the *Gospel of Jesus’s Wife*” (and references there). However, the final nail in the coffin came as a result of investigative journalism carried out by Ariel Sabar, who sought to trace and vet all documentation pertaining to the acquisition history of the *GJW*. As he puts it, “[t]he Gospel of Jesus’s Wife had undergone—and passed—more state-of-the-art lab tests, inch for inch, than almost any other papyrus in history.... With King and her critics at loggerheads, each insisting on the primacy of their evidence, I wondered why no one had conducted a different sort of test: a thorough vetting of the papyrus’s chain of ownership.” The evidence did not match

But the debate about unprovenanced artifacts goes well beyond the narrow epistemic question of archaeological context. There are also ethical, moral, economic, and legal considerations.¹⁶ Most countries have enacted laws which aim to protect the cultural heritage found within their borders. According to these laws, this heritage belongs to the state in question, and thus the unauthorized excavation of archaeological sites and/or export of cultural objects constitutes a legal offense.¹⁷ Furthermore, the trade in antiquities operates within a framework that propagates western political and cultural hegemony. In many cases, objects move from less developed countries to more developed ones, and at the place of destination such objects are re-contextualized in, and thus interpreted in relation to, a western aesthetic.¹⁸ In addition to the potential for appropriation, western tastes and preferences that fuel the antiquities trade may negatively affect the ethnic or cultural identities of certain groups or populations in the source countries.¹⁹ There is also an economic dimension to cultural heritage, which can be an important source of income and social capital for countries. However, profits from the antiquities trade rarely trickle down to the source countries, and thus a few individuals, museums, and

up, and thus Sabar proved that the *GJW* is most probably a modern-day forgery. See Sabar, "The Unbelievable Tale of Jesus's Wife."

- 16 The consequences of the illegal trade in antiquities are summarized succinctly in Neil Brodie, "Congenial Bedfellows?" 410–11. The following observations are largely based on Brodie's work.
- 17 On the legal dimension, see the many works by Neil Brodie: "Stolen History"; idem, "Consensual Relations?"; idem, "Scholarship and Insurgency?"; Brodie and Renfrew, "Looting and the World's Archaeological Heritage," 347–48; Brodie and Kersel, "WikiLeaks, Text, and Archaeology"; Brodie and Sabrine, "The Illegal Excavation and Trade of Syrian Cultural Objects." See also Renfrew, *Loot, Legitimacy and Ownership*; Vrdoljak, *International Law, Museums and the Return of Cultural Objects*.
- 18 See, for example, Price, *Primitive Art in Civilized Places*; eadem, "The Enduring Power of Primitivism." Price explores the western construct of "primitive" art, bringing to the fore the manner in which the West typically appropriates non-western art, using its own artistic canon as the standard or benchmark for evaluation. In the process, such art pieces are subjected to the western gaze and commodified. All the while, however, the various local contexts and meanings at the place of origin are ignored or misconstrued.
- 19 See, for instance, Brodie and Kersel, "The Social and Political Consequences of Devotion to Biblical Artifacts." The authors highlight how the tourist demand for Jewish and Christian artifacts or relics from "the time of Jesus" has the consequence of minimizing the Arab or Islamic past. In their own words, such artifacts "become charged with political significance. Those who decide what artifacts are valuable also decide what history is valuable. Thus, although the market in Israeli antiquities is to all appearances politically disinterested, driven as it is by faith and commerce, it might still have political outcomes" (118).

institutions end up benefitting at their expense.²⁰ Finally, but certainly no less important, is the strong possibility that the illegal trade in antiquities is tied to and thus funds criminal and terrorist organizations.²¹

Some scholars dismiss the legal argument on the principle that cultural heritage belongs to all humankind and not to any one nation state.²² The case against “cultural nationalism,” to use John Merryman’s term (see note 22), has some merit, especially in those cases where there are no innate links between ancient societies and modern nation-states. But this does not negate the fact that, by law, any archaeological site or cultural artifact belongs to the state within whose borders it is found, irrespective of any presumed links (or lack thereof) between antiquities and the state in question. Beyond the possibility that cultural heritage has an intrinsic connection with local ethnic or cultural groups, therefore, we must not forget that heritage is also a national asset. The unauthorized excavation and/or export of cultural objects from source countries, then, could result in both cultural, social, political, and economic loss. Whether or not one agrees with the underlying principles, such acts constitute a violation of the antiquities laws of the respective countries, and “to encourage the sale of antiquities removed from a nation without its permission is to encourage disrespect for the legal rights of that nation as well as denial of its right to cultural self-determination.”²³

So we return to our original question: should or should not scholars publish unprovenanced artifacts? We acknowledge that some artifacts—art objects, clay tablets, inscriptions, ostraca, coins, manuscripts—have significant value beyond that provided by their archaeological context. At the same time, it cannot be emphasized enough that the loss of contextual information dilutes the historical significance of *any* unprovenanced object. In the end, however,

20 See Brodie, “Archaeological Looting and Economic Justice.” And cf. his conclusion: “In sum, although in the short term a source country’s economy might profit from illicit digging, in the long term the economic benefits are experienced mainly in the acquiring countries. It is one of the inequities of the trade, and one typical of the global economic process, that at the source the economic potential of archaeological heritage is realized through unsustainable commodity production, while in the developed acquiring countries, the durability of artifacts and their accumulation in museums as physical capital generate sustainable economic flows” (264). See also idem, “It’s All in a Price.”

21 See Brodie, “Congenial Bedfellows?”; idem, “Consensual Relations?”; idem, “Scholarship and Insurgency?”; Mazza, “Biblical History at What Cost?”

22 See, for example, Cuno, *Who Owns Antiquity?*, esp. 20; Ortiz, “Fifty Years of Collecting in a Changing World,” esp. 15; de Montebello, “And What Do You Propose Should Be Done with Those Objects?”; Appiah, “Whose Culture Is It?”; Merryman, “The Nation and the Object.” For an overview of the various issues concerning cultural heritage, ownership, and modern nation states, see Anderson, *Antiquities*, 73–103.

