

Did Pius XII Change a Dogma in 1947? The Apostolic Constitution *Sacramentum ordinis* and its Underestimated Potential

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Abstract In 1947, Pius XII issued the Apostolic Constitution *Sacramentum ordinis*, which reformed the matter and form of ordaining Deacons, Priests and Bishops, thus changing a doctrine that had been valid for 500 years. Whereas the Council of Florence, in its 1439 Decree for the Armenians, had established the presentation of instruments as the matter of the sacrament, the laying on of hands was now sufficient. For the first time, it is possible to reconstruct the genesis of this papal document, thus providing an insight into the writing workshop of the Magisterium and the Holy Office. The Consultor Franz Hürth SJ was the main actor in this sacramental-theologically sensitive issue. Did Pius XII thereby change a dogma?

Keywords Papal Magisterium. Pius XII. Holy Office. Franz Hürth SJ. Sacramental theology.

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1 “Will this not cause amazement, even astonishment?”¹ – On the Discontinuity of Magisterial Teaching

Is it appropriate to publish a decree defining and declaring that the essence of ordination consists only in the laying on of hands when until now the opposite has been commonly said? Will this not cause amazement, even astonishment? “We would have two Pontifical Bulls, in the first of which the *traditio instrumentorum* is said to be essential, in the second of which the opposite is said...” [...] I repeat, in all modesty, that it seems to me necessary to be very careful before introducing profound changes about what has been taught in the Latin Church for centuries, the Church which constitutes the major and principal part of the Church founded by Our Lord Jesus Christ. Why are the bishops, who, together with the Pope, constitute the teaching Church, not consulted in such an important and sensitive matter? Such novelties, even if theological-ly justified, are bound to cause a stir, and make one believe that what is said and taught to be certain by the Church today could be declared untrue in the future.²

These urgent questions were posed by the Consultor Ernesto Ruffini (1888-1967)³ at a session in the Holy Office in April 1944 - in the middle of the Second World War, when Rome was still under German occupation. The *Suprema Congregatio* was discussing a highly sensitive issue of sacramental theology: in response to a growing number

1 “Non si desterà meraviglia anzi ammirazione?”. Ruffini, *Votum* (24 April 1944), in *Archivio del Dicastero per la Dottrina della Fede (ADDF), Sanctum Officium (S.O.), Dubia circa Ordinationem* (D.O.) 1947, n. 1, fasc. 2, f. 88.

2 “[...] ma conviene pubblicare un Decreto che stabilisca e dichiari che l’essenza dell’Ordinazione consiste soltanto nella imposizione delle mani quando fino a oggi si è detto comunemente il contrario? Non si desterà meraviglia anzi ammirazione? ‘Avremmo due Bolle pontificie nella prima delle quali si dice essenziale la *Traditio instrumentorum*, nella seconda invece si direbbe il contrario...’ [...] Ripeto sommamente che mi pare necessario usare molta prudenza prima di introdurre profondi cambiamenti circa quanto si è insegnato per secoli nella Chiesa latina che costituisce la parte maggiore e principale della Chiesa fondata da N.S. Gesù C. Perché non si interpellano i vescovi che costituiscono col Papa la Chiesa docente in materia così importante e così delicata? Tali novità anche se teologicamente giustificate, sono destinate a suscitare scalpore e farebbero credere che quanto si dice e si insegna oggi dalla Chiesa come certo potrebbe essere dichiarato non vero in futuro”. Ruffini, *Votum* (24 April 1944), in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 2, f. 88.

3 Ernesto Ruffini: 1910 Priest, 1913-30 Lecturer at the Pontifical Roman Seminary, 1917-29 Lecturer at the Urbaniana and Propaganda Fide, 1925 Substitute for book censorship Holy Office, 1925 Papal House Prelate, 1928 Secretary Congregation for Seminaries and Universities, 1930 Prefect of Studies Pontifical Athenaeum of the Lateran, 1931 Rector Magnificus Pontifical Athenaeum of the Lateran and Apostolic Protonotary, 1945 Archbishop Palermo, 1946 Cardinal, 1962-65 Member of the Presidium of the Second Vatican Council. Cf. Bräuer, *Handbuch*, 315.

of *dubia* about the validity of the ordination of deacons, priests and bishops, the Pope had asked the Congregation to examine whether the biblically documented laying on of hands, rather than the presentation of the instruments, could be established as the matter of the sacrament. However, the existing magisterial doctrine was highly problematic: in 1439, the Council of Florence (1431-45), with the approval of Pope Eugene IV (1431-47),⁴ had stipulated in the Decree for the Armenians that the presentation of the respective instruments was the decisive matter for holy Orders.

If the words of Ruffini, who was to become one of the most prominent Cardinals of the conservative minority at the Second Vatican Council, are to be believed, this discussion went to the heart of Church doctrine. He was even afraid of a crevasse enabling further changes of the Church's magisterium. If Pius XII were to initiate a doctrinal reorganisation, there would be two papal bulls, pronouncements with highest doctrinal authority, which would contradict each other. The continuity of church doctrine, which is deeply in the DNA of the church, would be seriously at risk. But according to the internal logic of the Church, ruptures or discontinuities were not allowed to exist and dogmas were not allowed to be revised anyway.⁵ In view of such a difficult doctrinal dilemma, Ruffini even brought a consultation of the world episcopate into play. But this is an extremely rare endeavour in the history of the Church, which until now has only been undertaken outside a Council in preparation for infallible papal *ex-cathedra* decisions.⁶

Ruffini's admonishing words were to disappear as a minority vote in the archives of the Holy Office, as he was outvoted by the other 15 Consultors. Only in 2020, when the Vatican archives of the pontificate of Pius XII (1939-58)⁷ were opened, they became accessible. In the *Suprema*, the preparations continued and in 1947, Pius XII published the Apostolic Constitution *Sacramentum ordinis*, in which he actually revised the matter and form of holy orders that had been valid for five hundred years. In order to prevent any critical enquiry, the Pope wrote in the new Apostolic Constitution:

4 Cf. Vones, "Eugene".

5 Cf. on the question of continuity or changeability of church doctrine: Bischof, "Steinbruch"; Hilpert, "Beständigkeit", 450-4; Seewald, *Perspectives*; Wolf, *Krypta*. Cf. the recent theological systematic discussion on the question of the development of dogma: Marschler, "Umgestaltung"; Seewald, "Lehre"; Hütter, "Fortschritt im Glauben".

