

P. Emil Herman S.J. (1891–1963): Jesuit Canonist*

Michael J. KUCHERA S.J.

Introduction

Cardinal Agagianian (1895–1971), president of the Pontifical Commission for the Revision of the Code of Oriental Canon Law sent the following condolences to the rector of the Pontifical Oriental Institute upon learning of the death of R. P. Emil Herman S.J. (1891–1963).

Mi è giunta la triste notizia della scomparsa del Reverendissimo Padre Emilio Herman S.J., Consultore di questa Pontificia Commissione. Desidero a nome mio e degli altri componenti di questa Commissione esprimere le più profonde condoglianze per il gravissimo lutto che ha colpito la Compagnia di Gesù ed, in modo particolare, il Pontificio Istituto Orientale.

La scomparsa del P. Herman è una grave perdita anche per la Chiesa Orientale, di cui Egli era benemerito, avendo generosamente dato il contributo della sua vasta cultura e delle sue non comuni doti di mente e di cuore per la preparazione e la redazione del Codice di Diritto Canonico Orientale, in stretta ed efficace collaborazione con il Compianto Em.mo Card. Gabriele A. Coussa.

La nobile figura del P. Herman, il suo tratto, il suo sereno ed obbiettivo giudizio nel trattare le cose, la sua sentita pietà sacerdotale, lo hanno reso a tutti così ben voluto, che oggi tutti sentono nella scomparsa sua la mancanza di fraterno amico, di un saggio consigliere e di un religioso esemplare.

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Il Signore non mancherà di dare il premio dei giusti al suo servo fedele, al quale non ha risparmiato in questi ultimi anni le sofferenze per accrescergli i meriti. ...¹

I. Biography

Emil Herman was born in Aachen, North Rhein-Westphalia, Germany, on 5 April 1891 and died on 20 January 1963 in Münster, Germany.² As a youth having successfully completed his classical studies, his father who was a banker sent his son to work at a bank in England. However, after one year of working at a bank in England, Emil entered the Society of Jesus in 1912 and did his two years of novitiate in Holland at the two year old German Novitiate of 's-Heerenberg. In 1914 he began his philosophy studies at Valkenburg³ in Holland. These studies were interrupted by World War I. He was called to help

- 1 Letter of condolence upon the death of R. P. Emil Herman S.J. from His Eminence Gregory Peter XV Cardinal Agagianian, President of the Pontifical Commission for the Revision of the Code of Oriental Canon Law (2 July 1955– 16 May 1971), dated 24 January 1963, to R. P. Joseph Gill S.J., Rector of the Pontifical Oriental Institute: Pontificia Commissione per la Redazione del Codice di Diritto Canonico Orientale, Prot. N. 612/63.
- 2 In general the best biographical information about Emil Herman is found in Jan ŘEZÁČ, “P. Aemilius Herman S.I., in memoriam”, in *Orientalia Christiana Periodica* 29 (1963) 250–259; Carmelo CAPIZZI, “Herman, Emil. Canonista”, in *Diccionario Histórico de la Compañía de Jesús*, Charles E. O’NEILL – Joaquín María DOMÍNGUEZ (dir.) Roma-Madrid 2001, vol. 2, p. 1908; Joseph PRADER, *Il Pontificio Istituto Orientale e il diritto canonico delle Chiese Orientali*, in Robert TAFT – James L. DUGAN (a cura di), *Il 75° anniversario del Pontificio Istituto Orientale. Atti delle celebrazioni giubilari 15–17 ottobre 1992* (*Orientalia Christiana Analecta* 244), Roma 1994, 181–195; and also for his place in the history of the Pontifical Oriental Institute see: Vincenzo POGGI, “Il settantennio del Pontificio Istituto Orientale”, in *Seminarium* n.s. 17 (1987) 3, 207–221.
- 3 See: “Valkenburg”, in Ludwig KOCH, *Jesuiten-Lexikon: die Gesellschaft Jesu Einst und Jetzt* (Paderborn 1934), Löwen-Heverlee 1962, cols. 1792–1794.

with wounded soldiers in Jaroslav, in Galizia, then at Novegrodek in White Russia and also at Kevevara on the Danube in Hungary. Following this he spent eight months aiding soldiers on the battle front at Verdun and then at Rehtel near Rheims in France. At the end of the war he returned to pursue his vocation with the Jesuits studying philosophy and theology at Valkenburg. On 24 August 1923 he was ordained a priest in the chapel of St. Ignatius in Valkenburg. This was followed by the traditional Jesuit fourth year of theology. In 1924 he was sent to Rome to study canon law at the Pontifical Gregorian University where he received his canon law degree in 1926. Following this was his Jesuit third year of probation (1926–1927) in Florennes, Belgium.