23 Gerstenblith, “Restrictions on Publication of Undocumented Texts,” 218.

the issue goes well beyond the epistemic concerns of scholars, and we believe that scholarship should not be pursued at all costs and it should not trump ethical, moral, and legal imperatives. This means that any artifact deemed illicit should neither be studied nor published.²⁴

Here, it must be pointed out that not all unprovenanced artifacts are necessarily illicit. Many museums have adopted the so-called “1970 rule,” a policy which places the burden on museums to ascertain that an artifact under consideration for acquisition was not exported from the source country without authorization after 1970.²⁵ This threshold refers to the principles enshrined in the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, which was adopted in Paris on 14 November 1970.²⁶ Signatory nations are required to enact national legislation ratifying the principles of the Convention, which, however, says nothing about the study or publication of artifacts. Nonetheless, several academic societies and journals have since adopted the “1970 rule” as a guiding principle, extending it also to the study and publication of artifacts deemed illicit.²⁷ The publication policy of the Archaeological Institute of America (AIA), for example, states:

As a publication of the Archaeological Institute of America, the *American Journal of Archaeology* will not serve for the announcement or initial scholarly presentation of any object in a private or public collection acquired after December 30, 1973, unless its existence is documented before that date, or it was legally exported from the country of origin. An exception may be made if, in the view of the Editor, the aim of publication is to emphasize the loss of archaeological context. Reviews of exhibitions, catalogues, or publications that do not follow these guidelines should state that the exhibition or publication in question includes material without known archaeological findspot.²⁸

24 The following points are heavily indebted to Gerstenblith, “Restrictions on Publication of Undocumented Texts,” and Mazza, “Biblical History at What Cost?”

25 See further Brodie and Renfrew, “Looting and the World’s Archaeological Heritage,” 351–53; Harding, “The Problem of Illicit Antiquities,” 81–82.

26 See http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html. Cf. also the related UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, which was signed in Rome on 24 June 1995: <https://www.unidroit.org/instruments/cultural-property/1995-convention>. For an overview of the main points of both Conventions, see O’Keefe, “International Laws, Treaties, and Organizations”; Anderson, *Antiquities*, 75–84.

27 See further the overview by Cherry, “Publishing Undocumented Texts.”

28 Norman, “Editorial Policy,” 135. Cf. also Article 2 of the AIA Code of Ethics at https://www.archaeological.org/pdfs/AIA_Code_of_EthicsA5S.pdf: “In accordance with these

Similarly, Article III, E, 4 of the American Schools of Oriental Research (ASOR) Policy on Professional Conduct states that:

ASOR Members recognize that: ... the publications and presentation venues of ASOR shall not serve as the initial place of publication or announcement of any object acquired by an individual or institution after April 24, 1972, which is the date of entry into force of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, with the following exceptions: a. the object was documented as already being in a collection before April 24, 1972; and further, if that object is no longer in its country of origin, it must have been legally exported; b. the object was acquired after April 24, 1972 but it is considered to be a forgery and is published as a forgery; c. the object's publication or announcement serves *primarily* to emphasize the degradation of archaeological heritage.²⁹

Accordingly, it is incumbent upon scholars to determine and confirm that an artifact is not illicit *prior* to its actual study and publication. This entails a thorough investigation of all documentation pertaining to the artifact's acquisition and ownership history. Documentation should establish that

principles, members of the AIA should: ... Refuse to participate in the trade in undocumented antiquities and refrain from activities that enhance the commercial value of such objects. Undocumented antiquities are those which are not documented as belonging to a public or private collection before December 30, 1970, when the AIA Council endorsed the UNESCO Convention on Cultural Property, or which have not been excavated and exported from the country of origin in accordance with the laws of that country."

29 <http://www.asor.org/about-asor/policies/policy-on-professional-conduct/>. In the case of ASOR, an exception is made in connection with cuneiform tablets (Article III, E, 5–6), on account of the fact that it is much easier to authenticate them and on condition that their lack of provenance is clearly highlighted in the publication and, more critically, that the author presents written confirmation that the tablet's owner is willing to return the object back to the source country.

As of 2017, the Society of Biblical Literature (SBL) follows ASOR's policy: https://www.sbl-site.org/assets/pdfs/SBL-Artifacts-Policy_20160903.pdf. Other professional organizations have adopted similar policies. For the Society for American Archaeology (SAA), see <https://www.saa.org/career-practice/ethics-in-professional-archaeology>; for the Society for Historical Archaeology (SHA), see <https://sha.org/about-us/ethics-statement/>; for the Register of Professional Archaeologists (RPA), see <https://rpanet.org/rpa-code-and-standards/> (Section 1.1); for the World Archaeological Congress (WAC), see <https://worldarch.org/code-of-ethics/> (the Dead Sea Accord); for the European Association of Archaeologists (EAA), see https://www.e-a-a.org/EAA/About/EAA_Codes/EAA/Navigation_About/EAA_Codes.aspx?hkey=714e8747-495c-4298-ad5d-4c60c2bcbdag (EAA Code of Practice).

the object had not been recently looted and that it had been acquired by the present collection (or a prior one) before 1970–73. Documentation must also prove that the laws of the source country in question had not been violated. Of course, the problem is that antiquities collectors and dealers are seldom forthcoming with information regarding an object's provenance.

When documentation is made available, it is the duty of whoever takes on the responsibility of publication to investigate thoroughly and prove beyond reasonable doubt that the documentation itself is authentic and accurate. Due diligence is critical here, as the recent case of the *GJW* has shown. It goes without saying that unsubstantiated statements by dealers or collectors should not be taken at face value.³⁰ As Brodie notes,

[d]ealers are keen to stress that large quantities of antiquities moved out of their countries of origin during the 'grand tour', or in colonial times, and that documentary proof of original provenance is long lost. They are right, and this is the crux: in the absence of provenance, how can licit material be distinguished from illicit? ... The only cautious response is to regard all unprovenanced material as looted³¹ [or potentially forged].

Importantly, all pertinent documentation as well as a detailed history of acquisition and ownership should be published together with the artifact in question. This is critical as it ensures full transparency. Indeed, this is the only true form of academic freedom in scholarship. Scholars who insist on the study and publication of unprovenanced artifacts often invoke the argument of academic freedom and the dissemination of knowledge as justification, accusing their critics as "censoring knowledge."³² But as Brodie points out, such scholars

30 Brodie, "Smoke and Mirrors."

31 Brodie, "Stolen History," 16. See also idem, "Smoke and Mirrors," 7: "The trade community does not agree that absence of published provenance is proof that an object has been looted, and point [sic] out that provenances are often known but not revealed because of a vendor's request for confidentiality, or because of the commercial requirement to keep a source secret. The trade community also maintains that most truly unprovenanced objects that reach the market have been found by chance in jurisdictions that claim state ownership of, or a preemptive state interest in, archaeological heritage. In such circumstances it becomes easier to sell finds on the black market than to submit them to the inefficient bureaucracy and perhaps for the inequitable reward of the state regulatory system. Not surprisingly, information about findspot and ownership history is lost in the process. But while these arguments are reasonable, not to say comforting, they are hardly ever supported by any documentary evidence or reliable testimony which might allow their validity to be assessed."

