

**THE NEXT HORIZON OF MUSEUM PRACTICE:  
VOLUNTARY REPATRIATION, RESTITUTION, AND REPARATIONS**

# **A Future of Collaboration: Case Studies of Provenance Dilemmas Regarding Jewish Communal Property**

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**Center for the Future  
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## ABOUT THIS PAPER

An academic foresight paper exploring a future in which a network of individuals and institutions see preservation and accessibility of Jewish textual heritage as a *joint* responsibility.

## ABOUT THE NEXT HORIZON PROJECT

This paper is one of a series published by the American Alliance of Museums exploring the future of voluntary repatriation, restitution, and reparations in museums. For this collection, AAM's Center for the Future of Museums invited a diverse group of authors from the museum sector, academia, and descendant communities to share their visions of preferable futures in opinion pieces, academic research, fictional stories, or hybrids between these formats. For a full overview of the project, and a selected timeline of museums' evolving ethics regarding collections and community relationships, see the AAM report [\*The First Horizon: Understanding the State of Voluntary Repatriation, Restitution, and Reparations Today\*](#).

Yogi Berra once famously said, “The hardest thing of all to predict is the future.” I share his attitude, if not his wit. I do not know what libraries, museums, and archives will look like, or what they should look like, decades from now. However, I am aware of some trends in Jewish archival practice that are beginning to emerge today and which have great promise to develop into best practices in the more immediate future. I want to examine two case studies, both of which involve objects that were once Jewish communal property and which had been, over time, transferred to private collectors to be sold on the open market. These cases deal with troubling ethical and legal questions regarding the very legitimacy of communal property becoming private property, and hence the legitimacy of the sales. I want to compare the outcomes in these two cases, discuss the responses of professionals in the field, and raise some suggestions for future practice based on my conclusions.


(Full disclosure: I am not an outsider, describing actions and activities undertaken by other parties. As Curator of the Haim and Hanna Salomon Judaica Collection at the [National Library of Israel](#) until late 2022, I took an active role in these events.)

## PINKASIM AND PROVENANCE

European Jewish communities and their institutional bodies kept records of their own activities, incomes, expenses, rules, regulations, decision, and members. These records, from the modern period, exist in documents called *pinkasim* (pinkas, singular), or ledgers. These are bound books made of originally blank pages. Communal scribes and record-keepers filled those pages with handwritten records of community activities and institutions. Pinkasim are a gold mine for historians and genealogists, and the material books are heritage objects inherited from the past. (For examples of digitized pinkasim, see [The Pinkasim Collection: The International Repository of Communal Ledgers](#); for a short introduction to pinkasim as a historical source, see [Bartal, Teller, and Hundert](#).)

Pinkasim of this kind regularly come up for sale, sometimes in auction houses specializing in Judaica and sometimes in private sales without sharing any public information. Generally, much provenance information is missing. Buyers and sellers will not, without a great deal of effort, know how these documents left Jewish communal ownership, how they became private property, and whether that chain of title was legal or ethical. Such sales create ethical, moral, and practical tensions and conflicts.


On the one hand, acquiring items of unknown or unknowable provenance can be legally problematic and ethically compromised. Collecting these items runs the risk of doing business in looted or questionably gathered materials. On the other hand, leaving these items to private collectors ensures that Jewish and public institutions or institutions



inside the documents' countries of origin lose agency over their cultural heritage, since private owners may not be concerned with ethical considerations and may not share their collections with the public. There seems to be no easy way out of this dilemma. The market for pinkasim is, then, only one example of the legal and ethical tensions that exist throughout the market for archaeological finds, cultural heritage, potentially looted art, and the like.


Fortunately, these dilemmas have earned a great deal of attention from librarians, archivists, lawyers, ethicists, philosophers, political leaders, museum professionals, sellers, collectors, and auction houses. Unfortunately, challenges persist. Many organizations will not acquire new materials without a complete chain of title going back more than a century; others are more flexible. The market for cultural heritage, Jewish or otherwise, takes the problems of provenance increasingly seriously, but the field remains ethically and legally diverse. There is not, today, consensus about either theory or practice.