6 The world episcopate was consulted both before the Marian dogma of 1854 (encyclical *Ubi primum* 1849) and the Marian dogma of 1950 (encyclical *Deiparae virginis Mariae* 1946). Cf. Daufpratshofer, *Lehramt*, 403-535; Wolf, *Unfehlbare*, 187-218.

7 Cf. "Eugenio (Pius XII.) Pacelli".

If it was at one time necessary even for validity by the will and command of the Church, everyone knows that the Church has the power to change and abrogate what she herself has established.⁸

In view of the otherwise customary affirmations of continuity, this is an outrageous-sounding sentence. From a doctrinal perspective, we are now faced with a highly interesting situation: With the Decree for the Armenians of 1439 and *Sacramentum ordinis* of 1947, it seems that statement goes against statement, doctrine against doctrine, Pope with council against Pope without council, and, taken to the extreme, even dogma against dogma. So, did Pius XII change a dogma with *Sacramentum ordinis* in 1947?⁹ This question can now be examined for the first time on the basis of the original sources.

2 “Ad fontes vaticanos” – The Opening of the Archives of the Pontificate of Pius XII

While research into the Apostolic Constitution *Sacramentum ordinis* in terms of Church history was simply impossible until 2020, the opening of the Vatican archives fundamentally changed the availability of sources. Until now, the main focus of research about Pius XII has been on the more public-concerning political perspective of the pontificate.¹⁰ With some delay, however, his magisterium, and the Holy Office as the curial authority responsible for it, are now also coming into focus.¹¹ For the first time, the actors behind the scenes, the Consultors and Cardinals, can now be examined and the previously unknown editorial histories of for examples his encyclicals,¹² his allocutions,¹³ the

8 “Quod si ex Ecclesiae voluntate et praescripto eadem aliquando fuerit necessaria ad valorem quoque, omnes norunt Ecclesiam quod statuit etiam mutare et abrogare valere”. Pius XII, “*Sacramentum ordinis*” (30 November 1947), 6.

9 The term ‘dogma’, as it is understood today in the context of doctrine, only came into use in the nineteenth century. It is, of course, anachronistic to use the term ‘dogma’ to describe the Decree for the Armenians. Medieval theologians, such as Thomas Aquinas, used equivalent terms such as “articulus fidei” or “veritas fidei catholicae” instead of ‘dogma’. Cf. Drumm, “Dogma”; Seewald, *Dogma*, 22-51.

10 Cf. Coco, ‘*Carte*’; Kertzer, *Pope*; Mémorial de la Shoah, “Vatican”; Wolf, Daufkratshofer, Hinkel, Pfister, Richter, Schepers, Schüler, “Papst”, 13-14; also Arnold, Ciciliot, Vian, “Church”.

11 Overview of the newly opened files in the archives of the Dicastery for the Doctrine of the Faith: Cifres, *Fondo*. Cf. Marotta, *Bea*.

12 Premoli, *Redazione*; Anna Maria Plischka is researching her dissertation project on the encyclical *Musicae Sacrae Disciplinae* (1955): Plischka, “Papa”; on the biblical encyclical *Divino afflante spiritu* (1943): Pfister, “Mann”, 465-588; on the encyclical *Humani generis* (1950): Zettl, *Aufbäumen*.

13 Cf. Coco, “*Scritti*”; Premoli, *Pacelli*; Wolf, “Schicksal”.

dogma of the Assumption of Mary can be reconstructed,¹⁴ or his canonisations¹⁵ and the book censorship can be researched.¹⁶

Although there is a whole range of previous research on the Decree for the Armenians and its origins and degree of compulsion, there is no recent general historical study that meets today's standards.¹⁷ The state of research on *Sacramentum ordinis* is also quickly sketched out: in addition to the published text, there are only dutiful entries in the textbooks of Catholic dogmatics¹⁸ and a 'semi-official' commentary by the German Jesuit Franz Hürth (1880-1963)¹⁹ in the *Periodica de re morali* and *La Civiltà Cattolica*²⁰ and two critical contributions by his confrere Bernhard Brinkmann SJ (1895-1966).²¹ All in all, the findings are meagre. Pius XII's constitution received attention for the first time in current contributions on Church reform.²² The dogmatist Michael Seewald from Münster for instance

14 Cf. Dauftratshofer, "Definizione"; Morciano, "Pio XII".

15 Cf. Arnold, "Päpste".

16 Cf. Heringer, *Kirche*; Scheiper, "Seminarprofessor".

17 Cf. on the Council of Florence: Burigana, Piatti, *Concilio*; Gill, *Konstanz*, 145-357; Helmuth, *Konzil*, 460-77; Müller, *Konzilien*. On the controversy over the Decree for the Armenians: Castagnoli, "Sessione"; Galtier, "Mot"; Guibert, "Decret"; Hofmann, "Einigung"; Hofmann, *Unione*; Hugon, "Controversia", 475-6; Hürth, *Sacramentis* 1947, 298; Lachello, "Costituzione", 124; Lennerz, *Sacramento*, 1947; Lennerz, *Sacramento*, 1953, 133; Michel, "Ordre"; Ott, *Weihesakrament*, 145-54; Perrella, "Decreto", 450-1; Quera, "Palabra".

18 E.g. Müller, *Dogmatik*, 736, 741, 747; Ott, *Weihesakrament*, 180-3.

19 Franz Hürth SJ: 1896-98 Novitiate Blyenbeck; 1898-1900 Juniorate Exaeten; 1900-03 Philosophy Valkenburg; 1903-08 Interstutz Feldkirch; 1908-12 Theology Valkenburg; 1911 Priest; 1912-13 Tertianship Freinberg/Linz; 1914 Final vows; 1913-14 Lecturer in philosophy Valkenburg; 1914 Professor of moral theology Valkenburg; 1915-16 studies at Friedrich-Wilhelms-University Berlin; 1917-18 studies at Ludwig Maximilian University of Munich; 1918-35 Professor of moral theology Valkenburg; 1936-60 Professor of moral theology Gregorian University; 1936-63 Consultor Holy Office; 1955 Grand Cross of Merit of the Federal Republic of Germany; 1956 Full Member of the *Pontifical Academy of Theology*; 1960 Member of the Theological Preparatory Commission for the Second Vatican Council. Cf. in detail on Hürth's role as a theological adviser: Dauftratshofer, *Lehramt*. On Hürth's biography: Dauftratshofer, "Hürth" (NDB); Dauftratshofer, "Hürth" (BBKL).

