

A Case Study in Professional Ethics Concerning Secondary Publications of Unprovenanced Artefacts: The New Edition DSS F.Instruction1

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Abstract: A recent development in scholarly discourse in the fields of early Judaism and early Christianity is an increased awareness of the influence that the publication of unprovenanced material has on the illicit trade in antiquities. The primary concerns are that publications legitimize artifacts that are potentially looted, forged, or illegally imported, and that such material has the capacity to contaminate the academic corpus of ancient texts. As a consequence, a number of scholarly societies, most recently the Society of Biblical Literature, have enacted policies that reject any initial announcement, presentation, or publication of unprovenanced material in their venues. This article discusses an ethical issue not considered thoroughly under these policies: the ethics of publishing unprovenanced material following the initial publication. Though technically permitted, do subsequent publications help or harm? In order to explore this topic, this article utilizes as a case study the publication of DSS F.Instruction1, an unprovenanced fragment formerly published as part of 4Q416 that was reconsidered in a new edition.

Introduction

In the wake of several high profile cases of forgeries and the tide of looted artefacts that flooded the antiquities market after the most recent invasions of Afghanistan and Iraq and the political and humanitarian chaos following the Arab Spring, scholars in the fields of early Judaism and early Christianity have become more aware of how their work influences the demand for antiquities and their value on the market. This recognition has raised ethical concerns about the complicity of scholars who publish unprovenanced artefacts in the trade of illicitly acquired and imported cultural heritage. Unprovenanced artefacts are items of cultural heritage that have not been excavated in an archaeological

context and lack documentation of their possession from their discovery to their current owners. Archaeologists have been more attuned to the ethics of unprovenanced artefacts than textual scholars, but academic discourse in the field has begun to shift to the questions of just what textual scholars should do with recently surfaced manuscripts that lack provenance and what sort of professional ethics should guide the research of such material.

As a graduate student,¹ I was faced with these questions during an MA research

¹ I was a research assistant for Peter W. Flint, Canada Research Chair in Dead Sea Scrolls Studies, at Trinity Western University from 2011–2013.

assistantship when invited to write an edition of DSS F.Instruction1 (DSS F.Instr1).² This unprovenanced fragment was acquired by the Museum of the Bible³ and contained two partial lines of a wisdom text called “Instruction,” a composition hitherto only attested in Caves 1 and 4 at Qumran. An apparent parallel text is only found in 4QInstruction^d (4Q418) frg. 148 ii 4–5, which is translated by its editors, John Strugnell and Daniel Harrington, as follows:

4. *vacat* A man of poverty art thou[...]

5. knowledge of thy work, And from there thou [shalt ...]⁴

When reconstructed with 4QInstruction^d, DSS F.Instr1 translates:

1. [*va*]*cat* A m[a]n of [... art thou ... knowledge of]

2. thy work, And from there t[...]⁵

The contents of this fragment—probably an aphorism holding up a particular kind of person as moral exemplar—is unremarkable, and provides no additional

text that 4Q418 does not already have. Our knowledge of Instruction is only advanced because this saying is preserved in another manuscript, and DSS F.Instr1 may have minor implications for any future material reconstructions of copies of Instruction, though these implications remain to be seen. This unprovenanced fragment is not potentially controversial for its contents but for the sheer fact that it has been published as a Dead Sea Scroll fragment.⁶ This paper reflects on the process of writing a new edition of this fragment as a case study for professional ethics regarding the publication of unprovenanced material. I argue that prior claims that this unprovenanced fragment is either part of 4Q416 or 4Q418 in previous publications are unwarranted and demand on ethical grounds its republication to correct the record. Moreover, I contend that such a case is not only permissible under the new SBL guidelines but should be encouraged as a legitimate and necessary form of academic discourse.

² DSS F.Instruction1 is a designation assigned to this fragment by Eibert Tigchelaar. Tov 2016, 6; Tigchelaar 2012, 214.

³ The Museum of the Bible was formerly called the Green Collection but has adopted new nomenclature as it has restructured itself from a collection into a museum. For sake of consistency and to avoid confusion, I will refer to the Green Collection organization as the Museum of the Bible, even though in some cases it will be an anachronistic designation.

⁴ Strugnell – Harrington 1999, 375.

⁵ Johnson 2016, 229. This translation of DSS F.Instr1 is adapted to match Strugnell and Harrington’s translation of 4Q418 by replacing “are” with “art” and “you” with “thou” for the purposes of comparison. The reading for the word “poverty,” ריש, is uncertain and is not adopted in my edition of DSS F.Instr1.

