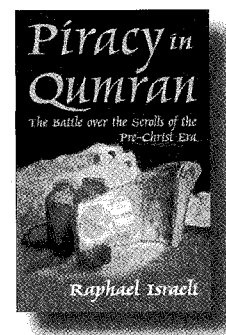


Dead Sea Drama

by Jovan Culibrk



Piracy in Qumran: The Battle Over the Scrolls of the Pre-Christ Era

by Raphael Israeli

New Brunswick, NJ: Transaction
220 pp., \$39.95

EVER SINCE Marshall McLuhan's famous review of Northrop Frye's *Fearful Symmetry* and Parker Tyler's *Magic and Myth of the Movies* in 1947, Western intellectuals have felt obliged to mix traditional scholarship with themes from popular culture. Needless to say, few could compete with McLuhan's brilliance and erudition in taking Parry's and Lord's theories about the oral composition of the *Iliad* and the *Odyssey* and applying them to the media revolution that has transformed our world. Even fewer scholars have had enough direct knowledge of popular culture to be taken seriously by those who have lived in that cultural milieu. As a result, postmodernist theorists, for all their fevered talk of "discourse," have accomplished very little. Here at the beginning of the 21st century, there are few theorists worthy of being named in the same sentence with McLuhan.

Thus it was with a mixture of hope and uneasiness that I sat down to review a book about the Dead Sea Scrolls written in the vein of a courtroom thriller. As in any good Agatha Christie mystery, the story begins with an enigma: the ancient community of Qumran hovering in the air above a small elite society gathered around the dinner table somewhere

in the Middle East, a table that in the next chapter will reveal itself as a metaphor for the judge's seat. An eloquent discussion by like-minded intellectuals will turn out to be a recollection of an epic courtroom battle in which two of them play the roles of the two principal heroes.

Fortunately for readers and reviewers, Prof. Raphael Israeli of the Hebrew University of Jerusalem abandoned his theological discourse exactly here, at page viii. But his analysis of a trial that became a *cause célèbre* is still a surprise, although it is written by a scholar who has never failed to confront contemporary realities. Israeli's honesty is on display in his acclaimed book, *Green Crescent Over Nazareth: The Displacement of Christians by Muslims in the Holy Land* (2002), in which he applied his masterful knowledge of Islam to produce a thorough analysis of the rapid Islamization of Nazareth, the birthplace of Christianity, under the rule of the Jewish state of Israel.

Early Christianity, in fact, provides the link between these two books: At the heart of *Piracy in Qumran* is a document that is key to understanding the true nature of the Essene community, which produced the Dead Sea Scrolls. Ever since the discovery of the scrolls (1953-59), some scholars have argued that the community that produced them must have influenced the teachings of Jesus Christ.

Miqsat Ma'ase ha-Torah (Some Precepts of the Law, abbreviated as 4QMMT or, most often, simply MMT) was found in

Cave 4 in Qumran in 70 fragments of six copies of the same text. Reconstructed, it will make 130 lines that "earned so much controversy, accumulated so many arguments, and revolutionized the history of the Second Temple." The work was written between 50 B.C. and A.D. 50, apparently as a letter from Qumran's "Teacher of Righteousness" to his opponent, the "Wicked Priest" of the Temple, and/or one of the Hasmonean kings. The text deals with the nature and definition of Judaism and the relationship between various streams of the faith, and it reveals very clearly that the Qumran community was quintessentially a Jewish sect, and not an early church.

As Professor Israeli puts it, the letter "is analogous to a present-day ultra-Orthodox rabbi admonishing the Israeli Prime Minister to adopt as official policy the rules of his haredi ('faction')." This interpretation, doubtless correct, disappointed an entire school of thought that saw the Dead Sea Scrolls as a major source of Christianity, and the only promise it held out was the possibility "that John the Baptist was under the influence of the Essenes."