20 Hürth, "Constitutio"; Hürth, *Constitutio*; Hürth, "Contenuto".

21 Bernhard Brinkmann SJ: 1919 entered Jesuit order in s'Heerenberg; 1927 Priest; 1928-31 specialised studies Biblicum; 1931-42 taught New Testament, Introduction to Sacred Scripture and from 1933 Fundamental Theology in Valkenburg; 1932-33 Tertianship in Amiens; 1936 Final vows; 1942-44 Chaplain in Mönchengladbach; 1944-46 Parish vicar in Gronau; 1946-50 Professor of Introduction to Sacred Scripture in Büren, since 1948 also of Fundamental Theology; 1950-66 Professor of New Testament and Introduction to Sacred Scripture in Sankt Georgen. Cf. Schatz, *Geschichte*, 120; Brinkmann, "Äußerungen"; Brinkmann, "Kathedralentscheidung"; Brinkmann, "Konstitution".

22 Cf. Dauftratshofer, *Lehramt*, 387-402, 557-68; Beinert, "Aus der päpstlichen Lehrwerkstatt"; Brechenmacher, "Recensione di Dauftratshofer"; Garhammer, "Recensione di Dauftratshofer"; Röttger, *Weihe*, 153-7; Schüller, "Recensione di Dauftratshofer"; Unterburger, "Recensione di Dauftratshofer"; Voderholzer, "Überlieferung", 31-6.

mentioned *Sacramentum ordinis* as an example of the “self-correction” of the magisterium.²³

Thanks to a chance find in the *Fondo “Hürth”* in the archives of the Pontifical Gregorian University, it has already been possible to formulate initial hypotheses about the history of its genesis.²⁴ In the Vatican Apostolic Archive, however, there are only a few files relating exclusively to the reception of *Sacramentum ordinis*.²⁵ The decisive documents are to be found in the Archive of the Dicastery for the Doctrine of the Faith in the archive box with the signature “ADDF, S.O., D.O. 1947, n. 1”,²⁶ consisting of seven fascicles and a total of over seven hundred pages, which provide the basis for the reconstruction at hand.

3 Matter and Form of the Sacrament of Holy Orders – From the Decree for the Armenians (1439) to the Apostolic Constitution *Sacramentum ordinis* (1947)

The biblical laying on of hands at the conferral of ministries was attested up until the High Scholastic period. This changed with Thomas Aquinas (1224/5-1274),²⁷ who formulated the presentation of the respective instruments as the decisive matter of the sacrament,²⁸

²³ Cf. Seewald, *Perspectives*, 49-58.

²⁴ APUG, *Fondo “Hürth”*. Cf. Daufratshofer, *Lehramt*, 307-402.

²⁵ AAV, Segr. Stato, Titoli 1939-58, Anno 1948, titolo: Sommo Pontefice, posiz. 36 (Oggetto: Mons. Giuseppe Rossi esprime al Santo Padre sentimenti di ringraziamento per la promulgazione della Costituzione apostolica *Sacramentum ordinis*); AAV, Segr. Stato, Titoli 1939-58, Anno 1948, titolo: Ordini Religiosi Maschili, posiz. 393 (Nome: P. Tommaso Jorio S.J., Napoli, Oggetto: Invia copia di Conferenza dattilografata, tenuta dal suddetto presso il Seminario Maggiore di Napoli, sulla Costituzione *Sacramentum ordinis*). I would like to thank for this reference Alejandro Dieguez, Archivio Apostolico Vaticano.

²⁶ ADDF, S.O., D.O. 1947, n. 1.

²⁷ Thomas Aquinas: 1239 studied at the University of Naples; 1244 joined the Dominican Order; 1245 moved to Paris where Albertus Magnus taught; 1248 moved with Albertus Magnus to Cologne to the newly established Studium Generale; 1252 lectures on the Sentences in Paris; 1256 Master of Theology; 1259 return to Italy; 1261 Lector in the Dominican convent in Orvieto; 1265 Teacher in Rome; 1268 Dominican chair in Paris; 1272 return to Italy with the task of establishing a Studium generale in Naples; 1323 canonisation; 1567 Doctor of the Church. Cf. Kluxen, “Thomas”.

²⁸ Thomas Aquinas, “De articulis fidei et Ecclesiae sacramentis”: “Sextum est sacramentum ordinis. [...] Materia autem huius sacramenti est illud materiale, per cuius traditionem confertur ordo: sicut presbyteratus traditur per collationem calicis, et quilibet ordo traditur per collationem illius rei quae praecipue pertinet ad ministerium illius ordinis. Forma autem huius sacramenti est talis: ‘accipe potestatem offerendi sacrificium in Ecclesia pro vivis et mortuis’; et idem est dicendum in consimilibus ordinibus. Minister huius sacramenti est episcopus qui confert ordines. Effectus autem huius sacramenti est augmentum gratiae ad hoc quod aliquis sit idoneus minister Christi”. Quoted from: Périnelle, “Doctrine”, 248.

which was to be adopted verbatim by the Council of Florence. At the centre of the Council of Ferrara-Florence convened by Eugene IV was the church union between the Roman Catholic church and several orthodox churches. With the approval of Eugene IV, the council proclaimed the bull of union *Exsultate Deo* between the Roman and Armenian Church on 22 November 1439 and defined, almost verbatim from Thomas Aquinas, the matter and form of the sacrament of Holy Orders:

The sixth is the sacrament of *orders*. Its *matter* is the object by whose handing over the order is conferred. So the priesthood is bestowed by the handing over of a chalice with wine and a paten with bread; the diaconate by the giving of the book of the gospels; the subdiaconate by the handing over of an empty chalice with an empty paten on it. [...] The *form* for a priest is: Receive the power of offering sacrifice in the Church for the living and the dead, in the name of the Father and of the Son and of the Holy Spirit.²⁹