He was nominated professor at the Pontifical Oriental University in 1928 to replace Father F. Cappello and he remained in this post until 1959. From 18 December 1931⁴ to 1951 he was rector of the Pontifical Oriental University. During this pre-ecumenical age before Vatican II he encouraged relations with the Orthodox to bring about union. As rector he allowed non Catholics to attend courses at the Orientale Institute. Among these students were Rev. Stephan Popoff, the pastor of St. Nedelia's in Sofia, Bulgaria, and the Turkish Greek Orthodox deacon Chrysostom Constantinidis, who later became the Orthodox Metropolitan Archbishop of Mira. Herman was one of the founders of the "foyer" for Union in 1944 in Rome and also of the journal *Unitas* (London, New York, 1949). Linguistically he was a polyglot. In addition to his native German language, he knew English, French, Italian and Russian, as well as being conversant in various Slav languages such as Bulgarian, along with these he had facility in Romanian, Spanish, Greek and Turkish. Among Byzantine scholars he was very well respected and often in demand for his scholarship at international congresses pertaining to Byzantine studies.

4 *Acta Apostolicae Sedis* 29 (1932) 31.

In 1930 Herman became a consulter of the Holy Congregation for the Oriental Church and worked on the redaction commission. Officially, in 1935 he was a member of the Pontifical Commission for the Redaction of the Eastern Code of Canon Law.⁵ In 1937 he was a member of the Special Commission for the Redaction of Canons and from 1942 a member of the *Consulta di redazione* for the final text of the Canons. Working closely with the Spanish Cardinal Larraona (1887–1959–1973) and the Syrian Cardinal Coussa (1897–1962–1962). It has been noted that between 23 February and 24 November 1944 alone, Herman contributed to 71 meetings.⁶

Pius XII (1939–1958) appointed Herman as visitor to a number of Oriental Rite colleges and universities in Rome and also to the monasteries of the Marionites and Melkites. On 3 October 1940 Cardinal Tisserant (1884–1936–1972) as Secretary of the Holy Congregation for the Oriental Church requested Herman to make the necessary arrangements and draft a brief outline of rules for the future Institute of San Giovanni Damasceno.⁷ This college was then approved by Pius XII on 9 November 1940 and the institute was inaugurated on 4 December of 1940. Until 1949 the Institute was housed at the Russicum and Herman was its rector.

At age 65 in 1956 Herman travelled to Lebanon and while there he fell seriously ill with cerebral atherosclerosis, hardening of the arteries, however he still hoped to be able to teach for a few more years. Despite a gallant effort to continue working in Rome, by 1961 it was

5 Official notification of the creation of the commission appeared in *Acta Apostolicae Sedis* 21 (1929) 669. In the article “Codificazione Canonica Orientale”, in *L'Osservatore Romano*, 2 April 1930, p. 1, the names of those on the commission are published. This notification does not contain the name of Herman. However, his name does appear in the official notification about the commission published on 17 July 1935 in *Acta Apostolicae Sedis* 27 (1935) 308.

6 ŘEZÁČ, “P. Aemilius Herman” (nt. 2), 253–254.

7 Sacra Congregazione “Pro Ecclesia Orientali”, Prot. N. 490/40.

necessary for him to return to Germany and retire at the Jesuit formation house in Münster. He died there on 20 January 1963 at the age of 72. In Rome his death was announced in *L'Osservatore Romano* with the notification of a Mass to be offered for the repose of his soul on Monday, 28 January 1963 at Santa Prassede all'Esquilino.⁸ R.P. Joseph Gill S.J., rector of the Pontifical Oriental Institute was the main celebrant of the Mass. He was joined by Archbishop Scapinelli and Msgrs. Spina and Gilardone from the Oriental Congregation.⁹

8 *L'Osservatore Romano*, 23 gennaio 1963, N. 19 (31.191), p. 4.