⁶ The volume in which DSS F.Instr1 is published is called “The Dead Sea Scrolls of the Museum Collection,” and thus appears to make a basic overarching claim about the provenance of the fragments it includes, even if the editions themselves make no such claims. Furthermore, the “DSS F” nomenclature (Dead Sea Scrolls Fragment) assigned to each fragment is suggestive of a relatively general provenance at one of the sites where manuscripts have been discovered near the Dead Sea. If any of the post-2002 fragments titled as such are found to be forgeries or are from other locales, the sigla will need to be revised. A less speculative system would be preferable; however, the more nuanced a system is the less likely it will be consistently applied in subsequent cases, which was the pitfall of Tov’s X and XQ siglum system in DJD 39 and the Revised List of the Texts from the Judean Desert according to Tigchelaar. It would be more accurate to omit references to the Dead Sea when such a provenance is not argued in the edition. Tov 2002, 89; Tov 2010, 10; Tigchelaar 2012, 214.

This study draws on the ethical guidelines of the American Schools of Oriental Research (ASOR), the American Institute of Archaeology (AIA), and the work of Neil Brodie, an archaeologist specializing in professional ethics, to reflect on an issue that our field has yet to address directly—the ethics of publishing editions of previously published unprovenanced material.

The Ethical Problem of Publishing Unprovenanced Material

Before discussing the particulars of the case of DSS F.Instr1, the larger discussion around the ethics of publishing unprovenanced material needs to be established. This ethical issue has been examined in detail by Brodie, a trained archaeologist who has researched the illicit trade of antiquities for the last twenty years and is an outspoken advocate for transparency in the transactions of dealers, museums, and private collectors.⁷ He has also argued that scholars play a role in the market, even though their contribution is not often discussed in academic discourse.⁸ Brodie argues that “[i]t is nondisclosure of provenance that allows illegal antiquities to infiltrate the market, and nondisclosure is a policy actively defended by dealers on the grounds of commercial necessity or client

confidentiality.”⁹ As a consequence of the widespread implementation of these nondisclosure policies, Brodie notes that “most antiquities (between sixty and ninety percent) are sold without provenance, which means that legal and illegal material have become hopelessly mixed on the market.”¹⁰ An artefact could be legally acquired and transported by a museum, but without provenance, the likelihood that the material has been looted, altered, faked, or illegally transported at a prior stage of its chain of possession cannot be dismissed. In other words, without verifiable provenance data, it is impossible for a scholar to determine if an unprovenanced artefact is legally acquired and extremely difficult to determine from which site it came or if it is a partial or complete forgery.¹¹

Many archaeologists and a growing number of textual scholars recognize that if an academic publishes an edition of an artefact, they contribute to the market for unprovenanced material, facilitating the sale of other unprovenanced and potentially looted or faked items. The publication of an item can establish a provenance or at least the beginning of an academic pedigree—that is, publication bestows upon the unprovenanced item a footprint in the scholarly literature that lends it some degree of academic legitimacy, even if only in a superficial

⁷ There is a growing body of literature on the ethical issues pertaining to unprovenanced artefacts and the antiquities trade. This article interacts primarily with Brodie because he has focused more than most on the topic of textual scholars’ impact on the trade of unprovenanced material. The reader is also referred to the larger discussion. See, e.g., Brodie 2006b; Green – Mackenzie 2009; Hoffman 2006; Robson – Treadwell – Gosden 2006; Rutz – Kersel 2014; Ulph – Smith – Tugendhat 2012; Zimmerman – Vitelli – Hollowell-Zimmer 2003.

⁸ Brodie 2009, 41.

⁹ Brodie 2006a, 53.

¹⁰ Id., 53.

¹¹ A clear distinction must be maintained between material without a provenance and inauthentic material that has been forged or deliberately altered. Not every unprovenanced fragment is a forgery, but the odds increase when there is no verifiable findspot. DSS F.Instr1 is certainly unprovenanced, but it remains to be seen whether it is inauthentic.

way or from the prospective of a potential buyer.¹²

Such publications increase the value of the particular item and raise the profile of similar items on the market, especially when a dealer contracts a scholar to verify the piece before it is sold. Brodie notes that “[a]lthough such behaviour may have been accepted in the past, today it contravenes the codes of practice that professional bodies have developed in recognition of the potential for destructive synergism that exists between the market and the profession.”¹³ He is referring to the field of archaeology, but since manuscripts are artefacts too, the remark applies to textual scholars as well. An anonymous certificate of authenticity or a published study on the artefact from a scholar boosts the confidence of the collector or museum who otherwise might be less inclined to risk investing in unprovenanced material. Brodie argues that “[o]nce material is accepted into the validated corpus, its academic significance might translate into monetary value and provide a spur for further looting.”¹⁴ The same incentive would be created for the production of forgeries and the assignment of legitimate artefacts to more lucrative findspots. Subsequently such publications can also nurture the demand for similar items, especially if they become a high-profile topic of discussion.