But scholarship has gone a long way from the unearthing of the document to the reaching of inescapable conclusions. In the immediate aftermath of the discovery, fragments were given to John Strugnell, who worked for decades on reconstructing and publishing them, until he deciphered and identified some 100 fragments, pieced some of them together, and reduced them to 70 unrelated pic-

es. By 1980, he "could go no further because many words were missing which could not be reconstructed unless one had a wide Talmudic education in addition to philology." At that point, Elisha Qimron, a young scholar from Ben-Gurion University of the Negev in Beersheba, entered the story. Qimron, who had "made an international name for himself for his insightful and path-breaking scholarship in the Hebrew language," was the first Israeli academician ever to join the close-knit community of predominantly Western Christian scholars who had monopolized the scrolls from the time of their discovery.

Qimron worked on his painstaking reconstruction for 11 years, filling in some 40 percent of the missing text of MMT. In 1984, he reported the first of his findings, and in 1986 he finished the first draft on "the halakhic aspect of the document." It

was copied and sent to four experts in Jewish law in different parts of the world. Once they had received and considered the responses of these men, Strugnell and Qimron prepared MMT in both Hebrew and English translation, together with a 300-page study, all of which was to be published by Oxford University Press. Now the plot was beginning to unfold.

Trouble began when one of the four confidants, in a breach of trust, distributed the text and translation of MMT to other scholars. Early in 1991, Zdzislaw Jan Kapera, a professor at Jagiellonian University in Krakow, published them in the local journal *Qumran Chronicle*, anonymously and without authorization. While the Israeli Antiquities Authority convinced Kapera to apologize and withdraw the contested issue of the journal, the text of MMT was published once again, this time "as a part of the introduction to a photographed edition of the entire Dead Sea Scrolls collection," by the Biblical Archaeology Society chaired by Hershel Shanks, also the editor of the *Biblical Archaeology Review*.

The story made its way into the pages of the *New York Times* and of prestigious law journals, and surfaced at scholarly conferences. Qimron's attorney sued in Jerusalem District Court for breach of copyright by a journal published in the United States, in a case abounding in legal precedents. The crux of the matter was summarized by Judge James Oakes of the U.S. Court of Appeals for the Second Circuit, who wrote a study in an issue of the *Houston Law Review* devoted to *Qimron v. Shanks*. Oakes writes:

I do not think most courts would have a problem in holding that, given the tremendous importance of the Dead Sea Scrolls for scholarly research in the areas of Judaic and Christian civilization, there was a fair use at least in light of the long de-

lay in Qimron's own publication of 4QMMT if, but only if, the Shanks publication had duly acknowledged Qimron's scholarly role.

Piracy in Qumran goes deeply and at length into the hardships faced by Israeli Judge Dalia Dorner during a trial that lasted a year and a half: the problem of how to bridge the legal systems of the state of Israel and the United States ("there is a universal assumption of equality between legal systems of enlightened countries"); how "originality" was to be defined in determining whether a moral right exists to a work of art or science; how to detect and define that extra element of creativity, which alone differentiates between copyright and creation.

Raphael Israeli dwells at even greater length on the reactions and resulting debates that followed Judge Dorner's verdict in favor of Qimron in 1993, upheld by the Israeli Supreme Court in August 2000. From the court's insertion of the argument that moral and material components of copyright law are equivalent, to the alleged "bringing into play what Oakes called 'theological law'" and feminist narratologist Martha Woodmansee's attack on a verdict issued "in masculine terms of insemination"—everything became the subject of a debate. Nevertheless, "lawyers on both sides had to admit that the precedent had been established that a copyright could be claimed for a reconstruction of an ancient text."

In 2000, Dr. Qimron told the *New York Times*' Jerusalem correspondent that "This ruling showed that intellectual property also comes under the commandment, 'Thou shalt not steal.'" This confirms for Raphael Israeli that the moral rules that the ancient Qumran community strove to preserve still obtain today.

Fr. Jovan Culibrk is a monk at the Cetinje Monastery.