## CONFLICT BETWEEN STAKEHOLDERS



The sale of a poorly provenanced pinkas creates conflict between different stakeholders. Current sellers—who may or may not have acquired their collection legally and in good faith—want to maximize profit. They often prefer privacy, even if they have nothing to hide about their collection practices. Auction house owners want to earn the fees from which they make their living. Both have little interest in sharing provenance information that would suggest problems. Public collections see opportunities to expand resources for research and education and to preserve cultural heritage, in addition to chances to grow their own collections and prestige. They often have limited acquisition budgets, so they would like to reduce the price, and (hopefully) avoid illegally acquired items or morally compromised purchases.


There can also be competition between the countries of origin and institutions outside the countries of origin. Much legal and ethical discussion of provenance places country of origin at the center, particularly in contexts of postcolonial trends toward cultural restitution. Following this logic, countries where pinkasim were originally created—the cities or towns that these documents describe—rightly see pinkasim as part of their cultural heritage. Very often, though, there is little left of the Jewish communities of origin in those places: like almost all of European Jewry since the creation of the pinkasim, they fled, suffered persecution, or were murdered. As such, Jewish communities outside those countries also correctly see pinkasim as the heritage of what is now a quite different trans-national Jewish community.



Finding the best solution to these challenges would involve answers to the following questions: When did the pinkas leave the community of origin, and under what circumstances? Was it ever looted, and if so, by whom? How did it get to the current seller? Were all the transactions legitimate and legal? If not, which ones were and which ones were not? It is neither easy nor cheap to answer these questions. In many cases, it is not even possible: even good faith attempts to answer them cannot find evidence that no longer exists or that is not cataloged. In the real world, acquisitions are made under time and financial pressures that may not allow for the dedication of significant resources to provenance research.

Some of the difficulty in answering provenance questions stems from the history of European Jewish communities during the last 150 years. Eastern European Jews, suffering from extreme poverty and persecution, began emigrating en masse in the last decades of the nineteenth century. World War I was massively disruptive to Jewish communal life; World War II involved the mass murder of European Jewry and the destruction of its communities. As the communist era proceeded, Jewish communities diminished in their scope and function, and were actively persecuted. Each disruption involved the movement or destruction of people, documentation, and cultural heritage, and consequently also the destruction of provenance information.

A given pinkas might have left Europe with immigrants or refugees or might have been looted during the Nazi era. Perhaps they were bought, sold, or stolen from their place of origin during the Soviet era at a time when national authorities were not dedicated to preserving Jewish traditional culture, often actively persecuting or reeducating Jews. Items might have been bought, sold, or stolen after the fall of the Soviet Union. Rumors circulate about book dealers who traveled to struggling Jewish communities around Europe and walked away with books and documents, with or without the approval of community leaders, with or without paying for them. If they were sold, they might have been sold by leaders of Jewish communities for the benefit of the communities, or they might have been sold by individuals without permission, for personal profit. Through how many hands have the pinkasim passed since they left the community of origin? What was the nature of those transfers? Even with reasonable due diligence and study, answers to these questions may prove elusive, since records of transfers may not have ever existed, let alone been preserved, let alone been transcribed in a searchable database. (For guidelines on the practical aspects of conducting provenance research see [Pearson](#), the best practices of the [International Foundation of Art Research](#), and the flow chart suggested by the [International Forum on Judaica Provenance](#).) Furthermore, the organizations that once owned these documents generally no longer exist, and in some cases, there is no legal successor organization. Creating a complete chain of title is unlikely in any given case.




In the future, an aggregated database of provenance information about particular items could make answering these questions more realistic, and the [Association of Jewish Libraries](#) is working in this direction. The more that interested parties invest in provenance research infrastructure for Jewish materials, the easier the work will become. But in the meantime, limited provenance information makes it hard to understand the ethical weight or legal claims of the various stakeholders who may want these items restored to them today. Lack of provenance information raises questions about which laws apply to a given document. If you don't know when and under what circumstances an item left its place of origin, it can be difficult to determine which laws applied. In some cases, shifts in European borders might even raise questions about which country the document was removed from.