9 Most Reverend Giovanni Battista Scapinelli di Léguigno, titular Archbishop of Laodicea in Lebanon, Assessor; Rev. Msgr. Antonino Spina, *Minutante*; Rev. Msgr. Emil Gilardone, *Minutante*. Also present at the funeral were: His Eminence Ignace-Gabriel I Cardinal Toppouni, Syrian Patriarch of Antioch, member of the Holy Congregation of the Oriental Church, of *Propaganda Fide* and of the *Rev. Fabbrica di S. Pietro*, a member of the Commission for the Redaction of the Oriental Code of Canon Law and one of the Cardinal chairmen of Vatican II; His Eminence Francesco Cardinal Roberti, Prefect of the Supreme Tribunal of the Apostolic Signature, member of the Holy Congregations for the Sacraments, *Concilio*, *Propaganda Fide* and of the *Rev. Fabbrica di S. Pietro* and a member of the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, also founder and director of *Apollinaris* (1928); Most Reverend John Bučko, titular Archbishop of Leucade and Apostolic Visitor for the Ukranian faithful of the Byzantine rite who live in western countries in Europe, member of the Council on Emigration, consultor for the Holy Congregation of the Oriental Church, member of the Commission *De Ecclesiis Orientalibus* and a member of the *Cappella Pontificia*; the Most Rev. Archimandrite Teodoro Minisci, Superior General of the Italian Congregation of Basilian Monks, Ordinary of the Monastic Exarch of St. Maria of Grottaferrata and a member of the Secretariate *Ad Unitatem Christianorum Fovendam*; Rev. Proto-Archimandrite Pavlo Myskiw, Superior General of the Basilian Order of St. Josaphat; Rev. Alphonse Raes, S.J., rector of the Pontifical Oriental Institute (1957–1952, following Rev. Ortiz de Urbina, 1951–1957) Prefect of the Apostolic Vatican Library, consultor for the Holy Congregation of the Oriental Church, a member of the Special Commission for the Liturgy, of the Pontifical Committee of Historical Science, of the Permanent Commission for the Guardianship of Historical and Artistic Monuments of the Holy

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Numerous condolences were sent to the Pontifical Oriental Institute, but perhaps it was the one received from The Catholic Patriarch of the Chaldeans, Paul II Cheikho, which summarizes most of the sentiments of the notes.

... Ho avuto il compianto Padre Padre Emilio Herman come professore e Rettore nell'Istituto Orientale dove ebbi la fortuna di completare i miei studi. Egli è stato il Relatore della mia tesi. Era per tutti un esempio di vita spirituale e di un vero ed instancabile lavoratore al servizio della Chiesa. La sua vita era, per noi, una predica vivente. ...¹⁰

2. Canonist

At the Pontifical Oriental Institute, which on 14 November 1926 just relocated from Piazza della Pilotta to Piazza Santa Maria Maggiore, Felice Cappello S.J. was teaching *Ius canonicum orientale* at 3:30 PM on Monday and Wednesday. His course generally relied heavily

See, of the Pontifical Academy of Science and of the Administrative Tribunal of the Secretariate *Ad Unitatem Christianorum Fovendam* of Vatican II; also present at the Mass, from the same administrative tribunal for Vatican II, was the Most Rev. Chorbishop Ignatius Mansourati. Representing His Eminence Gregory Peter XV Cardinal Agagianian (see footnote no. 1 above) was Rev. Daniel Faltin, O.F.M. Conv., Assistant for the Pontifical Commission for the Redaction of the Oriental Code and a member of the Vatican II administrative tribunal. Representing the Vicariate of Rome was Rev. Msgr. Gustav Pasquali, writer; representing the Jesuits were Rev. Frs. Bernard de Gorostarzu, French Assistant; Anthony P. Prešeren, Slav Assistant and Peter van Gestel, German Assistant. Also present at the Mass were the Rev. Rectors and alumni of all of the Oriental Pontifical Colleges in Rome, as well as representatives from the curia of the Fatebenefratelli, the Basilians and other male and female Congregations, the Sisters of Our Lord, the English Ladies, the Sisters of the Poor and numerous other priests and faithful.