**The College of
Saint Thomas More:
The Classical
College of Texas**

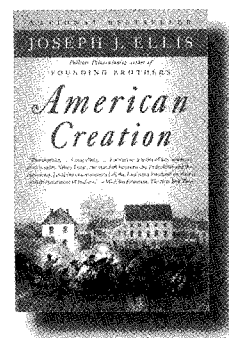
Invites you to pursue truth
and wisdom through
the study of the great texts of
Western Civilization.
Interterm programs in Rome,
Oxford, and Greece.

Send Inquiries to:
3020 Lubbock Avenue
Fort Worth, Texas 76109
817-923-8459
www.cstm.edu

*Liberal learning in the
Roman Catholic Tradition*

A Sum of Contradictions

by Fr. Michael P. Orsi



American Creation: Triumphs and Tragedies at the Founding of the Republic

by Joseph J. Ellis

New York: Alfred A. Knopf

304 pp., \$26.95

IN *AMERICAN CREATION* Joseph Ellis, a prominent scholar of the American Revolution known for his embrace of the Sally Hemings myth (see “Tom and Sally and Joe and Fawn,” by Egon Richard Tausch, *Views*, March 1999), shows how serendipitously the American founding actually unfolded, hardly in accordance with the godlike clarity of vision suggested by our national hagiography. Instead, we learn that Washington’s insight of “land and time” being on his side affected his conduct of the war; Adams was ambivalent regarding democracy; Jefferson’s words and actions regarding the power of the presidency were often contradictory; the delayed application of the most provocative statements of the Declaration of Independence actually set the stage for enlarging the American franchise; Madison’s purposeful ambiguity in parts of the Constitution enabled its passage; and the founders’ conflicted treatment of the Indians reflected the realpolitik they all exercised.

Yet Ellis fails to identify the full context of the founders’ responses to the events he portrays. They were men of the 18th century, who had a high regard for ancient Rome, its leaders, and the virtues they valued. Certainly, Washington’s admiration

and emulation of the upright Cato and the noble Cincinnatus are well attested. However, the Roman model also shaped the seemingly disparate personalities of Adams, Jefferson, and Madison. For example, Adams said of Cicero, “All ages of the world have not produced a greater statesman and philosopher combined.” Cicero loved the Roman Republic above all else. Though preferring the *optimates*, he was willing to compromise with the *populares* for the sake of preserving the state. This flexibility characterized all the founders. What made them great was their willingness to perceive situations broadly, allowing them to sacrifice personal preference for the common good.

As for democracy, the founders’ understanding of popular government was hardly the modern one. They favored a republic directed by an aristocracy of the elite, a meritocracy of virtue. Jefferson himself was repelled by the candidacy of Jackson. “Adams,” Ellis writes, “feared the people as much as the monarchy, neither of which, he wisely reckoned, was omniscient.” For Adams, “the revolution was a transfer of authority from a corrupt regime to a more enlightened one.”

ELLIS’S FONDNESS for Jefferson and Madison leads him to give them more credit than they deserve for the conscious direction of America’s policies. For example, he contends that Jefferson stealthily inserted into the Declaration of Independence the famous words regarding

equality, rights, and the “consent of the governed” to plant the seeds of a *real* revolution—one that would mandate individual rights, end slavery, provide for women’s suffrage, and sanction civil rights. This utterly anachronistic reading goes far beyond anything that Jefferson’s limited view of republican government could have endured.

Similarly, Ellis portrays Madison as having had an activist agenda for the Constitution. The ratification of that document, he contends, was primarily the result of Madison’s ambiguous language. Ellis suggests that the main purpose of the Constitution was to provide “a political framework for an ongoing negotiation between the states and federal government.” Certainly, the South had no such understanding! “Because of [the founders] the American Revolution moved forward,” Ellis says, “with deliberate speed, the effects of which are still shaping us today.” This is more a disservice to the founders’ vision than a compliment to their farsightedness.

As Henry Adams wrote when examining the conduct of British politicians during the American Civil War, “they were a sum of contradictions.” The same can be said of the founders, and indeed politicians of every age.

Fr. Michael P. Orsi is a research fellow in law and religion at Ave Maria School of Law in Ann Arbor, Michigan.