These questions are not only legal, but moral as well. If items left the country of origin due to mass murder or persecution, or if duly appointed leaders of a community sold them to pay for the ongoing activities of their impoverished community, perhaps the original community or country of origin has a lesser moral claim. If the Jewish community where they were created still exists and is active, and if the country of origin has made ongoing attempts to preserve rather than persecute Jewish collective memory, then the moral claim of the community of origin might be weightier. If collections were looted by Nazis and their collaborators, should we speak of someone who later bought them and cared for them as part of the problem, or part of the solution? If communist countries persecuted Jews and showed little interest in Jewish cultural life, should we speak of Jewish cultural property that traveled west during the Soviet era as stolen or smuggled, rather than rescued? One wonders about a moral claim to cultural property by countries from which Jews fled due to abject poverty and persecution, pogroms, or genocide.

When curators of public-facing collections face an opportunity to add pinkasim to their collections, they must make difficult decisions, almost always without enough information. Sometimes, it becomes clear that an object was stolen, looted, or smuggled in ways that violate laws and ethics, and that public institutions should avoid adding such items to a collection. At other times, research will lead to a clear and clean "bill of health" for an item. In most cases, however, questions and dilemmas will remain.

## CASE STUDIES

Given this background, I would like to examine what happened when two sets of pinkasim were placed on auction in 2021. In both cases provenance information was limited, and it was not possible to establish a complete chain of title. In one case, those items were seized by law enforcement officials and have been unavailable ever since. In



the second case, cooperation between stakeholders led to joint international ownership of the pinkasim, with digitization and accessibility as features of the agreement.

There are lessons to be learned from this. Case studies can become, to play on a traditional Jewish principle, a *perat shehu letzorekh hakellal*, a detail that illuminates the larger picture (*Sifra, Beraita DeRabbi Yishmael, 2*). These case studies can help us envision a better, more professional, more cooperative, more ethical, and more goal-oriented practice in the future. Museums, libraries, and archives can, if circumstances allow, cooperate with sellers, collectors, and auction house owners to produce good outcomes for most or all stakeholders, while minimizing losses, disadvantages, and ethical or legal problems. These case studies are meant to help articulate the kinds of professional and interpersonal relationships that can help preserve Jewish materials without violating ethical or legal principles.

In both cases, Jewish cultural institutions and the World Jewish Restoration Organization ([WJRO](#), an international organization dedicated to restoring looted Jewish cultural property) were concerned that Jewish communal property was being held and might be sold to private hands. As the WJRO stated, regarding one of the sales: “The problem is when individual collectors get them.” This understanding stems from the important international statement of “Best Practices for the Washington Principles on Nazi-Confiscated Art”: “Art and cultural property that is determined to have been the property of Jewish communities should...not be seen as collection items.” Instead, “they should be returned to an existing successor community, institution, or organization, and/or a successor organization for the Jewish people as a whole.”

But the two cases followed radically different paths—indeed opposite ones—in responding to that problem, with very different outcomes.




## WINTER 2021

In February 2021, [Kestenbaum and Co.](#), a New-York-based Judaica auction house, listed for sale twenty-one pinkasim related to the activities of the Jewish *hevra kadisha* (burial society) of locations in Hungary, Romania, Slovakia, and Ukraine. In a personal conversation, the seller explained that they had purchased the pinkasim from private dealers mostly in the 1990s due to their interest in Jewish traditions related to death and burial. The person claimed that they did not know much about the provenance beforehand.

Individuals and groups that focus on Jewish genealogy realized just how important these documents would be for their work. They sprang into action, mostly online, hoping to prevent the sale to a private collector, as did public institutions responsible for






Jewish cultural preservation, such as the WJRO. European governments turned to the US Department of State asking for intervention, and US law enforcement bodies got involved. Activists, the National Library of Israel, the Association of Jewish Libraries, and other bodies reached out to the auction house, to the seller, and to one another, trying to find creative solutions, compromises, or alternatives to seizure. However, once law enforcement and multiple foreign ministries were involved, the efforts that would have been required to get all stakeholders to agree on a creative solution were simply too great. In July 2021, the Department of Homeland Security seized the documents from the auction house and from the seller's home. (Fortunately, the publicity resulted in several similar items being sold and donated to the National Library of Israel.)