Publications also have an adverse effect on subsequent academic discourse and scholarship. The introduction of unprovenanced material into the corpus of texts of a particular period has the

potential to contaminate literary, paleographic, and linguistic datasets upon which scholars rely.¹⁵ In a very concrete way, unprovenanced material that has gained credibility through scholarly publications can find its way into popular databases used by many scholars. The contamination of the corpus, however, is not necessarily a mechanical process with a quantitatively significant impact, and it may take place through the entry of an unprovenanced artefact diffusely into disciplinary discourse on the basis of publications or its incorporation into such databases, where it is common for the item’s questionable status to be forgotten when it is not clearly marked. Furthermore, even if there is not a statistically significant number of unprovenanced manuscripts in a single database, if any are forgeries or have been assigned to an incorrect manuscript, the introduction of their variants into the evidence used by textual critics is problematic. Likewise, items inaccurately assigned to a findspot skew the statistics for each locus and the interpretation of the documents found there. In other words, once an unprovenanced artefact has entered the discussion, especially when inaccurately marked, there are a number of ways that it can directly and indirectly contaminate academic corpora, datasets,

¹⁵ The language of “contamination” is standard in ethical discourse about the incorporation of unprovenanced material into academic discussions, especially when unprovenanced status is not clearly marked. Though common-place, this language is susceptible to sensationalizing rhetoric, especially to readers unfamiliar with the broader ethical conversation. This article uses this language to describe the effects of the publication of DSS F.Instr1 as a fragment from Qumran but not the intentions of the authors of these publications who were writing in a different academic climate.

¹² Brodie 2006a, 59.

¹³ Id., 58.

¹⁴ Id., 59.

and discussions with effects that can be mutually compounding.

Although most would agree that unprovenanced material is problematic for its impact on the market and textual datasets, there is still a reluctance to ignore texts that may have value apart from their archaeological contexts. The archaeological societies AIA and ASOR have reflected on this question for many years and have developed slightly different but mostly overlapping approaches to handling unprovenanced material in their publications and conferences. ASOR requires authors to make a clear identification of unprovenanced material in any publication and does not permit its initial announcement in ASOR publications or meetings.¹⁶ There is one notable exception to this rule—the so-called “cuneiform exception,” which allows for the initial publication or presentation of cuneiform tablets in ASOR venues in light of the sheer number of items that have been looted, the relative ease with which they are authenticated, and the value of their content independent of their archaeological context.¹⁷ These ASOR guidelines are becoming more prominent since the Society of Biblical Literature (SBL) has adopted them for their own meetings and publications beginning in 2017.¹⁸ The AIA guidelines are somewhat

less strict than ASOR’s because, while they prohibit announcements or initial scholarly presentations of unprovenanced artefacts, exceptions can be made if one of the goals is to “emphasize the loss of archaeological context,” whereas ASOR only allows for initial publications that serve “*primarily* to emphasize the degradation of archaeological heritage.”¹⁹ The same AIA rules apply to the programme of the AIA annual meeting.²⁰

A competing view is that there should not be significant restrictions on the initial publication of textual artefacts. The Biblical Archaeological Society (BAS) posted a “Statement of Concern” in 2006 that advocated this position in response to the AIA’s recommendation to refrain from participating in any activity that supports the market for unprovenanced material.²¹ BAS argued the following: “We also recognize that artefacts ripped from their context by looters often lose much of their meaning. On the other hand, this is not always true, and even when it is, looted objects, especially inscriptions, often have much of scholarly importance to impart.”²² Without dismissing the inherent problems involved in dealing with unprovenanced material, the statement underscores that in many cases the textual information is important apart from its context. However,

Advisory Board (AAB) that will advise chairs and editors, resolve conflicts, and maintain a record of incidents. The policy is focused on initial publications and clear identification of unprovenanced material. No additional policies are adopted that restrict secondary publications or re-editions of unprovenanced materials. SBL 2016.

¹⁶ ASOR 2015.

¹⁷ Id.

¹⁸ SBL policy adopts without amendment or qualification the ASOR guidelines, including the “cuneiform exception.” The policy published on Sept 7, 2016 is primarily concerned with the mechanisms of implementation through the program unit chairs at SBL conferences and series editors for publications of the SBL press. The policy also calls for the formation of an Artifact

¹⁹ ASOR 2015; Norman 2005, 135–36.

²⁰ AIA 2016.

²¹ This statement appears to have been removed from their website.

²² BAS 2006 as cited in Brodie 2009, 46. See Braarvig 2004, 35–38; Finkel 2004, 35–38.

the value of these artefacts is somewhat lessened by the danger of forged artefacts being introduced into the corpus of textual material, which is only possible when one enters unprovenanced material into consideration.