32 Cf. Owen, "Censoring Knowledge"; Boardman, "Archaeologists, Collectors and Museums."

often surrender their freedom by yielding to the demands of collectors and dealers: “[the] access of epigraphers to unprovenanced material in private collections appears to be conditional upon their disinterested acceptance of whatever account of provenance, or lack of provenance, the collector sees fit to offer.”³³ Moreover, by agreeing to publish artifacts without full documentation of their history of acquisition and ownership, such scholars would be committing their own acts of censorship, thereby impinging on the freedom of other scholars who might be interested in the study of the antiquities trade.³⁴

There is much more to unpack here, and this overview is a simplification of far more complex issues. Nevertheless, it provides the necessary background within which to situate our consideration of the post-2002 “Dead Sea Scrolls-like” fragments.

2 The Case of the Post-2002 “Dead Sea Scrolls-Like” Fragments

Although much of the controversy surrounding the “Dead Sea Scrolls-like” fragments that have surfaced since 2002 has focused on whether or not they are forgeries, the question of provenance is actually more fundamental and therefore of greater importance. In light of the above discussion, it is evident that the recent publication of these fragments is deeply problematic. Not only do most of them lack a known archaeological context, but their history of acquisition and ownership remains sketchy, to say the least. In what follows, we draw heavily on the valuable information collected in *The Lying Pen of Scribes*.³⁵

We start by considering the history of acquisition and ownership. The scroll fragments reached the present collections through diverse means. Some of them are said to have been procured directly from William Kando, whose father, Khalil Iskander, played an instrumental role in brokering the sale of Dead Sea Scrolls during the early days of discovery.³⁶ The majority, however, were acquired through one or more intermediaries, both named (e.g., Lee Biondi, James Charlesworth, Bruce Ferrini, Craig and Joel Lampe, Michael Sharpe, Michael R. Thompson) and unnamed, many of whom ultimately trace the

33 Brodie, “Scholarship and Insurgency?” 26.

34 Brodie, “Scholarship and Insurgency?” 25–27.

35 See Justnes, “A List of Unprovenanced, Post-2002 Dead Sea Scrolls-like Fragments”; Justnes and Kjeldsberg, “American Priest.”

36 The general details are well known. For a thorough account, see Fields, *The Dead Sea Scrolls*.

fragments back to the Kando family.³⁷ In all these cases, verifiable records that could illuminate the provenance—and, thus, the legal status—of the fragments in question are lacking.

According to some accounts, “Kando had sold fragments to several tourists and collectors from Europe and the USA who visited his shop in the 1950s and later.”³⁸ Other fragments were purportedly exported out of Israel through Lebanon and then on to Europe in the 1960s, either before or after the Six-Day War. William Kando claims that these fragments

were found in a box by a professor who checked them for my father. This was in 1966. My father kept the box with a cousin in Lebanon and then when the [civil] war in Lebanon began my cousin went to Europe. After the death of my father and after the cousin also died, we gave the money to his family and we got back all the fragments [from the box] and kept them in Switzerland. I think there are now 28 pieces left.³⁹

37 Here we exclude a small batch of fragments in the Schøyen Collection acquired from John Trever and the family of William Brownlee, owing to the special circumstances surrounding their acquisition; see Schøyen, “Acquisition and Ownership,” 27–29; Brooke and Robinson, “A Further Fragment of 1QSb.” We also exclude the fragments found in Yigael Yadin’s desk drawer, for similar reasons; see Eshel, “Three New Fragments.”

38 Schøyen, “Acquisition and Ownership,” 29.

39 Beaumont and Laughland, “Trade in Dead Sea Scrolls.” Cf. also Charlesworth, “The Discovery of an Unknown Dead Sea Scroll”: “Along with approximately 40 other Dead Sea Scroll fragments, some relatively large, it was taken from the Holy Land to Europe by Arabs, notably those related to the man who served as mediator between the Bedouin who found the Dead Sea Scrolls and scholars who proved their antiquity and edited the early discoveries. The fragments were taken to Europe, often through Lebanon, in the sixties (whether before or after the so-called Six-Day War I am unable to ascertain). I have spent 40 years talking to this famous Arab Christian family. They tell me that it was customary to collect the fragments in something like a basket. Most of them were sold and subsequently hailed as the greatest manuscript discovery of modern times; others (unknown to most specialists on the Dead Sea Scrolls) were hidden and taken to Europe before or after some of the wars between the Arabs and the Israelis. Why? These fragments had been judged in the 1950s and 1960s as the most valuable biblical texts, according to internationally renowned biblical scholars who lived in Jerusalem. The Arabs wanted to reserve the Dead Sea Scrolls for economically challenging times and sell them for millions of dollars.” And cf. Draper, “The Bible Hunters,” 69; also published online as “Inside the Cloak-and-Dagger Search for Sacred Texts”: “In 1967, during the Arab-Israeli Six Day War, Israeli intelligence officers seized the Temple Scroll from Kando’s home, claiming it as government property. After the incident Kando reportedly started furtively moving his remaining scroll fragments to relatives in Lebanon and later to a bank vault in Switzerland.”

These are then the alleged sources of most of the recently surfaced scroll fragments. But so far, no verifiable documentation has been made available—if it exists—to show that these fragments were indeed acquired and exported out of Israel either before 1970–73, in accordance with the terms of the UNESCO Convention, or before 1978, which is when the antiquities law in Israel was enacted.⁴⁰ Herein lies the problem—everything we know about the recently surfaced “Dead Sea Scrolls-like” fragments is based on mere hearsay or generic, unsubstantiated claims.⁴¹ Of course, this is hardly enough, and such statements cannot be accepted uncritically. The (signed) notes that arrived together with some scroll fragments do not count as verifiable records either,⁴² nor does Kando’s ledger.⁴³ Authentic documentation should comprise export

40 For a summary of the law, see <https://mfa.gov.il/mfa/pressroom/1998/pages/antiquities%20law-%201978.aspx>. Anything defined as an antiquity by this legislation belongs to the State of Israel, *unless* it had been acquired before 1978. Furthermore, the law requires that an export license be obtained prior to taking any artifacts out of the country.