For over five hundred years, the Decree for the Armenians was the - not always uncontroversial -³⁰ authoritative magisterial document regarding the matter and form of the sacrament of Holy Orders. However, the presentation of the instruments led to problems, as a result of which the validity of the ordination was repeatedly questioned. In the 19th and early 20th centuries, the Holy Office and the Holy Penitentiary were swamped with *dubia*. Newly ordained men, possibly due to their “post-ordination” nervousness, asked in Rome whether their ordination was nevertheless valid, even though they had not - as was prescribed - doubtlessly touched the instruments.³¹ There were as many as ninety cases and eventualities that could arouse doubts about the validity of an ordination.³² In view of the applicable canonical and liturgical requirements, the enquiries were by no means unjustified. Ultimately, the question was whether or not

29 “Sextum est sacramentum ordinis, cuius materia est illud, per cuius traditionem confertur ordo. Sicut presbyteratus traditur per calicis cum vino et patene cum pane porrectionem. Diaconatus vero per libri evangeliorum dationem. Subdiaconatus vero per calicis vacui cum patena vacua superposita traditionem. [...] Forma sacerdotii est talis: accipe potestatem offerendi sacrificium in ecclesia pro vivis et mortuis, in nomine patris et filii et Spiritus sancti”. Council of Florence, “*Exsultate Deo*”, 1244-5.

30 Compare the controversial views regarding the Decree for the Armenians and how the discussion developed, especially in the neo-Scholastic dogmatic textbooks: Dauftratshofer, *Lehramt*, 354-74; Diekamp, *Dogmatik*, 349-52; Ott, *Weihesakrament*, 139-56; Pohle, *Lehrbuch*, 545-52; Rossum, *Essentia*, 9-56.

31 Cf. the case of the Montfort priest Albert Hus (1913-1992), among others: Dauftratshofer, *Lehramt*, 307-16.

32 A compendium of all possible defects and the corresponding decisions of the Holy Office can be found at Hecht, “Defectibus”. Cf. Hanssens, “Ordinibus”.

the matter and form of the ordination had been carried out correctly – on which, in turn, the validity depended. According to classical doctrine, a sacrament consists of three constitutive elements: 1. the outward sign; 2. the inward grace; 3. the institution by Jesus Christ. The external sign is – going back to the philosophy of Aristotle – determined by matter and form. Matter is understood to be the element or action of the respective sacrament, while form refers to the words of the sacrament minister.³³ The question of whether Christ instituted the sacrament of holy orders “in genere” or “in specie” was the subject of controversy.³⁴ Theologically, it was undisputed that Christ had established the substance of the sacraments. However, it was to remain a dispute, to which extent the substance corresponded to matter and form.³⁵

In view of the never-ending debate, it became increasingly urgent for the Church’s magisterium to clarify the matter and form of ordinations. While one faction used the Decree for the Armenians to invoke the presentation of instruments, the other invoked the laying on of hands by referring to the authority of Holy Scripture. Finally, Pius XII put an end to the decades-long debate with the publication of *Sacramentum ordinis*³⁶ in 1947. While the Decree for the Armenians did not mention episcopal ordination, Pius XII presupposed the sacramentality of episcopal ordination, which was finally established as a doctrine at the Second Vatican Council (1962-65).³⁷

4 A Look into the Engine Room of the Magisterium – The Writing Workshop of *Sacramentum ordinis* (1947)

The German Jesuit Emil Herman (1891-1963),³⁸ Professor of Canon Law at the Pontifical Oriental Institute, wrote the following lines to his confrere Franz Hürth in April 1948:

33 Cf. Ott, *Grundriss*, 390-418; Kuckovský, *Weg*, 21-34; cf. Braun, “Form”; Braun, “Materie”; Finkenzeller, *Lehre*, 55-6, 71-9, 90-3; cf. on the historical change in the form of performance in all seven sacraments: Heringer, *Anaphora*, 122-31.

34 Cf. Finkenzeller, *Lehre*, 61.

35 Cf. Ott, *Grundriss*, 404-5.

36 Pius XII, “*Sacramentum ordinis*”.

37 Second Vatican Council, “*Lumen gentium*”, 4145. Cf. Dahlke, “Sakramentalität”; Hell, “Fülle”; Kuckovský, *Weg*, 27; Ott, *Weihesakrament*, 87-91, 136-9; Röttger, *Weihe*, 199-202; Wolf, *Krypta*, 58-9.

38 Emil Herman SJ: 1923 Priest; 1924-26 canon law studies Gregoriana; 1926-27 Tertianship in Florence; 1927-61 Professor of canon law at the Orientale; 1929 Final vows; 1929 Consultor Commission for the Codification of Oriental Canon Law; 1940-48 Recor Damascenum. Cf. Schatz, *Geschichte*, 204.

First of all, congratulations on the publication of the Constitution, which fulfils one of your urgent wishes. I still remember well our walks together in Merano five years ago, when you told me about the usefulness of a declaration like the one we have in our hands today with the Constitution. In fact, the Constitution is a huge step forward. How much unrest, and unnecessary restlessness and worry, doubt and uncertainty are now blocked at their source? How much neurasthenia and nervous uncertainty will be removed from the outset? The Constitution foresees all difficulties with excellent clarity and cuts them off. Your clear and valuable commentary is the best guide to its understanding.³⁹

Apparently, the two Jesuits had already discussed the urgent need to clarify the question of the essential matter and form of the sacrament of Holy Orders during a holiday in South Tyrol in 1943 – four years before the publication of *Sacramentum ordinis*. These lines fuel the suspicion that Hürth was a decisive, if not the decisive actor. The files of the Holy Office now shed light on the background of the Apostolic Constitution for the first time. Its genesis can be divided into seven steps.