There are several principles that underlie these ethical codes that are helpful for considering other cases, including that of DSS F.Instr1. The greatest concerns are raised by initial publications, especially if they ignore, minimize, or fail to discuss fully issues of provenance. The worst case scenario is that an initial publication provides an unwarranted provenance for unprovenanced material. To a lesser degree, subsequent publications can also have a negative impact if they too ignore or misrepresent the artefact's unprovenanced status. Therefore, in view of the existing ethical guidelines, one should avoid introducing new unprovenanced material and make every effort to "keep the checkered past of an object out in the open and part of the continuing scholarly discussion" in secondary publications.²³ One aspect that needs to be more clearly emphasized in the SBL guidelines is the value of open discussions of provenance of artefacts at annual meetings, whether they be initial or non-initial discussions of an unprovenanced item, lest the concern for presentations that ignore provenance stifle more beneficial discussions. Such discussions should not be viewed as a gray area, but as a necessary counteraction to the problem the guidelines are intended to address.

In addition to avoiding initial publications

and underscoring the unprovenanced character of the artefact, Brodie advocates that scholars should also undertake an independent investigation of provenance. He argues that it might be

convenient for a scholar to remain ignorant of provenance as it makes for an easier judgment in favour of study and publication. This may be so, but unless the scholar is assiduous in researching and publishing provenance, he or she cannot claim to be acting in good conscience, and might even stand accused of passively colluding with the criminal trade.²⁴

This point is illustrated by the case of the Gospel of Jesus's Wife, in which an independent investigation of provenance was not conducted by the scholar, and important concerns about its chain of ownership were neglected until a journalist conducted a separate investigation that called into question the legitimacy of the fragment.²⁵

The Case of DSS F.Instruction1

Having discussed the bigger picture of the ethical discussion pertaining to unprovenanced artefacts, let us turn to the case of DSS F.Instr1. Because most of the guidelines on the publication of unprovenanced material have focused on initial publications, my edition of DSS F.Instr1 presents a less considered case. On the principle that one should do no harm, it might be argued that even a non-initial publication of the fragment should be avoided because it might have the same potential as an initial publication to spur

²⁴ Brodie 2009, 52.

²⁵ Hempton 2016; Sabar 2016. Hempton's formal statement has since been removed, but a copy is available from Mark Goodacre's blog. Goodacre 2016.

²³ Norman 2005, 136.

the trade in unprovenanced artefacts and to contaminate the scholarly record. However, in the case of DSS F.Instr1, the initial edition by Hanan and Esther Eshel made unsubstantiated claims about the fragment's provenance that have been incorporated into several other scholarly works. Thus, many of the undesirable effects were already achieved by the time the invitation to write a new edition of DSS F.Instr1 was offered. Furthermore, Lee Biondi, the dealer who facilitated the exhibition and sale of the fragment, had already established an unofficial rescue narrative that undergirded the legality of the acquisition and importation into the United States of DSS F.Instr1 and the other fragments in its lot. The relationship between the editors and dealers and the consistency of the academic and media-based narratives (detailed below) made the claim of provenance for DSS F.Instr1 all the more entrenched and thus all the more troubling. In this regard, the opportunity to publish a new edition of DSS F.Instr1 carried with it a substantially different ethical question. It was not a decision of whether to do no harm, but whether to attempt to reverse the harm that had been done.

In September 2003, Eshel and Eshel accepted the invitation of William Noah, a private collector, to serve as advisors to him and his fellow collectors, including Lee Biondi, Bruce Ferrini, and Craig and Joel Lampe, for their travelling exhibition, "From the Dead Sea Scrolls to the Forbidden Book." This exhibit began in April 2003 as a collaborative effort of several collectors, and it included material ranging from the fragments of so-called Scrolls to rare printed Bibles. The bulk of

the Scrolls fragments appear to have belonged to Biondi, though the situation was very confused and the dissolution of the exhibition in bankruptcy court in April 2004 demonstrated that ownership and finances were not always indisputably demarcated.²⁶

After the bankruptcy proceedings, the exhibition divided into two smaller traveling exhibitions, Noah's "Ink and Blood" exhibit, and Biondi and Lampe's "From the Dead Sea Scrolls to the Bible" exhibit. A photo of DSS F.Instr1 first appeared in 2004 in Biondi's first independent catalogue. It included a low-quality infrared photo and the caption, "a fragment from the Dead Sea Wisdom Text 4Q418 (4QInstruction)."²⁷ This caption was incorrect because the manuscript 4Q418 contained the same passage already in frg. 148 ii 4–5.