Today, more than three years later, they are still held by law enforcement bodies in the US and are not accessible to the public. There is no known timetable for next steps, and it seems likely that the status quo will last for some time. Among the reasons for the delay are not only that the mills of justice grind slowly and, frankly, not always that finely. They also include the fact that, while the documents are culturally important, they are not worth much money, which diminishes the resources stakeholders are willing to expend to address the issue.

Based on [a brief filed by Homeland Security](#) outlining the case for seizing the pinkasim, it seems that the legal case against the sale, is, to my reading and that of legal professionals with whom I have spoken, less than ironclad, primarily since there is very little information about how these items left public ownership and when and how they left Europe. It would be hard to determine if the items were stolen or sold legitimately by the community, and if so, when. Hence, there is very little information about what laws might have been broken, in which jurisdiction, by whom, and how that might affect purchasers more than a century later. In any given case, several stakeholders might have a legitimate claim to the items, but their claim would be extraordinarily difficult to prove by the standards needed in court. Any given claim by any given claimant is easily called into question.

There is also no evidence that the buyer acted in bad faith (even if they made mistakes), and they have generously dedicated their time, energy, and resources to preserving the pinkasim professionally. Yet, they have had their property seized and were presented in the press as the “bad guy,” (though they were not named, thankfully).

The result, then, of a well-meaning attempt to advocate for public ownership of Jewish cultural property has, up to now, led to counterproductive results. The outcome is pragmatically problematic both for the documents and for those who might use them. No Jewish community holds these materials; the countries where they were created do not have them; law-enforcement agencies are ill-equipped to care for and





preserve them; and the pinkasim are not available to scholars, genealogical researchers, descendants of the destroyed community, or other interested parties. As is often the case when things are treated exclusively as legal matters, the primary beneficiaries are the lawyers.

## FALL 2021

Shortly thereafter, in the fall of 2021, several lots of similar pinkasim appeared for auction at the Israeli auction house [Kedem](#). The story was similar. Nobody knows when and how these documents left Europe, but they had been purchased by a private collector who was interested in the topic. He wanted to sell them as he got older. The same groups of activists and genealogical enthusiasts were active in raising awareness about the problematic nature of this proposed sale of Jewish cultural property. In this case, law enforcement was not involved, in large part because the relevant jurisdiction was Israel. Instead, these activists turned to the National Library of Israel (the NLI).

Here, discussion about the future of the pinkasim occurred not through official channels of law enforcement and foreign ministers, but through phone calls between people with personal, professional, and institutional connections, including myself (at the NLI), the staff of the auction house, the seller (contacted indirectly by the auction house), activists and genealogists, the [Hungarian Jewish Museum and Archives](#), the Association of Jewish Libraries, and Jewish and government institutions in Europe.

Without much fanfare, and in a matter of a few short weeks, the parties reached the [following agreement](#): The collector would remove the pinkasim from the auction and would sell them directly for a preapproved price. The auction house would accept a reduced fee (the seller and auction house agreed to this, partially due to goodwill and partially due to concern that if law enforcement would be brought into the case, the items might be seized.) The NLI and Hungarian Jewish Museum and Archives would jointly purchase the pinkasim, which would physically be held in Jerusalem but available for exhibit by the HJMA. The pinkasim would be stored, digitized, and uploaded to the internet. It became a win-win-win-win-win for the seller, the auction house, the NLI, the HJMA, and the public. The items remain held by the Jewish public and by a representative of the original Hungarian communities. They are available to researchers and the general public, while the Jewish and Hungarian public institutions maintain agency over their own cultural heritage.