Step 1: Hürth’s vote (February 1944) and the “authentic a declaratio” of Pius XII (4 May 1944)

In June 1937, the Major Penitentiary Cardinal Lorenzo Lauri (1864-1941)⁴⁰ took the initiative and wrote an “urgent letter” to Cardinal Donato Sbarretti (1856-1939),⁴¹ the secretary of the Suprema Congregatio:

39 “Zunächst herzlichen Glückwunsch zum Erscheinen der Constitutio, die einen Ihrer dringenden Wünsche erfüllt. Ich erinnere mich noch gut an unsere gemeinsamen Spaziergänge in Meran vor 5 Jahren, wo Sie mir von dem Nutzen einer Erklärung sprachen, wie wir sie heute in der Constitutio in Händen haben. Tatsächlich bedeutet die Constitutio einen gewaltigen Fortschritt. Wie viel Unruhe, und unnötige Unruhe und Sorge, Zweifel und Ungewissheit werden jetzt an ihrer Quelle verstopft? Wie viel Neurasthenie und nervöser Ungewissheit wird von vornherein der Boden entzogen. Die Constitutio sieht mit ausgezeichnete Klarheit alle Schwierigkeiten voraus und schneidet ihnen den Weg ab. Ihr klarer und wertvoller Kommentar gibt dazu für das Verständnis den besten Führer ab”. Herman to Hürth, 21 April 1948, in APUG 2721.8.17.

40 Lorenzo Lauri: 1887 Priest; 1895-1910 Head of the ecclesiastical court of the vicariate of Rome; 1901 Canon of St Lorenzo in Damaso; 1910 Substitute of the Regent of the Apostolic Penitentiary, Papal House Prelate; 1917 Titular Archbishop and Nuncio in Peru; 1921 Nuncio in Poland; 1926 Cardinal; 1927 Major Penitentiary; 1939 Camerlengo. Cf. Bräuer, *Handbuch*, 265.

41 Donato Raffaele Sbarretti: 1901 Titular Archbishop; 1910 Secretary Congregation for Religious; 1914 Assessor Holy Office; 1916 Cardinal; 1919 Prefect Congregation for the Council; 1930 Secretary Holy Office. Cf. Bräuer, *Handbuch*, 237.

In the interest of so many poor consciences without peace, who frequently have reached out to the Sacred Penitentiary because of grave doubts about the validity of their Holy Ordination, it is considered not only opportune but even necessary that the *vexata quaestio* [sc. the troubled question] be authoritatively and definitively resolved: “Whether in Sacred Ordination – *ad validitatem* – it is necessary to have the presentation of the instruments – with all the particulars indicated by the Roman Pontifical for each Order – as well as the immediate physical touch of the same on the part of the ordinand”. The Sacred Penitentiary, in agreement with the Holy Father, proposes – *ex officio* – as is its duty, the said question to this Supreme Sacred Congregation of the Holy Office for consideration and possibly prompt study.⁴²

The matter was first discussed in the *Congregazione particolare*, the weekly preparatory meeting of the leading officials of the Holy Office, on Saturday 10 July 1937,⁴³ but a quick decision was not reached – another ten years were to pass. The internal file number of the Holy Office “S.O. 52/1944” reveals that the preparatory work for the papal document did not begin until 1944.

In order to gain an overview of the difficult situation, the Consulor Hürth, who had repeatedly dealt with delicate questions regarding the validity of ordinations and had already been involved in the matter in 1937, was asked to draw up a vote:⁴⁴

42 “Nell’interesse di tante povere coscienze senza pace, che ricorrono frequentemente alla Sacra Penitenzieria per gravi dubbi sulla validità della loro S. Ordinazione, si ritiene non solo opportuno ma addirittura necessario che venga [risolta] autorevolmente e definitivamente la *vexata quaestio*: ‘Se nella Sacra Ordinazione sia necessaria – *ad validitatem* – la così detta tradizione degli strumenti – con tutti i particolari indicati dal Pontificale Romano per ciascun Ordine – nonché l’immediato tatto fisico dei medesimi da parte dell’ordinando’. La Sacra Penitenzieria, d’intesa con il Santo Padre, propone – *ex officio* – come di dovere, la detta questione a cotesta Suprema Sacra Congregazione del S. Uffizio per il relativo e al possibile sollecito studio della medesima”. Lauri to Sbarretti, 14 June 1937, in ADDF, S.O., D.O. 1947, n. 1, fasc. 1, f. 2 (emphasis in the original).

43 Appunto S.O. (10 July 1937), in ADDF, S.O., D.O. 1947, n. 1, fasc. 1, ff. 4-5. The report prepared by Pietro Parente was distributed to the following persons: Grégoire-Pierre Agagianian, Franz Hürth SJ, Cornelius Damen CSsR and Simonina OP.

44 Cf. inter alia Hürth’s vote of 13 March 1937 on the case of Alexius Schuette C. PP. S. from Ohio, USA (“Agitur de solvendo dubio circa valorem sacrae ordinationis presbyteratus, cum ab Episcopo ordinante quidam defectus in pronuntianda forma commissus fuerat”); Hürth, Votum (13 March 1937), in ADDF, S.O., D.O. 1937, n. 3. Or also Hürth’s Votum of 12 May 1938 on the case of Franciscus Neuber (born 1895), who was ordained subdeacon, deacon and priest in 1918, from the Apostolic Administration of Trnava (“Dubium circa valorem ordinationum ob defectum intentionis”); Hürth, Votum (12 May 1938); ADDF, S.O., D.O. 1938, n. 1; or also the enquiry of the Auxiliary Bishop of Cologne Hermann Joseph Sträter (1866-1943) regarding the validity of a priestly ordination in Cologne in 1930; Hürth to Sträter, 26 July 1930, in APUG 2721.8.33.