Before Biondi revised and reprinted the catalogue in 2009, Eshel and Eshel published the first edition of DSS F.Instr1 in 2007, which included a transcription, translation, provenance, and the identification of the fragment with one of the Qumran copies of Instruction.²⁸ They recognized that the fragment could not belong to 4Q418 for the reason stated above, and on the basis of palaeography, they identified it as a part of 4Q416. They even went so far as to count it as the 23rd fragment of the manuscript.²⁹ However, when Biondi's second catalogue came out in 2009, the caption still identified the

²⁶ It is not clear whether Biondi legally owned or possessed the fragments or whether they were on loan from another person or organization.

²⁷ Biondi 2004, 13.

²⁸ Eshel – Eshel 2007, 277–78.

²⁹ *Id.*, 277–78.

fragment as 4Q418, despite Eshel and Eshel's consulting services and their edition.³⁰

In November of the same year the Museum of the Bible purchased DSS F.Instr1 with DSS F.Exod6, DSS F.Lev5, and DSS F.Ps3. It is likely that the academic consultation services rendered to the exhibition and the publication of DSS F.Instr1 in 2007 as belonging to a known Cave 4 manuscript played a role in the acquisition of DSS F.Instr1 and the other fragments in the same lot.³¹ Biondi would have been able to point to Eshel and Eshel's work on this fragment to claim that it was vetted and that it had been assessed as an authentic fragment by reputable scholars. Potentially this vetting would have allowed him to appraise the fragment at a higher value.³²

The first publication of DSS F.Instr1 had also begun to contaminate the scholarship on Instruction and the textual corpus shared by Dead Sea Scrolls scholars. After the 2007 edition, DSS F.Instr1 began to appear in several publications as a fragment of 4Q416.³³ The most significant of these appearances was the fragment's incorporation into Qimron's critical edition as 4Q416 frg. 23.³⁴ All three

subsequent publications took Eshel and Eshel's claim at face value, and did not consider the uncertain provenance of DSS F.Instr1. In this regard, the preliminary edition has demonstrably contaminated scholarship on Instruction to the point that the fragment has appeared in secondary literature and a critical edition of Instruction, and it would likely continue to be considered as 4Q416 frg. 23 in future studies, editions, and reconstructions of 4Q416.

Biondi also harnessed the media attention on his exhibitions to establish a narrative about the provenance of DSS F.Instr1 and other fragments in his possession in order to promote their sale. Biondi's promotion of his inventory as including legitimate fragments from Qumran is not necessarily deceptive; however, his claims were made from his stance as an antiquities dealer, which should not satisfy academic skepticism because the claims are undocumented and thus unverifiable. In 2005, Biondi's narrative was delivered in a promotional piece by Star News for his exhibit in High Point, North Carolina.³⁵ In the interview, he disclosed that he was contacted by someone in Scotland about purchasing the scrolls, and ultimately he went to Switzerland to examine them. He and other unnamed collectors purchased them after "having the fragments authenticated" in October 2002.³⁶ Later in the piece, Biondi explained that the owners of the scrolls were selling them because "[t]he children of the collectors don't want the thing anymore. They want

³⁰ Biondi 2009, 15.

³¹ Eshel and Eshel published a preliminary version of DSS F.Ps3 in the same publication as DSS F.Instr1, so two of the four acquisitions were published two years before the Museum of the Bible purchased them. Eshel – Eshel 2007, 276–77.

³² The price of the fragment before and after the consultation is not publicly available.

³³ Goff 2013, 2 n. 9. 4 n. 18; Kampen 2011, 38. 152; Qimron 2013, 174. DSS F.Instr1 is also referred to as 4Q416 in Hanan Eshel's posthumous contribution to a volume dedicated to the fragments from the Schøyen collection. Eshel 2016, 43–44.

³⁴ Qimron 2013, 174.

³⁵ Greene 2005.

³⁶ Id.

the money for the thing.”³⁷

James Charlesworth was also interviewed and claimed that the influx of fragments on the market was the consequence of diminishing tourism in Israel and the failure of the peace process in the Middle East. The interviewer also indicated that Charlesworth was actively “trying to get wealthy Americans to buy pieces of the scrolls and send them back to museums in Israel so they can be studied.”³⁸ In sum, this promotional piece established several important parts of a narrative of the legitimate purchase of the scrolls in Switzerland and their rescue from poor socio-political circumstances.³⁹ This narrative also highlighted scholarly involvement. Though Eshel and Eshel remain unnamed, they are perhaps alluded to in the verification of the fragments in 2002.⁴⁰ Moreover, the association of Charlesworth and his efforts to convince wealthy Americans to purchase these fragments and send them to museums in Israel also lent the exhibit a degree of academic legitimacy and ethical rectitude, while simultaneously flagging to potential

buyers that the fragments were for sale.⁴¹

Attempts to reinforce this narrative followed the purchase of the fragments, possibly motivated by Biondi’s desire to establish his reputation as a dealer of Scrolls and to sell additional fragments in his inventory.⁴² In an interview with Public Radio International, Biondi and William Kando, the son of the antiquities dealer Khalil Iskander Shahin, famously known by the name “Kando,” indicated that the fragments were being purchased and imported from Kando’s safe deposit box in Switzerland, where they had been stored since the Kando home was raided in 1967.⁴³