¹⁰ Letter signed: + Paolo Cheikho, patr. di Bab. dei Caldei. Patriarchatus Babylo-nensis Chaldaeorum, Baghdad, 17 Marzo 1963.

on the recently promulgated 1917 *Codex Iuris Canonici*, but tailored for the Orientals as: “1. De fontibus iuris ecclesiastici orientalis. 2. De variis gradibus hierarchiae ordinis et iurisdictionis. De patriarchis, metropolitibus et episcopis. De vicario generali, de canonicis et parochis ac de aliis qui participant de potestate episcopali. 3. De iuribus et obligationibus clericorum tum in genere tum in specie. 4. De religiosis. 5. De locis et temporibus sacris. 6. De beneficiis aliisque institutis ecclesiasticis.”¹¹ This was the only course in canon law offered during the 1926–1927 academic year. The following academic year P. Herman took the place of P. Capello and taught on Monday and Wednesday in Aula I at 10:30 AM during the first and second semesters. His course *Ius canonicum orientale* was outlined as: “De sacramentis. De sacramentalibus. De iudiciis in genere et in specie. De delictis et poenis. De censuris latae sententiae.”¹² During the 1928–1929 academic year in addition to being Professor of Iuris canonici orientalis, P. Herman also gave a seminar as Director Seminarii Iuris canonici. His Oriental Canon Law course was: “1. De fontibus iuris canonici orientalis. Normae generales. De legibus. De consuetudine. – 2. De collectionibus antiquis iuris canonici orientalis. De fontibus recentioribus ad cognoscendum ius canonicum orientale. – 3. De personis in genere. De ritu eiusque transmutatione. – 4. De clericis eorumque privilegiis et obligationibus. – 5. De Romano Pontifice et de Curia Romana. De S. Congregatione pro Ecclesia Orientali. – 6. De Patriarchis, Metropolitibus, Episcopis, De adiutoribus episcoporum, praesertim de parochis. – 7. De conciliis oecumenicis. De conciliis nationalibus et provincialibus. De synodo dioecesana. – 8. De religiosis. De monachis. De noviciatu, professione, iuribus et obligationibus religiosorum. De regimine re-

¹¹ *Acta Pontificii Instituti Orientalis*, Roma, 1 November 1926, 7–9.

¹² *Acta Pontificii Instituti Orientalis*, Roma, 1 October 1927, 7–10.

ligionis. – 9. De bonis temporalibus ecclesiasticis.”¹³ During this second year of teaching his course was refined and notably included: “2. De collectionibus antiquis iuris canonici orientalis. De fontibus recentioribus ad cognoscendum ius canonicum orientale., 3. ... De ritu eiusque transmutatione., 5. ... De S. Congregatione pro Ecclesia Orientali., 7. De conciliis oecumenicis. De conciliis nationalibus et provincialibus. ...”. Clearly, this second year course was a more profound treatment of material that was important for Orientals. His course was now offered the same two days and times during the first semester, but during the second semester although the course was still taught on Wednesday, there was the addition of a seminar replacing the Monday morning class. The two courses alternated years, but each year had a seminar. During the course of time Herman compiled, had printed and later rather extensively edited in his own hand a *dispense* for “De Sacramentis”, which was titled “Liber II”, and also a second *dispense* “De Fontibus”.¹⁴ Also as time went on his courses became more and more “Oriental” in character and he entered in greater detail treating specific differences between the Latin west and the Oriental east.¹⁵

In addition to his course and seminar during the 1930–1931 academic year he also became the director of the periodical, “*Orientalia Christiana*”. In 1934 after this periodical reached its hundredth volume, Herman divided “*Orientalia Christiana*” into “*Orientalia Christiana Analecta*”, for monographs and “*Orientalia Christiana Pe-*

13 *Acta Pontificii Instituti Orientalis*, Roma, 25 September 1928, 7–12.

14 *Conspectus Iuris Canonici Orientalis, Liber II, De Sacramentis* and *Conspectus Iuris Canonici Orientalis, De Fontibus*, no publication dates, but his original hand corrected versions are in the library of the Pontifical Oriental Institute, Rome, call number for both: 254-4-7.