41 The various stories and claims made about the alleged provenance of “Dead Sea Scrolls-like” fragments are conveniently compiled in Justnes and Kjeldsberg, “American Priest.” None of the statements is backed by any verifiable documentation—at least, none that has been published or made freely available for scholarly scrutiny. Commendably, Johnson (“Secondary Publications of Unprovenanced Artefacts,” 38) emphasizes the need to carry out independent investigations about the provenance of such fragments and to include the ensuing results in the final publication. However, his investigation of MOTB.SCR.000123 (*idem*, “A Fragment of Instruction [Inv. MOTB.SCR.000123]”) is limited to identifying the dealer (*i.e.*, Lee Biondi) and the exhibition of which the fragment was a part, based on a publication by the same Lee Biondi. Accordingly, the provenance history is not accompanied by any verifiable records, and we remain in the dark regarding how and when Biondi acquired the fragment in question. The investigation of provenance needs to be much more comprehensive and evidential.

42 Cf. Schøyen, “Acquisition and Ownership,” 29: “In a signed statement William Kando says the following about the provenance of these fragments: ‘We hereby confirm that the Joshua (MS 2713) and Judges (MS 2861) fragments, from Qumran acquired through James H. Charlesworth and the Joel (MS 4612/1) and Leviticus (MS 4611) fragments, were acquired by my father from members of the Bedouins in 1952–53. At that time the caves in Qumran were not numbered and many of the locations not known, but we believe that all these fragments (except Judges) came from the cave near Khirbet Qumran later known as Cave 4. We sold these fragments to our old customer of the Kando family in Zurich in 1956.’”

Some of the fragments published by Esther Eshel and Hanan Eshel came with a similar statement: “*Statement to whom it may concern*: These fragments that came to Europe in the beginning of the sixties were in Lebanon with Mr. Moussa Al-Tawil for safekeeping,” signed by Kando in Jerusalem on 6 October 2002 (see Tigchelaar, “Provisional List,” 176, n. 18).

43 Cf. Draper, “The Bible Hunters,” 69; *idem*, “Inside the Cloak-and-Dagger.” Draper mentions that William Kando showed him a ledger, “pointing to a notation that he had sold seven Dead Sea Scrolls fragments to [Steve] Green in May 2010.” This is hardly proof of

licenses, transport papers, official receipts, letters of correspondence, photographs, etc. Of course, it is unlikely that any such records exist for scrolls that were transferred out of Israel in the 1950s and 1960s, but this is exactly the problem, for the situation allows recently looted material or even forged scroll fragments to be subsumed with those that truly belong to the batch from the mid-twentieth century.

The popularization of certain narratives only makes it easier to mask the provenance history of looted or forged scroll fragments and thus to create a fictitious social biography for them.⁴⁴ It is not surprising that many “Dead Sea Scrolls-like” fragments are ultimately traced back to the Kando family, as this is the perfect way to imbue them with an “authentic” pedigree.⁴⁵ This makes their provenance seemingly “plausible” owing to Kando’s historic link with the early discoveries of the Dead Sea Scrolls and well-known claims that he still possessed scrolls which he did not sell to the Palestine Archaeology Museum.⁴⁶ Importantly, the Kando connection also makes the fragments licit.⁴⁷ The danger of these popular accounts lies precisely in their ability to incorporate new

provenance. At most, it shows that William Kando had in his possession the fragments, which he sold to Green. However, we remain in the dark about the history of the fragments prior to the purchase. When did these reach Kando? Were they from the 1950s or are they more recent acquisitions? The fact that we cannot answer these questions with certainty is a problem.

- 44 Note, for instance, the widespread circulation of the anecdote about the transfer of Kando’s scroll fragments, first to Lebanon and then to Switzerland (see above and the following footnote). Interestingly, the little details—such as the dates and the impetus behind the movement of the fragments—change with each iteration, but the overarching narrative remains the same.
- 45 Cf. Jarus, “28 Dead Sea Scroll Fragments”: “Before Azusa Pacific University purchased the scroll fragments, the university received assurances from William Kando that the Kando family had owned those fragments in the past, [Robert] Duke said” (Robert Duke is Dean of the School of Theology at APU).
- 46 Cf. Cross, “Reminiscences of the Early Days.” And cf. further Fields, “Dead Sea Scrolls”: “Last Tuesday when I was in Jerusalem I said to William [i.e., William Kando], well, and I told him this story, again, just to remind him, and I said: ‘William, is it possible that the fragment that Southwestern Seminary just bought was in that box that your dad showed to Frank Cross in March of 1966 under that bridge in Beirut?’ And he said: ‘Yes, it’s possible.’ So, that gives you a clue, sorta to the root of a lot of these fragments probably from Beirut, to Cyprus, to Zurich ... probably in 1966, just before the six day war, and we don’t have any idea how many there are” (transcript by Justnes and Kjeldsberg, “American Priest”).
- 47 Cf. Årstein Justnes, as quoted by Beaumont and Laughland, “Trade in Dead Sea Scrolls”: “Why is the Kando connection so important? [Because] in practical terms, a link to the Kando family has been the only way one can justify introducing new fragments into the [academic] dataset close to 50 years after the last Dead Sea Scrolls were found.”

material. Indeed, Weston Fields's statement that "we don't have any idea how many there are" (see note 46) is effectively an open invitation to add newly acquired and potentially illicit or forged material retroactively into Kando's original collection.⁴⁸

We cannot emphasize enough that even if the fragments match previously known scrolls, it does not make them any more licit. In such instances, the match—if correct, and the history of scholarship on unprovenanced "Dead Sea Scrolls-like" fragments has often been characterized by incorrect identifications—would only prove that the fragments are authentic, in addition to shedding some light on their general place of discovery. However, this would not prove that the scroll fragments were found in the 1950s. It is possible that recent looting could have recovered fragments matching those from the early discoveries. Insofar as assessing their legal status, we must therefore be more vigilant when we have matches as these fragments could more easily be passed off as licit. Therefore, even in such instances, verifiable records of acquisition and ownership are still necessary.