## COMPARISONS OF THE TWO CASES

Winter 2021	Fall 2021
Antagonism toward private collectors and auction house	Cooperation with private collectors and auction house
Legalistic	Legal, but not legalistic
Antagonistic	Cooperative
Official communication	Informal communication
Interaction between strangers	Build on existing relationships
Top-down	Bottom-up
Justice alone	Pragmatic
Unavailable to public	Available to public
Not in Jewish institutional hands	In Jewish institutional hands
Not owned by an institution in the country of origin	Jointly owned by an institution in the country of origin
Expensive	Inexpensive
Lose-lose	Win-win

Two closely related “intangibles” were necessary for this better outcome. First, the ongoing relationships between professionals in the field, even between stakeholders with very different and sometimes competing interests. Second, goodwill. Many in the field—including some private collectors and sellers—maintain an interest in the benefit to the field as a whole, and in preserving cultural heritage. Cooperation was possible because stakeholders cared about the interests of other stakeholders and about the larger project of preserving Jewish cultural heritage.

These interpersonal and professional connections had been created through years of cooperation (and sometimes conflict), as well as by sharing expertise through conferences, speaking engagements, academic cooperation, professional advice, and shared business interests. Granted, close personal connections between collection curators and sellers can create, under some circumstances, conflicts of interest (and those must be addressed). But, under these circumstances, interests were aligned enough for positive outcomes. Others and I have recently referred to this combination of ongoing positive relationships, goodwill, and professional cooperation as a “**community of practice**” among stakeholders in the mission of Jewish heritage preservation.




## STEWARDSHIP AS A MODEL

In an important [recent article](#), Arthur Kiron has spoken about the difference between what he calls “ownership” and “stewardship.” Ownership is a legal category that includes the right to sell, transfer, or even destroy an object. Stewardship is a sense of responsibility to preserve and provide access to knowledge. In theory, ownership and stewardship could coincide—by responsible archives, libraries, or private collectors who steward manuscripts that they legally own. But they need not coincide. An owner could abandon a work to the elements or simply refuse to share access. A digitization project—particularly one with a good digital preservation program—could dedicate itself to stewarding cultural heritage while owning nothing. In most cases, ownership and stewardship work together in different ratios in different cases, on a sliding scale and in different proportions.

In both the winter and fall of 2021, there was a concern about both ownership and stewardship. In winter 2021, activists turned to law enforcement (ownership) because of a profound concern that cultural heritage remain in public hands and be available (stewardship). In fall 2021, activists and stakeholders, focusing on public access (stewardship), were eager to compromise (share ownership) for the sake of the public.

In the two cases, the proportion of ownership and stewardship was different. In winter 2021, ownership was centered, with stewardship sidelined. Stewardship was an ultimate but distant goal while ownership was the operating principle. In fall 2021, stewardship was centered and ownership sidelined. Ownership was a necessary means toward the end of preservation and agency—which made it easy for partners to compromise—while stewardship dictated the building blocks of the ownership agreement. Making stewardship a larger aspect of our practice can increase positive outcomes.

One could also compare winter and fall 2021 with the differences between a lawsuit and mediation. In a lawsuit, the best outcome is that one side wins and the other loses, based on who has the most compelling legal claim. In mediation, sides try to determine what their most important needs and desired outcomes are, and solutions, ideally, can offer both sides much of what they genuinely need. Finding mediation-like solutions to challenges can increase positive outcomes. Cooperation and constructive solutions are better than legalistic non-solutions.



## ENVISIONING THE FUTURE


We can make some generalizations about how private collectors, dealers, and public institutions might envision a future in which the preservation and accessibility of Jewish textual heritage is seen as a joint, cooperative, and worldwide endeavor, rather than a local, institutional one. Preservation of Jewish cultural heritage should not, and cannot, be the sole responsibility of any given institution. Instead, it is the shared responsibility of a network of bodies, individuals, communities, for-profit corporations, not-for-profit institutions, funders, and laypeople. The question should not only be what your collection contains, your institution holds, or what a given dealer buys or sells. It should also be how we, as a group, act in ways that preserve our own individual or institutional interests while also contributing to the good of the field as a whole. That attitude cannot be created by fiat—though it requires leadership and can be supported by professional organizations. It requires good relations, shared vision, mentoring of future leaders, and regular, constant communication.