15 See his course description for baptism and marriage in *Pontificium Institutum Orientalium Studiorum* for 1929–1930, in *Acta Pontificii Instituti Orientalis 1926–1940*, 4–5.

riodica” for articles and reviews. These appeared twice a year and he was their director and he often contributed to “*Orientalia Christiana Periodica*”.¹⁶

However, it was the year 1932 that Herman succeeded the Most Reverend Michael d’Herbigny, S.I. (1880–1957) as the second Jesuit rector¹⁷ of the Pontifical Oriental Institute, which began a new period of serious Oriental scholarship, especially in the field of canon law. Herman remained rector until 1951. Bishop d’Herbigny was rector of the Pontifical Oriental Institute from 1922 to 1931, during which he was secretly consecrated bishop on 29 March 1926 by the papal nuncio to Germany, Cardinal Pacelli¹⁸. In general, it may be said that Herman brought stability to the Institute after eleven years of growth, eleven years which were filled with much intrigue.¹⁹

During the next several years while rector his publications became both more prolific and more specialized. His writings and studies were reflected in an increasing variety of courses he taught during this period. In the 1934–1935 academic year in addition to the first year course he taught, *Institutiones iuris canonici orientalis*, he also taught

16 Also earlier he contributed to “*Orientalia Christiana*”, see the *Bibliography* below. See the letter of Eugenio Card. Pacelli to Herman, *De ephemeridibus “Orientalia Christiana Periodica” et “Orientalia Christiana Analecta”*, 19 February 1935, in *Acta Pontificii Instituti Orientalium Studiorum*, Roma 15 Septembris 1935, p. 3. In 1936 he relinquished the directorship of “*Orientalia Christiana Periodica*” to Ignatius Ortiz de Urbina S.J., who was Patrology professor and Syriac instructor. Herman remained director of “*Orientalia Christiana Analecta*” until the end of his rectorship in 1951.

17 For the history of the Pontifical Oriental Institute see: POGGI, *Il settantennio* (nt. 2), 207–221.

18 Pius XII (1939–1958).

19 See: Léon TRETJAKEWITSCH, *Bishop Michel d’Herbigny S.J. and Russia: A Pre-Ecumenical Approach to Christian Unity*, Würzburg 1990, together with the review of this book by Vincenzo Poggi in *Orientalia Christiana Periodica* 57 (1991) 446–449. Also see: POGGI, *Il settantennio* (nt. 2), 207–221.

the second and third year courses; *Tractatus de fontibus*, *Tractatus de s. Hierarchia* and *Tractatus de iuribus et officiis clericorum*. In his course on the hierarchy he treated: “De Romano Pontifice, De S. Congregatione Orientali aliisque Dicasteriis Romanae Curiae ad Orientales pertinentibus, de Patriarchis, De Synodo patriarchali, De Metropolitibus, De Synodo provinciali, De Episcopis and De Curia episcopali”. It is only possible to imagine how interesting he made his *Tractatus de iuribus et officiis clericorum*, which among other topics, dealt with “De officiis clericorum praesertim de castitate clericorum et de divino officio”.²⁰ Undoubtedly the matter presented here was an extremely well informed and developed section of his course. This was due not only to the fact that his first canonical publication was an annotated study of *Cum data fuerit* (1 March 1929)²¹, which in article twelve enforced clerical celibacy in the United States of North America,²² but also be-

20 *Acta Pontificii Instituti Orientalium Studiorum*, Romae, Septembri 1934, p. 20.

21 See 1929 in the *Bibliography* below.

22 *Cum data fuerit* is a decree of the Sacred Congregation for the Oriental Church issued on 1 March 1929 for the spiritual administration of the Greek-Ruthenian ordinance in the United States of North America. It contains an introduction, four chapters, forty-three articles and a closing. Chapter one, in ten articles, nn. 1–10, treats of the bishops in the Greek-Ruthenian ‘rite’; chapter two, in seventeen articles, nn. 11–27, treats the topic of the Greek-Ruthenian clergy; chapter three, in ten articles, nn. 28–37, treats the topic of the Greek-Ruthenian faithful and chapter four, in six articles, nn. 38–43, deals with marriage cases involving the faithful of different rites. The decree was ratified and confirmed by Pius XI (1922–1939) to be effective for ten years. *Per Decretum*, 23 November 1940, extended *Cum data fuerit* for ten more years. The first two articles on the manner of appointment of a Greek-Ruthenian “rite” Ordinary for the United States caused some debate from time to time. Two other articles to cause some difficulties in the Ruthenian Catholic community in the United States were articles six and thirty-seven. Article six about the temporal goods of the church and the problem of “trustees” and the related article thirty-seven about fraternal organizations. However, the article which became the most controversial rallying point for the Ruthenian Catholics in the United States in