In another article in the *Denver Post*, additional pieces of this narrative were provided. According to this report, after the Norwegian collector and businessman Martin Schøyen suffered a financial setback and was unable to purchase the remainder of Kando’s fragments, “Kando then took his business to the U.S., startling manuscript collectors who didn’t know there was any scroll material available for purchase.”⁴⁴ This explanation seems to come in part from Biondi, who is quoted immediately after as saying, “[t]hese were the hurdles I had to pass with collectors in America... [t]he impossibility of it; people

³⁷ Id.

³⁸ Id.

³⁹ Brodie regards the “trope of rescue” as a common tactic to legitimate the purchase and publication of unprovenanced material: “The scholarly justification offered for acquiring, studying, and publishing [most recently ‘appeared’ ancient manuscripts] despite their illegal provenance is one of ‘rescue’—the historical information they contain is rescued for posterity.” Brodie is speaking about items that are almost certainly illegal, but the same story of rescue is used to justify more ambiguous cases too, including the fragments purchased by Biondi. Brodie 2009, 47.

⁴⁰ Eshel and Eshel indicated that they began working with Biondi in 2003, so it is possible that Biondi was referring to another prior consultant. In any case, by 2005, when this interview took place, Eshel and Eshel had served as consultants in a similar capacity. Eshel and Eshel 2007, 277–78.

⁴¹ The reference to Charlesworth’s search for wealthy buyers may be an example of how exhibitions alert other private collectors to the existence, value, and availability of hitherto unknown cultural heritage on the market. In this case, it seems to be an intentional effort to alert other collectors about new “Dead Sea Scrolls.” Brodie 2009, 48–49.

⁴² On his CV Biondi lists the following credential: “I am, I believe, the only dealer ever to purchase and sell actual Dead Sea Scroll Biblical fragments.” Biondi 2014.

⁴³ Estrin 2013.

⁴⁴ AP 2013.

saying, ‘You can’t get a Dead Sea Scrolls fragment. That’s impossible.’”⁴⁵ In sum, this article provided another part of the account—that Kando began marketing his scrolls to or through Biondi and other collectors in the U.S. after Schøyen ran into financial difficulties.

These scattered articles not only established Biondi as a pipeline for authentic fragments, but they also implied that they were imported legally. As Biondi said in another interview, “Nobody is doing anything wrong here and Mr. Kando is perfectly entitled to sell his possessions to whoever he wants.”⁴⁶ For William Kando and Biondi, it was important to establish that the fragments were part of a private collection before the 1970 UNESCO Convention treaty came into effect and that they were legally imported into the United States from Switzerland, both state parties to the UNESCO treaty. In other words, this narrative gave the impression that these fragments were not illicit cultural heritage, could be legally imported and purchased in the United States, and therefore were safe for US collectors or donors to purchase.⁴⁷ Thus, Biondi’s traveling exhibitions, interviews, and preliminary sales of fragments were

part of a larger effort to establish his credibility as a purveyor of legitimate Dead Sea Scroll fragments directly from Kando, which are legal to purchase in the United States.

It is hardly surprising that Kando and Biondi, a supplier and dealer of so-called Dead Sea Scroll fragments, would have wanted to establish such a narrative; however, their effort is at fundamental tension with the position of the Museum of the Bible, which does not disclose information about the seller or provenance of the fragment, a widespread but controversial practice in the museum industry.⁴⁸ Their rationale is that dealers and owners of private collections with fragments for sale do not want to be known and prefer to keep their transactions private, including any documentation about their provenance or verification by experts. However, in light of Biondi and Kando’s efforts to establish their narrative in the full view of the public through various news outlets and travelling exhibitions, it is unclear why these details should remain sealed. It would seem to be in the interests of all parties if the Museum of the Bible corroborated the legality and authenticity of the fragments that has been publicly claimed by Biondi and Kando. It is not necessary to conclude that the media narrative was a “cover-up,” as the situation was certainly more complicated than it appeared in the newspaper articles. However, the disparity between the apparent transparency of Biondi and Kando and opacity of the Museum of the Bible regarding the acquisition simply underscores that scholars should be wary

⁴⁵ Id.

⁴⁶ Parker 2013.

⁴⁷ The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a treaty under which the undersigned state parties, currently including the United States, Switzerland, and Palestine among others, agree to work against the illicit trafficking of unprovenanced artefacts and other classes of material culture. Unprovenanced items that can be established as part of a collection before 1972 are permitted to be traded, but any illegally acquired, purchased, or transferred artefacts are to be regarded as illegal and should not be imported or exported.