Some may question our insistence on recent looting, but the reality is that the Judean Desert is still yielding scrolls, as recent episodes of looting have shown.⁴⁹ In this context, it bears emphasizing that despite numerous surveys and investigations, many of the caves in the Judean Desert, including those at Qumran, have only been explored superficially. For instance, Roland de Vaux admits that while his team surveyed about 270 caves and crevices in the region of Qumran, "[i]t was not possible to make this exploration exhaustive."⁵⁰ In

48 Cf. Jarus, "28 Dead Sea Scroll Fragments," who refers to fifteen scroll fragments "recently sold through a company called Les Enluminures on behalf of an anonymous seller and [which] are now in an undisclosed U.S. institution." Jarus reports that Sandra Hindman, the president of Les Enluminures, "said she *believes* all 15 fragments were once in the collection of Bruce Ferrini, a collector in Ohio who died in 2010. Hindman said that *her information* indicates that the 15 fragments were originally sold by the Kando family in 2002 before being passed through a series of collectors. William Kando expressed concerns about this claim, saying that he sold seven fragments in that year to a man named Craig Lampe and that he thinks some of those fragments later went to a "library in California" (a description that better matches Azusa Pacific University)" (italics ours). In addition to the doubts raised by the conflicting accounts, note the language that Hindman uses, which is vague and indicative of the absence of any verifiable documentation.

49 See, for instance, Eshel, Baruchi, and Porat, "Fragments of a Leviticus Scroll." We will refrain from discussing the ensuing controversy surrounding this episode. But we are of the opinion that, by purchasing and publishing the scroll, scholars have only encouraged further looting and destruction of archaeological heritage.

50 De Vaux, *Archaeology and the Dead Sea Scrolls*, 51. And cf. idem, DJD 3:6: "On se souviendra que, dans un certain nombre de sites, des sondages ont seulement été effectués et que, par conséquent, cet inventaire n'est pas toujours complet."

most cases, in fact, de Vaux conducted minimal excavations, especially in the natural caves. This is also true of Operation Scroll, which comprised an extensive survey of the northern part of the Judean Desert.⁵¹ A look at the various published plans from this expedition shows that when excavations were carried out, these were limited to a few soundings. The recent re-excavation of Cave XII/53—misleadingly dubbed as “Cave 12”⁵²—is very telling in this regard. Soundings made during Operation Scroll unearthed a substantial quantity of pottery,⁵³ but the more extensive recent excavations yielded a richer corpus of material, including fragments of cylindrical or ovoid jars and lids, and pieces of linen.⁵⁴

Unfortunately, the Kando narrative has helped conceal the dubious legal status of many of the recently surfaced scroll fragments. As long as this narrative remains unquestioned, it will continue to serve as the perfect framework for “laundering” material that may have been acquired illegally or even forged. We are not saying that *all* authentic post-2002 “Dead Sea Scrolls-like” fragments are illicit. However, the fact that we cannot easily identify the licit from the illicit fragments is exactly the problem. In this case, the burden of proof is on the scholarly community to prove beyond reasonable doubt their legal status.

Working with material of questionable origin has legal and ethical implications, but there are also epistemic consequences to consider. Besides the potential contamination of the dataset by possible forgeries, the most obvious concern pertains to the archaeological provenance of “Dead Sea Scrolls-like” fragments. Unless a fragment can be matched to a scroll with a known context, the question of origin has to remain open ended. As with the history of acquisition and ownership, we can hardly rely on claims made by antiquities dealers or collectors in this regard. The oft-repeated attributions to “Qumran” or “Qumran Cave 4” should be approached with a great degree of skepticism—and not only because many of these claims are often qualified with precautionary adjectives.⁵⁵ It is obvious that a Qumran provenance

51 See the various reports in *ʿAtiqot* 41/1 [Hebrew] and *ʿAtiqot* 41/2 [English].

52 See also the comments in Fidanzio, “De nouvelles découvertes dans la grotte XII/53 (12 ?) à Qumrân.”

53 Cohen and Yisraeli, “The Excavations of Rock Shelter XII/50 and in Caves XII/52–53.”

54 Gutfeld and Ovadia, “Old Cave—New Project: The Renewed Excavations in Qumran Cave 53”; Gutfeld and Price, “The Discovery of a New Dead Sea Scroll Cave.” See the official press release at <http://new.huji.ac.il/en/article/33424>.

55 Cf. William Kando’s statement in connection with the Schøyen fragments: “... but we believe that all these fragments (except Judges) came from the cave near Khirbet Qumran later known as Cave 4,” and Schøyen’s own words, in connection with another batch of fragments, that “William Kando states that he was *reasonably sure* they came from Cave 4” and that the fragments that passed through Lebanon “were purchased from the

automatically raises the value of a scroll fragment (or any other artifact, for that matter). Moreover, the attribution to “Cave 4” is common precisely because thousands of scroll fragments, a large majority of which were excavated by and purchased from the Bedouin, are traced back to this cave. The implication, of course, is that there are likely many more fragments that were never recovered from the Bedouin, and this therefore can be used as a blank check to incorporate new fragments into the “Cave 4” dataset. Once again, we see the influence that popular narratives exert on the collective imagination of the scholarly community and the public at large.

This is not the first time that false claims have been made about the archaeological provenance of scrolls and other artifacts in connection with Qumran in particular or the Judean Desert in general. The situation with the Wadi Seiyal/Naḥal Ḥever fragments is a case in point, although political considerations seem to have been the primary factor behind the misattribution.⁵⁶ In the case of Qumran, Kando’s claim that a bronze inkwell and incense altar were found at the site prior to the start of de Vaux’s excavations in 1951 is highly dubious.⁵⁷ A convincing case has also been made that some 4Q texts are likely to have come from Naḥal Ḥever,⁵⁸ which in turn raises the possibility that the same may be true of other scrolls claimed to be from Cave 4Q.⁵⁹ In this regard, it is significant that to date, only one fragment (Schøyen’s MS 5439/1) has been conclusively matched with a published Dead Sea Scroll (4Q364).⁶⁰ For this reason, it is disappointing that several of the published post-2002 “Dead Sea Scrolls-like” fragments have been given a tentative provenance, in most cases with very little justification.⁶¹

Bedouin between 1952 and 1956 and were also *believed to come* from Cave 4” (Schøyen, “Acquisition and History,” 29–30 [our italics]).

56 See the account in Yadin, *The Finds from the Bar Kokhba Period*, 1–3; see further Cotton and Yardeni, DJD 27:1–6.

57 Elgvin and Pfann, “An Incense Altar from Qumran?”; Elgvin, “Incense Altar from Naḥal Ḥever?”; idem, “Bronze Inkwells from Naḥal Ḥever(?)” Unfortunately, while he disputes their Qumran origin, Elgvin still attempts to ascribe a place of discovery to these unprovenanced artifacts.