Can the Holy Father be safely consulted to declare in his supreme authority that the handing over of the instruments for the validity of holy orders (diaconate, presbyterate, episcopate) is not necessary?⁴⁵

The Jesuit finally submitted his hundred-page vote to the Holy Office in February 1944. In it, he gave a historical overview and initially focussed on the work of the Codification Reform Commission,⁴⁶ as the question should have already been definitively clarified with the “Codex Iuris Canonici” of 1917. At the time, however, the Commission passed the question on to the Holy Office, which was to deal with it from 1911. Hürth summarized two of the four expert opinions at the time: by Willem van Rossum (1854-1932)⁴⁷ and by Pie de Langogne OFMCap (1850-1914).⁴⁸

On 24 April 1944, the “Consulta”, the congregation of the consultants of the Holy Office, met for the first discussion of the vote: the Assessor Alfredo Ottaviani (1890-1979),⁴⁹ the Commissary Giovanni Lottini OP (1860-1951),⁵⁰ Francesco Morano (1872-1968),⁵¹ Joseph

45 “Solvenda proponitur quaestio: numquid Summo Pontifici tuto consuli queat, ut pro Suprema Sua Potestate declarare dignetur: ad valorem sacrorum ordinum (diaconatus, presbyteratus, episcopatus) traditionem instrumentorum non requiri”. Hürth, *Votum “De traditione instrumentorum in sacramento ordinis administrando”* (25 February 1944), in ADDF, S.O., D.O. 1947, n. 1, fasc. 2, f. 78. Hürth, *Votum (manuscript) “De traditione instrumentorum in sacramento ordinis administrando”* (25 February 1944), in ADDF, S.O., D.O. 1947, n. 1, fasc. 2, ff. 2-77.

46 Cf. “Päpstliche Kommission für die Kodifikation des kanonischen Rechts”.

47 Willem van Rossum CSsR (1854-1932): 1873 entered the Redemptorist Order, 1879 Priest, 1886 Professor of dogmatics in Roermond and Wittem, 1897 Consultor Holy Office, 1904 Member commission for the preparation of the “Codex Iuris Canonici”, 1909 General Consultor Redemptorist Order in Rome, 1911 Cardinal and member Congregation for Religious and the Congregation for the Index, 1913 Member Holy Office, 1914 Chairman Pontifical Biblical Commission, 1915 Grand Penitentiary, 1918 Prefect Congregation for the Propagation of the Faith, 1919 Member Congregation for Seminaries and Study Institutions. Cf. Bräuer, *Handbuch*, 221-2; Poels, *De rode paus*; Weiß, “Glaubenswächter”.

48 Pie de Langogne OFMCap: 1892-1900 Qualifier Holy Office; 1900-14 Consultor Holy Office. Cf. Wolf, *Prosopographie*, 1183-93.

49 Alfredo Ottaviani: 1916 Priest; 1916-26 pastoral care in the diocese of Rome; 1922 Papal Privy Chamberlain; 1926-28 Rector Bohemian Seminary in Rome; 1927 Papal Household Prelate; 1928-29 Undersecretary Congregation for Extraordinary Ecclesiastical Affairs; 1929 Substitute Secretariat of State; 1931 Apostolic Protonotary; 1935 Assessor Holy Office; 1953 Cardinal and Prosecretary Holy Office; 1959 Secretary Holy Office; 1962 Bishop, President Theological Preparatory Commission for the Second Vatican Council; 1966 Prefect Congregation for the Doctrine of the Faith. Cf. Bräuer, *Handbuch*, 334-5.

50 Giovanni Lottini OP: 1883 Priest, 1905-19 Consultor Holy Office, 1919-51 Commissary Holy Office. Cf. Wolf, *Prosopographie*, 892-5.

51 Francesco Morano: 1897 Priest; 1903-25 Collaborator Holy Office; 1918 Papal Privy Chamberlain; 1921 Prelate and 1922 Advocate Prelate of the Apostolic Signature; 1925 Auditor Roman Rota; 1935 Secretary Apostolic Signature; 1959 Cardinal. Cf. Bräuer, *Handbuch*, 356.

Creusen SJ (1880-1960),⁵² Pietro Parente (1891-1986),⁵³ Ulrich Beste OSB (1885-1976),⁵⁴ Sebastian Tromp SJ (1889-1975),⁵⁵ Cornelius Damen CSsR (1881-1953),⁵⁶ Cristoforo Bigazzi OP (1879-1971),⁵⁷ the Primo Compagno, Vigilio Dalpiaz (1887-1950),⁵⁸ the Promotor of Justice, Mariano Cordovani OP (1883-1950),⁵⁹ the Master of the Sacred Palace, and Ernesto Ruffini. The Consultors endorsed Hürth's opinion and argued in favour of a papal document,⁶⁰ the assembly of cardinals was still divided.⁶¹ Pius XII made the fundamental decision on 4

52 Joseph Creusen SJ: 1938-57 Professor at the Faculty of Canon Law Gregorian University, Consultor Holy Office and Congregation for Religious. Cf. Meesen, "Creusen", 997.

53 Pietro Parente: 1916 Priest; 1926-34 and 1940-55 Professor of dogmatics at the Lateran University; 1934-38 Rector Pontifical Athenaeum Urbaniana of the Congregation Propaganda Fide; 1939 Consultor Holy Office; 1948 Member of the biblical sub-commission for the preparation of a council; 1950-55 Lecturer at the Urbaniana; 1955 Archbishop Perugia; 1959 Assessor Holy Office; 1967 Cardinal. Cf. Bräuer, *Handbuch*, 401.

54 Ulrich Beste OSB: born in Freeport, Minnesota, canon lawyer, Professor at the Benedictine College of Sant'Anselmo, Commissioner Sacramental and Religious Congregation, Consultor Holy Office, 1939-49 Rector Anselmianum. Cf. Premoli, *Redazione*, 78.

55 Sebastian Tromp SJ: 1910-13 studied philosophy; 1913-20 studied classical philology; 1926-29 taught in Maastricht; 1929-65 Professor of fundamental theology Gregorian University; 1936 Consultor Holy Office; 1963 Secretary Theological Commission of the Second Vatican Council. Cf. Alberto, "Tromp", 268.

56 Cornelius Damen CSsR: 1901 perpetual vows Redemptorists; 1906 Priest; 1911-14 Professor of moral theology of his congregation in Rome; 1914-21 Lecturer in canonical, moral, ascetical and social discipline in Wittem and Geistingen; 1921-52 Professor of moral theology at the Pontifical Academy Alfonsiana and at the Pontifical College Urbaniano, Consultor Holy Office, Propaganda Fide and the Congregation for Studies. Cf. Parente, "Damen", 4.