cause since 1930 he was a consulter of the Holy Congregation for the Oriental Church which dealt extensively with this topic during the 1930's. In the 1935–1936 academic year in addition to his courses *Institutiones iuris canonici orientalis* for those in first year, and *Tractatus de Sacramentis* and *Tractatus de locis et temporibus sacris* for those in the second and third years, he offered a special course. This course was *De relationibus iuridicis quae ante schisma inter Ecclesiam Orientalem et Romanum Pontificem intercedebant*.²³ His special course in 1936–1937 was *Praxis processus matrimonialis secundum ius canonicum orientale*.²⁴ During this same year he also received help teaching his *Institutiones* course in the person of C. Mazón, S.I.

His duties as rector of a growing Pontifical Oriental Institute and his scholarly publications reached an apex in 1936 with the publication of the most important work of which he was the sole author: *De fontibus iuris ecclesiastici Russorum commentarius historico-canonicus*, published at the Vatican by the *S. Congregazione per la Chiesa Orientale*, in *Codificazione canonica orientale, fonti, serie II, fascicolo VI*.²⁵ This

1929 was article twelve enforcing clerical celibacy. See Michael KUCHERA, *A Balance between Concession and Discipline, "Cum data fuerit" Article XII and "Codex Canonum Ecclesiarum Orientalium", Canon 758 § 3 in the Metropolia "sui iuris" of Pittsburgh, U.S.A. A Question of Celibacy or Jurisdiction*, Romae 2005.

23 *Acta Pontificii Instituti Orientalium Studiorum*, Romae, Septembri 1935, 22–23.

24 *Acta Pontificii Instituti Orientalium Studiorum*, Romae, Septembri, 1936, 21–22.

25 In the *Preface* of this work he does acknowledge his gratitude for the help he received from P. Cirillo Korolevski, a consulter for the Holy Congregation of the Oriental Church and for the Pontifical Commission for the Redaction of the Oriental Code, as well as the help of P. Joseph Ledit S.J., Professor of Ecclesiastical History at the Pontifical Oriental Institute. Also at this time in 1935 Aleksande Sipjagin (1875–1941), a Russian Catholic priest spent three days a week at the Russicum while continuing to reside at Grottaferrata with the Italo-Greek monks. He was involved in the work of the revision of Oriental canon law previous to the new revision commission set up by Pius XI (1922–1939) on 7 June 1935. In 1939 he was given a room at the Russicum. Also Vjačeslav

labor of his must be viewed with the 1944 publication he co-authored along with A. Wuyts, S.I.²⁶ who began teaching at the Pontifical Oriental Institute during the 1939–1940 academic year. This second work on Russian sources was: *Textus selecti iuris ecclesiastici Russorum* published at the Vatican by the *S. Congregazione per la Chiesa Orientale*, in *Codificazione canonica orientale, fonti, serie II, fascicolo VII*.

Although until today these two publications remain the standard reference works for Russian Church law sources in Latin, they were not without criticism. One of the earliest scholars to praise the works as well as criticize them was I. Žužek, S.I.²⁷ In his doctoral dissertation, *Kormčaja Kniga*, from the Pontifical Gregorian University, published in 1964, one year after the death of P. Herman, in “*Orientalia Christiana Analecta*” he wrote the following in the introduction to his dissertation.

Ivanov (1866–1949), who according to one author “was thought by many to write the most beautiful Russian of the century” (C. Simon), began teaching *palaeoslavica* at the Pontifical Oriental Institute during the 1936–1937 academic year. Undoubtedly, especially with Ivanov, Herman as rector had contact with these scholars as he prepared his *De fontibus* and *Textus selecti*. On Sipjagin, see: Constantin SIMON, *Russicum, Pioneers and Witnesses of the Struggle for Christian Unity in Eastern Europe, 2, The First Years 1929–1939*, Rome 2002, 198–201. On Ivanov, see: Simon, *ibid.*, 240–244 and Vincenzo POGGI, *L'Oriente Cristiano e i Due Polmoni*, in *Saggi di storia della cristianizzazione antica e altomedievale* (Biblioteca di cultura romanobarbarica 8), Bruno LUISELLI (a cura di), Roma 2006, 346–384.