58 Yardeni, DJD 27:283–317 (esp. 283–84).

59 See also Reed, “Find-Sites of the Dead Sea Scrolls.”

60 Tigchelaar, “Provisional List,” 175–76.

61 Cf., for example, Tov, “Introduction,” 5: “Some of these fragments must have come from Qumran, probably Cave 4, while the others may have derived from other sites in the Judean Desert. Unfortunately little is known about the provenance of these fragments because most sellers did not provide such information at the time of the sale.” And cf. Eshel and Eshel, “New Fragments from Qumran,” 135: “Four of these fragments appear to have originated in Cave 4 at Qumran. These include: a fragment from the book of Genesis;

The Schøyen volume deserves a detailed appraisal in this regard owing to the significant effort invested in trying to determine the probable place of discovery of each fragment in the collection. Some fragments (e.g., MS 4612/9, MS 5214/1, MS 5214/2, MS 5233/2, MS 5440, MS 5441, and MS 5480) are labelled as “4Q(?)” without any further explanation, and it is unclear whether these attributions are based on claims made by antiquities dealers or on the results of the mineral analysis (on which see below).⁶² In the case of the Bar Kokhba caves, the attributions are limited to “Ḥev(?)” and “Mur/Ḥev.” Torleif Elgvin notes that “[w]hile other Bar Kokhba locations cannot be excluded, a variety of factors suggest that these texts were removed from Murabbaʿat or Ḥever; these are sites discovered by the Bedouin in 1951–52, close in time to their discovery of Cave 4.”⁶³ The problem, in this case, is that this decision is predicated on the assumption that *all* the fragments in the Schøyen collection were indeed found by the Bedouin in the 1950s and not at some later time. As noted above, this is an assumption that has no evidential support.

Indeed, the attribution of provenance often follows a circular logic. Scroll fragments that have a late paleographic date as well as “peculiar” scribal characteristics are given a non-Qumran provenance due to their different nature compared to the published Qumran Dead Sea Scrolls (e.g., MS 2713, MS 2861, MS 4611, and MS 4612/1).⁶⁴ This, in turn, continues to underpin the notion that the scrolls from Qumran have a set of defined characteristics. But who is to say that such fragments could not have come from Qumran, perhaps from one of

two fragments from an Isaiah scroll; and a small fragment from a nonbiblical work that refers to Abraham and Isaac. The fifth fragment also comes from Genesis; however, as best can be determined, its origins are from Cave 8. All of these texts belong to known Qumran scrolls.” In the latter instance, the identification was made on the basis of a presumed match, which later turned out to be incorrect. Cf. also the differing judgments made in connection with Schøyen’s MS 2861. Charlesworth (DJD 28:231) states that the fragment “probably derives from Qumran cave 1 or 4.” Puech (“Les manuscrits,” 184) claims that “[c]e fragment de rouleau du livre des *Juges* appartenant à une collection privée fut acheté le 16 août 1964 à l’antiquaire de Bethléem, Khalil Iskandar Shahin, alias Kando” and that it “provenant très probablement de la grotte 4.” The editors in the Schøyen volume, on the other hand, note that “[t]he fact that the scroll is Masoretic, without textual variants ... and from a late date may point to Murabbaʿat or Naḥal Ḥever as place of discovery” (Eshel, Eshel, and Justnes, “XJudg with MS 2861,” 201). For the problem with the latter attribution, see the main text.

62 The problematic nature of these attributions has already been pointed out by others. See, for example, Tigchelaar, review of *Gleanings from the Caves*; Zahn, review of *Gleanings from the Caves*.

63 Elgvin, “Texts and Artefacts,” 53 (n. 14).

64 See further Davis, “High Quality Scrolls.”

the other caves that yielded no scrolls in the 1950s? Only knowledge of archaeological context would be able to determine whether or not a late paleographic date or particular scribal features are indeed “un-Qumranic.” The assumption that such fragments cannot be from Qumran because they are unlike the scrolls from Caves 1Q–11Q assumes that we know the entirety of the Qumran corpus.⁶⁵ This is exactly why context matters. Indeed, both paleography and any typology of scribal characteristics *depend* on the availability of precise and secure archaeological contexts, just like all other typologies.

The editors of the Schøyen volume went to great pains to integrate scientific analyses to try and determine the probable provenance and authenticity of the fragments in question. In our opinion, the application of these analyses obfuscates the picture by lending an aura of credibility to the proposed places of discovery that remains, as yet, unattainable. To elucidate a possible archaeological provenance, mineral analyses were carried out to identify the mineral fingerprint typical of limestone and marl caves at Qumran and caves in Naḥal Ḥever and Wadi Murabbaʿat. The main shortcoming, in this case, is the non-exhaustive nature of the dataset. Unless hundreds of caves from each region of the Judean Desert are sampled, the results from such analyses will have limited applicability. Some of the conclusions drawn from the results are also questionable. For example, the “4Q(?)” provenance of some fragments (e.g., MS 4612/5 and MS 4612/4) is predicated on the presence of aragonite in them since the mineral is typical of this cave. Yet, in the case of MS 5439/2, it is stated that

FTIR spectra show the presence of quartz and calcite, but not aragonite.... These results indicate that MS 5439/2 might not derive from Cave 4 (Rabin, unpublished report). Since aragonite has been invariably found on the fragments from Qumran, the absence of aragonite suggests a place of discovery other than Qumran. Furthermore, the absence of dolomite eliminates the possibility that the fragment came from Murabbaʿat. We tentatively designate the fragment Ḥev(?)Unidentified Fragment.⁶⁶

This raises a number of questions which are not addressed in the report. Is aragonite typical of all the caves at Qumran or only of the marl caves? If it is the

65 Cf. also the case of MS 5095/7, which is identified as a commentary on Genesis. In connection with its possible archaeological provenance, it is stated that “[n]early all the Qumran *pesharim* were found in Cave 4, and the same may be the case for MS 5095/7” (Elgvin, “MS 5095/7,” 294). The logic is circular and assumes *a priori* that our knowledge of the Qumran collection is complete.