57 Cristoforo Bigazzi OP: 1951-55 Commissary Holy Office.

58 Vigilio Dalpiaz: Priest of the Archdiocese of Trento; 1908-14 theological studies in Innsbruck, military chaplain in the First World War; 1925-37 Consultor Holy Office; 1928 Laurea in Canon Law at the Apollinare; 1930 Advocate Roman Rota; 1934 Prelato Referendario; 1934 Prelato Votante del Supremo Tribunale della Segnatura; 1938-50 Promotore di Giustizia Holy Office. 2Cf. Chiocchetti, "Dalpiaz", XXXI.

59 Mariano Felice Cordovani OP: 1906 Priest; 1912-21 Professor Angelicum; 1921-27 Professor Catholic University of Milan; 1927-32 Rector Angelicum; 1933-36 Roman provincial and at the University of Florence; 1936 Master of the Sacred Palace and since 1942 Theologian of the Secretariat of State. Cf. Ignesti, "Cordovani".

60 "Revmi Consultores fuerunt in voto ut sequitur: *Quindecim* (Adessor, Commissarius, Morano, Hudal, Gillet, Cordovani, Schaefer, Hurth, Creusen, Parente, Beste, Tromp, Damen, Bigazzi, Dalpiaz) 'In voto Relatoris iuxta mentem: pubblicare, per ora, la risposta al primo dubbio e ritenere gli altri dubbi come norma interna del S.O. La Consulta ritiene opportuno che la pubblicazione sia fatta mediante un documento pontificio'. Appunto S.O. "Feria II die 24 aprilis 1944", in ADDF, S.O., D.O. 1947, n. 1, fasc. 2, f. 89, 119.

61 Appunto S.O. "Feria IV die 3 maii 1944", in ADDF, S.O., D.O. 1947, n. 1, fasc. 2, f. 119. Cf. the detailed vote: Votum Rossi "De traditione instrumentorum in Sac. Ordinis Administrando" (3 November 1944), in ADDF, S.O., D.O. 1947, n. 1, fasc. 2, ff. 91-102. In 1944, the following seven cardinals were members of the Holy Office: Francesco

May 1944: from then on, the presentation of the instruments should no longer have any influence on the validity and substance of the ordination. At the same time, the previous rites were to be retained, but without affecting the validity of the ordination. This “*authentica declaratio*” was henceforth to be considered a “*norma interna*” of the Holy Office, but was not to be published. The definitive papal decision had therefore already been taken in 1944.

But in the meantime, let us proceed with the work for the preparation of a Pontifical Constitution that His Holiness is planning to publish and in which it is also made very clear what – in the current rites, which are not to be changed – the matter and the form are, because – as His Holiness said – the world has the right to know how things are.⁶²

A papal plea for transparency in the Catholic Church.

Step 2: Two Schemes of Hürth (9 May 1945)

Consultor Hürth was commissioned to draw up a scheme for this papal document.⁶³ After almost a year of intensive work, on 16 May 1945 he even submitted two schemes to the Suprema, which differed fundamentally from each other in the first part.⁶⁴ In the first outline

Marchetti-Selvaggiani, Raffaele Carlo Rossi, Pietro Fumasoni Biondi, Luigi Maglione, Giuseppe Pizzardo, Nicola Canali and Domenico Jorio. Cf. *AnPont* 1944, 638.

62 “Sua Santità, accettando e facendo sua la soluzione del dubbio principale proposto (vedi *Relazione Huerth*, pag. 97), ha deciso – secondo il suggerimento degli E.mi, nell’accordo pratico da essi raggiunto – che d’ora in poi la ‘*traditio instrumentorum* in sacra diaconatus, presbyteratus, episcopatus ordinatione vel consecratione, non sit de valore et substantia ordinationis (respective: consecrationis)’, quantunque i riti relativi debbano ‘*sancte servari*’ come integrativi dell’ordinazione stessa in modo che, d’ora in poi, se vengano omissi, debbano essere suppliti, ferma restando però – anche se omissi – la validità dell’ordinazione. Per ora la cosa sia attuata come norma interna per la soluzione dei casi che si presenteranno. Ma intanto si proceda nello studio per la preparazione di una Costituzione Pontificia che Sua Santità ha in animo di pubblicare e nella quale sia anche ben chiarito quale sia – negli attuali riti, da non modificarsi – la materia e la forma, perché – ha detto Sua Santità – il mondo ha diritto di sapere come stiano le cose”. Appunto S.O. “*Feria V, die 4 maii 1944*”, *ADDF, S.O., D.O. 1947*, n. 1, fasc. 2, f. 119.

63 Cf. Hürth to Ottaviani, 21 May 1944, in *ADDF, S.O., D.O. 1947*, n. 1, fasc. 2, f. 124.

64 Hürth to Ottaviani, 16 May 1945, in *ADDF, S.O., D.O. 1947*, n. 1, fasc. 3, f. 28. On 16 May 1945, Hürth sent a bundle consisting of four manuscripts, all dated 9 May 1945, to Ottaviani in the Holy Office: 1. Typewritten Hürth “*Supplementum Voti, quo respondetur ad Dubium, motum a S. Eminentia Card. Rossi*” (9 May 1945), in *ADDF, S.O., D.O. 1947*, n. 1, fasc. 3, ff. 29-45; Ponenza S.O., in *ADDF, S.O., D.O. 1947*, n. 1, fasc. 3, ff. 72-9; 2. Typewritten Hürth, “*Appendix ad Supplementum, quo exhibetur ‘Brevis conspectus Rituum ordinationis’, ex quo appareat Dubium Eminentiae Suae non esse fundatum*”, in *ADDF, S.O., D.O. 1947*, n. 1, fasc. 3, f. 45; Ponenza S.O., in *ADDF, S.O., D.O. 1947*, n. 1,

he discussed the Decree for the Armenians, in the second he did not explicitly mention it. On 23 July 1945, the Consulta voted in favour of the second, “less scholastic” scheme, even if the preamble of the first scheme was still to be taken into account. However, a “pedantic discussion” and the reference “to controversial judgements” should be avoided.⁶⁵

Step 3: Schema reformatum of the *Commissione speciale* (18 February 1946)

After substantial interventions, such as the one by Cardinal Raffaele Carlo Rossi (1876-1948),⁶⁶ Pius XII agreed with the Cardinals’ proposal and decided on 10 January 1946 that a *Commissione speciale* should draw up a “new scheme” based on the second scheme by Hürth.⁶⁷ The members of this commission, which met on 28 January, 4 February and finally on 18 February in the Palace of the Holy Office,⁶⁸ were Pietro Parente, Joseph Creusen, Sebastian Tromp, Cornelius Damen, Josef Grendel SVD (1878-1951)⁶⁹ and Salvatore Garofalo (1911-1998),⁷⁰

fasc. 3, ff. 80-5; 3. Typewritten Hürth, “Schema ‘Constitutionis Apostolicae’ (2 Schemate)”, in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 47-56; Ponenza S.O., in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 86-91; 4. Typewritten Hürth “Annotationes ad Schema, quibus quaedam puncta explicetur vel de iis ratio reddatur” (8 May 1945), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 57-71; Ponenza S.O., in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 92-9.