⁴⁸ Brodie 2006c, 9.

when relying on unverifiable media narratives to form opinions on issues of provenance—whether for or against the claims of the narratives—because of the complex web of interests involved.

The Ethical Grounds for Publishing DSS F.Instr1

When I was asked to write an edition of DSS F.Instr1, it presented an ethical dilemma. On the one hand, it is arguably better not to publish unprovenanced material to avoid inflating its value, even if a secondary publication is permitted according to the SBL, ASOR, and AIA guidelines. Yet, on the other hand, it seemed ethically problematic to forego an opportunity to question the emerging consensus that DSS F.Instr1 is 4Q416 frg. 23. In this case, I determined that the most ethical course of action was to publish a new edition of the fragment to counteract the previous publications. The remainder of this article will outline my approach. Guided by the principles underlying the AIA, ASOR, and SBL guidelines and Brodie's admonition to investigate provenance independently, my edition of DSS F.Instr1: 1) identified the fragment as unprovenanced, 2) provided the results of my independent investigation of the fragment's provenance, 3) drew attention to unusual characteristics, 4) examined a wide range of potential matches that the previous edition did not consider, and 5) offered conclusions that were framed by its unprovenanced status.

The edition opens with a discussion of provenance in the introduction, which indicated that this fragment is unprovenanced and contained the details of my independent investigation of its chain of ownership and history of

publication, as described above. It identified the dealer, Biondi, and the touring exhibition of which it was a part.⁴⁹ The introduction also traced the history of how the fragment has been labeled by Biondi, Eshel, and Eshel in different phases and how subsequent scholarship has adopted the latter scholars' designation.⁵⁰ Most importantly, it emphasized that the provenance of this fragment is unknown, contradicting all previous claims that it comes from Cave 4.⁵¹ Including a discussion of provenance in the introduction is not a common part of the genre of an edition—something that is obvious when one compares the DSS F.Instr1 edition to the others in the volume or the DJD editions. Typically, the issue of provenance is only occasionally mentioned with no extended discussion or attempt to independently trace the history of the fragment. As Brodie has noted, “one searches in vain through scholarly publications of unprovenanced manuscripts for a decent account of provenance, or even for any indication that a scholar has attempted to research provenance or to take a broad view—in terms of criminality—of what provenance might mean.”⁵² There needs to be a generic shift to include such discussions prominently in future scholarly editions.

Another way the edition of DSS F.Instr1 attempted to consider provenance is by noting unusual characteristics of the fragment that could be used in larger scale comparisons with other post-2002 fragments in order to identify

⁴⁹ Johnson 2016, 222.

⁵⁰ Id., 222–23.

⁵¹ Id., 222–23.

⁵² Brodie 2009, 51.

commonalities that might shed light on the authenticity of the fragments. DSS F.Instr1 has several peculiar letters, *e.g.* a possible *shin* on line 1, which falls well below the baseline and was possibly overwritten or reshaped at some point, an *ayin* at the beginning of line 2 with an uncommon orientation and shape, and a *tav* at the end of line 2 with thickened strokes that are somewhat cramped.⁵³ Evaluated on their own, these and other features of the fragment do not permit any conclusions about its authenticity; however, other scholars may find that they fall within broader trends in the characteristics of post-2002 fragments, which may provide a firmer basis for reflecting on issues of authenticity throughout the whole corpus of new fragments.

A large part of the analysis is dedicated to evaluating all of the possibilities of a match to a known manuscript rather than simply confirming Eshel and Eshel's claim or proposing a single alternative.⁵⁴ In view of the lack of provenance and the paucity of letters for making a paleographic comparison with other manuscripts, it was more appropriate to examine the entire range of possibilities and to highlight the most feasible matches without advancing a strong claim. The possibility of a match was explored with every copy of Instruction (1Q26, 4Q415–4Q418c, 4Q427) and Instruction-like Composition B (4Q424).⁵⁵ Establishing

this list of possibilities makes it simpler for subsequent scholars to pursue the question of provenance further and allows them to see the rationale used for ranking each potential identification.

In the conclusion of the edition, I calculated its unprovenanced character into the final analysis so that all of the observations are couched in the primary concern about provenance. Although some consistencies were found in the writing of DSS F.Instr1 and other copies of Instruction (4Q415, 4Q416, and 4Q417), none were ultimately convincing, especially in light of “the fragment’s uncertain provenance and its history of being mislabeled by scholars and collectors.”⁵⁶ I recommended treating DSS F.Instr1 as a distinct unprovenanced copy of Instruction until more information is available.⁵⁷ Although the concern about provenance was already indicated in the introduction, it was important to remind the reader in the conclusion that any findings are ultimately framed by the unprovenanced status of the manuscript, and are thus tentative.