66 Elgvin, “MS 5439/2,” 299. Cf. idem, “MS 4612/1,” 225 for a similar judgment.

former, why are fragments with aragonite given a “4Q(?)” provenance, when many other caves could be equally plausible candidates? And if aragonite is unique to the marl caves, why are fragments without aragonite assumed not to be from Qumran, when these fragments could have come from one of the natural caves?⁶⁷ And why is Cave 4Q singled out as the only possible source for these fragments when there are plenty of other marl caves around Qumran?⁶⁸ Furthermore, while the absence of dolomite may eliminate Wadi Murabba‘at as a possible place of discovery, Naḥal Hever cannot be presented as the only other option, not without a much broader dataset which shows unequivocally that dolomite is the mineral fingerprint of Wadi Murabba‘at alone (see also above for the problem with limiting non-Qumran sources to Naḥal Hever and Wadi Murabba‘at). The same critique can be levelled against the “11Q(?)” provenance ascribed to MS 4612/3, which rests on the notion that “Cave 11, the so-called bat cave, seems to possess ... a [very specific] fingerprint.”⁶⁹ But how can we be certain that other caves in region do not have the same fingerprint? Do bats not visit other caves in the region? The veneer of legitimacy provided by these analyses is a misuse of hard science and is misleading, as no matter how costly, varied, or dazzling the analyses may be, they do not trump a properly excavated and thoroughly documented archaeological context.

The danger of educated guesses lies in their potential to contaminate the dataset. A tentative “4Q” provenance will easily become a possible or a probable one a few studies down the line.⁷⁰ In fact, we would go so far as to say that even referring to these unprovenanced scroll fragments as “Dead Sea

67 MS 4612/3, for instance, is claimed to be from Cave 11Q owing to the presence of “magnesium ammonium phosphate (struvite), a feature most easily explained as a product of the bat guano that permeated the atmosphere of Cave 11” (for more on this, see below). Yet, “[n]o calcite or aragonite was detected on the fragment.” See Eshel, “MS 4612/3,” 295.

68 In addition to the marl caves excavated by de Vaux (i.e., Caves 4Qa and 4Qb, 5Q, 7Q, 8Q, 9Q, and 10Q), marl caves were investigated by Magen Broshi and Hanan Eshel to the north of the Qumran settlement. Critically, the excavators note that “[i]n each of the caves investigated we found evidence of illicit digging, probably by Bedouins in the 1950s” (“Residential Caves at Qumran,” 328). The latter assumption, of course, is conjectural, as the illicit digging could have occurred at some other time.

69 Rabin, “Material Analysis of the Fragments,” 70. See also Eshel, “MS 4612/3,” 295. This fragment was originally published by Émile Puech (DJD 37:501–4) and attributed to Cave 4Q.

70 Cf. the case of MTB.SCR000123, which was wrongly identified as a fragment of 4Q416, a misidentification that found its way into subsequent publications, including commentaries and critical editions. See Johnson, “Secondary Publications of Unprovenanced Artefacts,” 35 (and references there). Similarly, the bronze inkwell in the Schøyen collection is still assumed to be from Qumran in the scholarly literature. Cf., for example, Askin, “What Did Ben Sira’s Bible and Desk Look Like?” 19; Eckardt, *Writing and Power in the Roman World*, 93–94, Fig. 5.17a.

Scrolls”—as many of the publications do—is problematic since we do not know whether they actually originate from somewhere around the Dead Sea or some other place—assuming they are not forgeries, that is. For this reason, the use of the adopted siglum “DSS F.” is best avoided as it is both misleading and epistemically problematic, just like “XQ” was before it.⁷¹ The term “Dead Sea Scrolls-like,” which we also use here, is better in this regard, although it still prioritizes the link with the Dead Sea Scrolls, which may, in turn, also play a role in raising the value of such fragments and, thus, in fueling the antiquities trade.⁷²

Therefore, all proposed or claimed places of discovery must be regarded with great skepticism. To base hypotheses or historical reconstructions on such dubious information is highly questionable. Moreover, generic labels can be quite disingenuous, as they give the impression of a known archaeological context when in fact they tell us next to nothing about it. This brings us to our final point.

While we acknowledge that, as textual artifacts, “Dead Sea Scrolls-like” fragments have inherent value, the information that is lost when these are devoid of a documented archaeological context is immense. One has only to look at the extensive literature and the ongoing debates concerning the history of deposition of the original Dead Sea Scrolls, many of which were discovered by Bedouin. As a result, critical information concerning the spatial context and relationship between scrolls, cylindrical jars, and other artifacts in the caves has been lost. Were these all part of one and the same deposit? Do the various artifacts reflect different uses of the caves? Under what circumstances and for what reasons were the scrolls and other artifacts deposited in the caves (e.g., for storage, safe-keeping, or a *genizah*)? Were some of the caves looted in antiquity or early modern times? Were some of the caves originally blocked off? And what do we make of Cave 4Q, arguably the most important of the scroll caves? A lack of documented contextual information hinders significantly any attempt to answer these questions. Moreover, the publication of unprovenanced scroll fragments, some of which may well have been looted recently, indirectly endorses such destruction of data, which is critical to archaeologists and textual scholars alike.

A common argument made by scholars who prioritize authenticity over provenance is that if we adhered strictly to the position of those who condemn the study and publication of unprovenanced artifacts, we would not have the Dead Sea Scrolls. We hope to have shown that this is not a valid argument.

71 See also Johnson, “Secondary Publications of Unprovenanced Artefacts,” 29 (n. 6).

72 For a history of the selling prices of “Dead Sea Scrolls-like” fragments, see Justnes, “A Price List.”

While the original Dead Sea Scrolls were found and/or acquired under less than ideal circumstances, we know a great deal more about where they come from. The material from Caves 3Q, 5Q, 7Q, 8Q, 9Q, and 10Q was excavated under controlled conditions by de Vaux's team, whereas fragments that matched those discovered by the Bedouin were found during the investigations of Caves 1Q, 4Q, and 11Q.⁷³ This is not to say that there are no misplaced fragments, especially in the case of Cave 4Q (see above),⁷⁴ which is why we would still advocate caution when it comes to historical or archaeological reconstructions based on some of this material. More importantly, however, the study of the original Dead Sea Scrolls does not violate the "1970 rule" or Israel's antiquities legislation. It is in this respect that the post-2002 "Dead Sea Scrolls-like" fragments are particularly problematic, and this is the critical distinction between these recent acquisitions and the Dead Sea Scrolls.