26 In his first year (1939–1940) at the Orientale Wuyts taught a special course, *De Concordatis*, the following years he taught other special courses and some of the core courses which before were taught by Herman. At this time along with Herman, Mazón and Wuyts were the canon law faculty of the Pontifical Oriental Institute.

27 Žužek began teaching Russian at the Pontifical Oriental Institute in the 1958–1959 academic year and he taught this until the 1961–1962 academic year when he began teaching Oriental canon law as well as Russian.

This book is an attempt to contribute to the history of the sources of Russian canon law. In the excellent Latin translation of the *Textus selecti* of Russian canon law published by Revs. E. Herman and A. Wuyts – both of them my Masters, to whom it is a pleasant duty to express my profound veneration – there are texts deserving the highest consideration because of their momentous and constant influence on the life of the Russian Church. But there are also others which, though important, were rather of a passing interest, often confined to a limited time and place. There is, then, need to inquire which of the many sources of Russian canon law has had the greatest impact on Russian ecclesiastical life. My purpose here is to meet that need.²⁸

Žužek made frequent use and helpful criticisms of the *Textus selecti* of Herman and Wuyts and began with his suggestion that perhaps a more exact translation of their *Liber gubernationis* for *Kormčaja Kniga* would be *Liber gubernatoris*.²⁹ In dealing with the printed editions of the *Kormčaja* Žužek made frequent reference and scholarly critical observations about Herman's *De fontibus*, even offering his analysis of how various opinions of writers described by Herman might be reconciled.³⁰ In writing about the *Kniga Pravil* he refined a translation of Herman when he wrote: "... Herman calls it *Liber regularum*, which is also good, but it is unnecessary to distinguish between *regula* and *canon* in this case."³¹ Elsewhere Žužek politely suggested that the *Merilo Pravednoe* (The Balance of Justice): "... is a canonical collection of the early Russian Church that deserved mention in Herman's *De fontibus*, since it seems to have been, after the *Kormčjas*, the one most frequently employed in the ecclesiastical courts. ..." ³² Also

28 Ivan ŽUŽEK, *Kormčaja Kniga: Studies on the Chief Code of Russian Canon Law* (Orientalia Christiana Analecta 168), Roma 1964, 1.

29 Ibid., 8–10. (*navigator's map*)

30 Ibid., 62.

31 Ibid., 102.

32 Ibid., 128, "deserved mention" = not mentioned.

when Herman listed twenty-one synods in his *De fontibus* “with the indication of the most fundamental bibliography on each of them”, he did not mention a synod at Perejaslavl’ in 1280.³³ However, several other times Žužek suggested consulting *De fontibus* for more details about other synods.³⁴ Sometimes a question remained open, such as if the synod of 1666 only had its first session in February or if it were a special synod as considered by Herman.³⁵ In general, Žužek offered the following analysis of his Master regarding, “The *Kormčaja* in the Juridical Practice of the Holy Synod and the Diocesan Courts in the Years 1721–1839”, in Part Three, Chapter 3 of his dissertation. Indeed, the work of P. Žužek is a pleasant obedient expression of his profound veneration of his Master.

If one reflects that the “sources of common law” in the Russian Church in the 18th century were contained exclusively in the *Kormčaja*, it would seem that Herman is overcautious when he states that “*Theoretice etiam posterioribus temporibus [after Peter I] fontes iuris communis primum obtinent locum*” (Herman, *De fontibus*, p. 75). The arguments of this chapter suggest that the *Kormčaja* was also the standard for practice. Nevertheless, Herman’s statement is right in respect of the regulations of the *Kormčaja* that refer to the constitution of the church and the relation between church and state which were disregarded in the *Ecclesiastical Statutes* of Peter I.³⁶

Between the years 1936 and 1944 when Herman published his *De fontibus* and the *Textus selecti* he continued to teach sharing these duties with C. Mazón, only until 1942, and with A. Wuyts until Herman offered his last course during the 1958–1959 academic year.³⁷ Joining