The envisioned community of practice would include libraries and archives and their staffs, academics and research institutes, tech professionals with an interest in cultural heritage, funders and fundraisers, collectors, sellers, professional organizations, volunteers, activists, and patrons of libraries. Some might be formally organized under the auspices of the Association of Jewish Libraries or other umbrella organizations dedicated to the preservation of Jewish archival heritage, such as New York's [Center for Jewish History](#), the National Library of Israel, [European Holocaust Research Infrastructure](#), or other bodies. Ultimately, much of the work will get done with informal networks and ongoing relationships.

The case of pinkasim in public auctions is a small example. But the community of practice which it represents continues to grow, both formally and informally. The development of this community is a major strategic desideratum for the future of Jewish cultural preservation, archival work, and librarianship.


## ADVANCES IN COOPERATIVE JEWISH HERITAGE PRESERVATION

Aspects of this community of practice already exist, whether in professional education and advancement, joint digitization and cataloging projects, or conferences. Recently, the AJL and the Jewish Theological Seminary teamed up to help mentor the next generation of leaders by instituting a [training certificate in Jewish librarianship](#). The [Yerusha project](#) has mapped more than twelve thousand Jewish-related archival



collections held throughout Europe. [KTIV](#) (the international digital repository of scanned Hebrew manuscripts) has created an aggregated digital collection of Hebrew manuscripts held around the world. The [United States Holocaust Memorial Museum](#) and [Yad Vashem](#) cooperate to digitize millions of pages of Holocaust-related archival documents. All these (and other) projects have something very important in common: they are cooperative, trans-institutional efforts to collectively preserve and steward Jewish textual heritage, dedicated less to individual institutions than to collaborative work for the betterment of the field as a whole.

One such project is particularly important in the context of the ethics of provenance: a transnational set of working groups that aim to guide collections-development professionals when faced with provenance concerns. In the spring of 2021—at the same time as these sales were going on—the National Library of Israel held an [online conference](#), bringing together curators of Judaica collections in libraries and archives from around the world. One session, titled “Murky Provenance and the Ethics of Collection,” raised many of the issues discussed above (the session was not recorded, to enable all participants to speak freely). At the end of the session, someone threw out a question: “What can we do to guide one another in navigating ethical and legal challenges around collections development and unknown provenance?” A handful of participants followed up. The NLI and AJL raised some money, gathered an international team of experts (curators, legal experts, historians, and private collectors—many of whom attended that session), and created an “International Forum on Judaica Provenance.” The team set itself a goal to articulate best practices for Judaica collections when faced with questions about provenance. They met periodically for some two years, read, learned, discussed, brainstormed, wrote, edited, critiqued, and re-edited. Those written guidelines—by professionals, for professionals—appeared online and in print in the spring of 2024, entitled “[Cultivating Best Practices in Judaica Provenance](#).” That document has already changed practice among individuals and institutions and has sparked at least two follow-up professional initiatives: working groups sponsored by the AJL. One is working on creating a centralized database of provenance markings for Jewish documents, while the other is tracing the work of Jewish Cultural Restoration, the organization responsible after World War II for distributing Nazi-looted books to Jewish communities around the world. I am encouraged by these cooperative initiatives and look forward to others.






## BY WAY OF SUMMARY: ACTION ITEMS

This analysis suggests a few “action items” for the future. I would encourage all stakeholders in the world of Judaica heritage to act with four goals in mind:

- First, advocate for a collaborative, pragmatic approach to resolving provenance issues and ensuring public access to important historical documents.
- Second, work toward a vision for the future of Jewish cultural heritage preservation that emphasizes cooperation, shared responsibility, and the development of a global community of practice.
- Third, balance the legal and ethical considerations with practical outcomes that benefit researchers, communities, and the public.
- Finally, encourage professionals in the field to build and maintain relationships across institutions and sectors to facilitate better solutions to complex provenance challenges.

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*Photo credit: Yorai Lieberman*





## Center for the Future of Museums

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