3 Concluding Remarks and Recommendations

Following the realization that some of the recently purchased "Dead Sea Scrolls-like" fragments are forgeries, there have been renewed calls for the implementation of rigorous methods and procedures by which to ensure the authenticity of the fragments, but little to no emphasis on the more pertinent question of provenance—that is, archaeological context and acquisition history. The recent study of "nine dubious" fragments which were withheld from the publication of the Schøyen collection concludes that its "results along with recent articles by Tigchelaar and Davis should form the basis for future examinations of non-provenanced parchment and papyrus antiquities in other private collections."⁷⁵ But this misses the point entirely. It is useless for a fragment to be confirmed as authentic if, in the end, it is shown to be illicit—or, as in most cases, if its legal status cannot be determined due to a lack of verifiable records.

Recent high-profile publications of unprovenanced textual artifacts such as the *GJW* and the "Dead Sea Scrolls-like" material highlight the urgent need for an overarching policy in dealing with such artifacts. Several scholarly publishers do not have any policy in place, or if they do, it is not as rigorous as it

73 Matches to the 11Q scrolls have been made only recently, on the basis of a few fragments found entangled with textiles excavated by de Vaux from the same cave. See Puech, "Nouveaux menus fragments de la Grotte 11Q."

74 See, especially, Reed, "Find-Sites of the Dead Sea Scrolls."

75 Davis et al., "Nine Dubious 'Dead Sea Scrolls' Fragments," 226.

should be. In a sense, even the current policies on unprovenanced antiquities of organizations such as the AIA, ASOR, and SBL are insufficient, as they allow for the presentation and publication of such artifacts in their venues after an initial presentation or publication elsewhere.⁷⁶ In many ways, therefore, the present system facilitates the “laundering” of unprovenanced artifacts by allowing their secondary publication, thereby mainstreaming them in the process.

Accordingly, we wish to conclude by proposing two sets of recommendations, addressing specifically the community of scholars dealing with “Dead Sea Scrolls-like” material. The first pertains to already known fragments that have not yet been published as well as fragments that might surface in the future:

1. Scholars should not authenticate, study, or publish any unprovenanced “Dead Sea Scrolls-like” fragments—unless the conditions in Point 2 below have been met. This process could not only contaminate the dataset, but it could potentially legitimize and enhance the monetary value of such fragments, fueling further the antiquities trade, looting, or the creation of forgeries.
2. The burden of proof should be on scholars who want to publish unprovenanced “Dead Sea Scrolls-like” fragments—that is, they have the ultimate responsibility to prove their legal status. Importantly, it is not enough to rely on hearsay, unsubstantiated reports, or other second-hand information. Rather, the history of acquisition and ownership must be traced in detail on the basis of verifiable records, which should be published and thus made available for subsequent scrutiny by other scholars or investigators. Like any scientific publication, scholars must provide the necessary data to allow their conclusions to be verified or challenged.
3. In the event of a successful verification, such fragments may be published, even if the archaeological provenance remains unknown or else indeterminable. However, they should not be assigned tentative places of discovery, let alone cave numbers or other designations used for finds with a documented archaeological context.

⁷⁶ The publication loophole remains, despite ASOR's recent effort to define more precisely what constitutes “an initial publication or announcement” (<http://www.asor.org/wp-content/uploads/2018/03/public-policy-first-publication-2017-04.pdf>). For example, the current policies of the AIA, ASOR, and SBL would allow for the republication of “Dead Sea Scrolls-like” fragments acquired by the Museum of the Bible which are now known to be fakes, as these were initially published by leading scholars in an academic press (for references cf. note 3). The same is true of the *G/W* papyrus (cf. note 15).

4. The scholarly community should refrain from using sigla such as “XQ,” “Q(?),” or even “DSS F.,” and instead adopt the more neutral designations by which the fragments are registered in the respective collections. These designations may be unwieldy or inconvenient, but that is exactly the point: to remind scholars where the fragments are coming from.
5. In conjunction with the previous point, published fragments should not be integrated into any “Dead Sea Scrolls” database. Rather, they should be placed in a distinct category to ensure that their “dubious” origin is never overlooked and they do not contaminate the existing dataset.
6. Professional organizations and publishers should adopt strict and comprehensive policies prohibiting the presentation and publication of “Dead Sea Scrolls-like” fragments without a documented acquisition and ownership history. Critically, this should not be limited to first publication *unless* the purpose of a secondary publication is to highlight the fact that an already published fragment is a fake or else lacks the necessary information to prove whether or not it is licit, or *unless* the purpose is to discuss the antiquities trade. These guidelines should be made easily accessible to all potential authors and presenters.

To be clear, we are not proposing a wholesale embargo on unprovenanced “Dead Sea Scrolls-like” fragments. Instead, in line with the current policies of the AIA, ASOR, SBL, and others, we agree that fragments acquired either before the 1970–73 threshold of the UNESCO Convention or the 1978 threshold of Israel’s antiquities law can be studied and published—even if their archaeological provenance cannot be ascertained—but we wish to emphasize, more than any of these policies do, the need for verifiable records and their eventual publication. Therefore, we are not saying that important artifacts without an archaeological context should not be published. Rather, their publication is acceptable as long as it is supplemented by the necessary documentation that proves their licit status.

What about the post-2002 fragments that have already been published? We recommend that:

- A. Scholars who have worked on this material should confirm whether or not there exist verifiable records that could shed light on their legal status. If there are, these records should be verified and made available to the scholarly community as soon as possible.
- B. If there are no verifiable records, or if dealers and/or collectors refuse to share them, the fragments should be deemed illicit. In these instances, we propose that an official retraction be issued, at which point the scholarly community should refrain from studying the withdrawn fragments, *unless* the purpose is to discuss the antiquities trade.

- C. Fragments that are shown to be licit should still be redesignated, as per our recommendation in Point 4 above. Moreover, if they have been assigned a tentative place of discovery, this should be officially retracted and changed to “unknown,” as per our recommendation in Point 3.
- D. Software companies which have already integrated the post-2002 fragments into their databases are strongly encouraged to omit data from illicit fragments in future updates and to place data from the licit material in a category distinct from the one which includes the original Dead Sea Scrolls, as per our recommendation in Point 5.
- E. The secondary presentation or publication of already published fragments whose status remains illicit should be prohibited, as per our recommendation in Point 6.

We believe that the implementation of these recommendations will help move the field forward by excluding questionable and problematic material from the scholarly forum. As archaeologists, we hope to have demonstrated that “Dead Sea Scrolls-like” fragments should be considered above all as archaeological artifacts, and therefore we invite our colleagues to recognize the importance of provenance over authenticity.

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