33 Ibid., 152.

34 Ibid., 158, 161, 164, 169, 180.

35 Ibid., 170.

36 Ibid., 266.

37 *Acta Pontificii Instituti Orientalium Studiorum*, Roma, June 1958, 29–30. This was a special course, *Historia Iuris Ecclesiastici Byzantini*.

them for a special course, *De iure quo religiosi orientales reguntur*, during the 1943–1944 academic year, was C. Pujol S.J.³⁸ As noted above Herman became a consulter of the Holy Congregation for the Oriental Church in 1930 and officially in 1935 a member of the Pontifical Commission for the Redaction of Canons, producing his *de fontibus* in 1936. The following year he became a member of the *Consulta di redazione* for the final text of the Canons. His bibliography below mirrors the work he was doing as a canonist in his various posts during these very productive years.

During the years 1944 and Herman's retirement in 1959 his most notable contribution as a canonist was the work he did on marriage. In one form or another during these years he taught *De Matrimonio* until the final time he gave this course during the 1957–1958 academic year.³⁹ In 1943 and 1944 the *Code of Eastern Canon Law*, was coordinated by three highly respected experts, one of whom was Herman.⁴⁰ Pius XII (1939–1958) in January 1948 was given the Oriental Code to be promulgated in stages. *Crebrae allatae sunt*, XIII, on marriage, was promulgated by him on 22 February 1949, to go into effect on 2 May 1949. During this same year of 1949, Herman published *Adnotationes ad motu proprio «Crebrae allatae sunt»*, followed by seven other publications on *Crebrae allatae sunt*.⁴¹ Actually, his publications on

38 *Acta Pontificii Instituti Orientalium Studiorum*, Roma, October 1943, 21.

39 *Acta Pontificii Instituti Orientalium Studiorum*, Roma, October 1957, 26. During the 1959–1960 academic year when this course was taught again, it was taught by Jan Řezáč S.J.: *Acta Pontificii Instituti Orientalium Studiorum*, Roma, June 1959, 29.

40 His name is included among the three names given in the official *Praefatio* of the *Codex Canonum Ecclesiarum Orientalium*, Vaticana 1995 (publication date), pp. xxii–xxiii. The other two named are Acacio Coussa, B.A. and Arcadius Larraona; C.F.M., both of whom later became Cardinals. Originally Herman was responsible for Canons 1154 to 1551.

41 All of these publications are listed in the bibliography at the end of this presentation.

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marriage began in 1935 and now after all of his work in the revision of the canons he published in earnest on marriage. His final work of 231 pages, *ad usum privatum auditorum*, from 1958 was *De disciplina sacramenti matrimonii pro Ecclesia Orientali: iuxta Motu proprio "Crebrae allate sunt"*.

Yet in light of all of his many productive years as a canonist, an anonymous obituary, which is conserved in the archives of the Pontifical Oriental Institute, concludes the section it allots to his work as a canonist with this tribute.

Trovò il tempo anche per lavorare nel sacro ministero delle confessioni e della predicazione, mantenendo la fedeltà agli atti comuni ed alla regola del suo Ordine.

Perhaps this is exactly what made him such a good canonist.

*

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abstract

P. Emil Herman S.J. (1891–1963): Jesuit Canonist

P. Emil Herman, S.J. (1891–1963) was a Jesuit canonist who made significant contributions to canonical science, especially in the redaction of the materials which became part of the first codification of Oriental Catholic canon law. His major contribution was his collaboration in the area of Oriental marriage law in “*Crebrae allatae sunt*”. His most important scholarly contribution was in the area of Russian Church law: “*De fontibus iuris ecclesiastici Russorum commentarius historico-canonicus*”, which remains a crucial work in this field until today. His apostolic life was spent as a professor of canon law at the Pontifical Oriental Institute and also rector of the same institute for twenty years; author of numerous scholarly publications; consulter for the Holy Congregation for the Oriental Church; appointed by Pius XII as visitor to various Oriental colleges, universities and monasteries; a founder and the first rector of the Institute of San Giovanni Damasceneo in Rome; and he was always known as a fine priest especially in the confessional and the pulpit as well as being an exemplary religious.

Michael J. KUCHERA S.J.