Beyond the need for a more critical study on DSS F.Instr1, this edition was necessary because of the broader work that remains to be done on the entire corpus of post-2002 fragments. The concern for forgery or intentional misrepresentation of a fragment’s provenance is especially high because of the exorbitant price fetched by such small pieces of manuscripts when they are

⁵³ Johnson 2016, 227. 230–34. See figure 18.1. Figure 18.2 is problematic in this regard because it normalizes the shapes of the *shin* and *tav* by pasting an example of the letter from elsewhere in the fragment. *Id.*, 236.

⁵⁴ Johnson 2016, 230–35.

⁵⁵ Instruction-like Composition B is a composition

that has the same genre of saying as appears in DSS F.Instruction1 and could conceivably have shared it with Instruction.

⁵⁶ Johnson 2016, 235.

⁵⁷ *Id.*, 234.

believed to be from Qumran. Furthermore, it has been disclosed that some of the remaining fragments in Kando's collection are blank.⁵⁸ These uninscribed pieces of leather would be ideal for a forger to purchase, to inscribe with a known text from an edition or photograph, and to sell as new fragments from Cave 4. If a number of the post-2002 fragments are forgeries or have inaccurately assigned provenances, it is more likely to be discovered when the fragments are evaluated together rather than examining them on a case-by-case basis. The preliminary stages of this important work are currently being carried out by Eibert Tigchelaar, Årstein Justnes, and Kipp Davis among others,⁵⁹ and explicit provisions should be made in SBL policy not merely to permit, but also to encourage such discussions in the annual meetings and publications, even if they include previously unpublished material.

Furthermore, a more cautious edition of DSS F.Instr1 was needed because there may be forthcoming evidence that will shed additional light on DSS F.Instr1. After the Museum of the Bible purchased DSS F.Instr1 in 2009, another fragment of Instruction appeared in a new joint

exhibition in Wasilla, AK in the Fall of 2010. Biondi and Lampe combined their manuscripts with Larry Lawson's collection of dinosaur fossils to create an exhibition called "Origins, The Museum," which was loosely and somewhat incoherently organized around the notion of biological origins and the history of the Bible. DSS F.Instr1 was in the possession of the Museum of the Bible at this point, and in its place a new fragment labelled 4Q418 appeared in the display case. It seems that DSS F.Instr1 was not the only so-called copy of Instruction in Biondi's inventory, and consequently the case of DSS F.Instr1 cannot be closed entirely until both fragments and the chains of their possession are fully and critically examined.

Conclusion

Since the influx of post-2002 fragments onto the market and their purchase by private collectors in the United States and Norway, scholars have been faced with the ethical question of what is the appropriate response to this material. The professional guidelines adopted by ASOR, AIA, and SBL have focused on initial publications and presentations, leaving open the question of how subsequent publications might also avoid any action that supports the illicit acquisition and trade in unprovenanced antiquities or that contaminates the scholarly record and whether such discussions are welcomed and encouraged at the annual meetings. Should one avoid secondary publications and presentations altogether or are there circumstances in which subsequent publications can have an ethical and beneficial influence? The case study of DSS F.Instr1 has been offered in order to

⁵⁸ Prigg 2013. On February 8, 2017, The Times of Israel reported that the archaeologists Ahiad Ovadia and Oren Gutfeld discovered blank writing material in the so-called Qumran Cave 12, a cave that shows evidence of having been looted in the mid-20th century. Ben Zion 2017.

⁵⁹ There are several articles in pre-publication stages, some of which were presented at the seminars, "The Lying Pen of the Scribes (Jer. 8:8): Manuscript Forgeries and Counterfeiting Scripture in the Twenty-First Century," April 13–15, 2016, University of Agder, Norway; "Fragments of an Unbelievable Past? Constructions of Provenance, Narratives of Forgery," September 14–16, 2016, University of Agder, Norway.

propose that in situations where initial publications have made unsubstantiated claims, especially when those claims benefit the dealers of the artefact, it is ethical to publish additional treatments in order to assert the unprovenanced status of a fragment, to highlight irregular features, and to advocate caution in subsequent discussions of the fragment. In the case of DSS F.Instr1, its republication in *Dead Sea Scrolls Fragments in the Museum Collection* rejects the claim that it should be regarded as 4Q416 frg. 23 and asserts its status as an unprovenanced fragment. It

also provides a better starting point for scholars investigating the authenticity of the post-2002 fragments by offering a fuller range of options and by highlighting its problematic characteristics. Especially in view of the unpublished fragment of Instruction that surfaced immediately after DSS F.Instr1 was purchased, it is important to properly frame this fragment as an example of a growing corpus of new material that needs very open and thorough consideration before incorporation into the dataset of early Jewish manuscripts.

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