65 “I Consultori sono del parere che si debba preferire il *secondo schema* tenendo presente il preambolo del primo. Si eviti il tono di discussione cattedratico, senza riferirsi a sentenze controverse”. Appunto S.O. (Feria II, die 23 iulii 1945), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, f. 1; Ponenza “Schema reformatum Constitutionis Apostolicae. De sacris Ordinibus” (Maggio 1946), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 185-205. Cf. Animadversiones Damen, in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 3-11.

66 Raffaele Carlo Rossi: 1901 Priest, 1920 Bishop Volterra, 1923 Assessor Consistorial Congregation and Secretary of the College of Cardinals, 1930 Papal Assistant to the Throne, Cardinal and Secretary Consistorial Congregation. Bräuer, *Handbuch*, 276. Rossi, *Votum* (9 January 1946), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 104-9.

67 Appunto S.O. (Feria IV, die 9 januarii 1946; Feria V, die 10 januarii 1946), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 12-13.

68 Cf. the minutes of the meetings of the *Commissione speciale*: “Prima sessio Commissionis 28 Jan. 1946” (handwritten Tromp), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, f. 126-7; “Secunda sessio Commissionis 4 Febr. 1946” (handwritten Tromp), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, f. 128; “Tertia sessio Commissionis 18 Febr. 1946” (handwritten Tromp), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, f. 130.

69 Josef Grendel SVD: 1901-23 Lecturer in dogmatics, 1917-23 Rector St. Gabriel, 1932-47 Superior General Divine Word Missionaries, 1944 Consultor Holy Office, 1948 General Councillor. Cf. Rohrbacher, “Sorge”, 210.

70 Salvatore Garofalo: 1933 ordained priest in Naples, 1958-71 Rector Urbaniana and first president of the “Associazione biblica internazionale”, Expert on the Second Vatican Council. Cf. Premoli, *Redazione*, 99.

who was responsible for the Italian translation.⁷¹ The “Schema reformatum” was now drawn up under the leadership of Tromp.⁷² On 8 April, the Consultors discussed this draft⁷³ and submitted corrections, from which an internal print of the “Schema reformatum” was produced in May.⁷⁴

Step 4: Schema denuo reformatum by Hürth (22 January 1947)

On 17 June 1946 the Consultors discussed the matter, on 26 June the Cardinals followed and on 27 June Pius XII agreed with the Cardinals’ suggestion that Hürth should draw up a “new short draft”.⁷⁵ In addition to the subject matter, he should also consider the question of the essential form of ordination. As instructed, he first drew up a vote on the question of form in November 1946,⁷⁶ on which the committees met in December.⁷⁷ Finally, on 22 January 1947, Hürth drew up the “Schema denuo reformatum”,⁷⁸ which was ultimately to remain the decisive draft.

71 “Schema reformatum” (Italian translation, corrected copy), in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 3, ff. 142-57.

72 Schema reformatum, handwritten Tromp, in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 3, ff. 110-17, 136-41; Typewritten “Schema post sessiones 28 Jan. 4 Febr., 18 Febr. 1946 reformatum ut tradatur redactori textus italicus”, in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 3, ff. 118-25; Schema reformatum, in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 3, ff. 132-5.

73 Protocol Consulta (8 April 1946), handwritten Tromp, in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 3, ff. 171-8.

74 Schema reformatum Constitutionis Apostolicae. De sacris Ordinibus (Mense Maio 1946), in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 3, ff. 185-205. The introduction to the scheme provides a good overview of the progress of the work to date.

75 Appunto S.O. (Feria II, die 17 junii 1946; feria IV, die 26 junii 1946; feria V, die 27 junii 1946), in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 3, ff. 206-7.

76 Hürth, Votum, Dubium de forma sacramentali diaconatus et episcopatus in Schemate reformato proposita (Mense Novembri 1946), in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 3, ff. 224-6.

77 Appunto S.O. (Feria II, die 9 decembris 1946; feria IV, die 18 decembris 1946; feria V, die 19 decembris 1946), in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 3, f. 228.

78 Ponzona, Schema denuo reformatum (22 January 1947), Constitutio Apostolica “De sacris Ordinibus”. Votum R.P. Francisci Hürth, S.I., Consultoris, in *ADDF, S.O., D.O.* 1947, n. 1, fasc. 4, ff. 9-14.

Step 5: Schema novum by Cardinal Rossi (10 April 1947)

Once again, debates of both the Consultors and the Cardinals became heated.⁷⁹ On 10 April 1947, Rossi even sent Ottaviani a new scheme he had drawn up,⁸⁰ which the Consultors Hürth and Tromp massively criticized because of the question of whether Christ instituted the ordination “in specie” or “in genere”.⁸¹ Pius XII then decided in the audience of 17 April,⁸² that a new draft should be drawn up on the basis of Rossi’s new scheme and taking into account Hürth’s scheme, including some of his personal comments. Finally, he handed it over to Hürth, as the Jesuit – according to Pius XII –

had dealt with the subject so decisively from the beginning and should now say his last word on it.⁸³

Step 6: Schema riformato by Hürth (21 May 1947)

Hürth then drew up a “schema riformato” and presented the text passage in question – the form of the ordination was still unclear – in a synopsis.⁸⁴ The publication date of Pentecost was already noted in the final formula. However, there were to be further delays. In June 1947, Pius XII followed the advice of the Cardinals and decided to submit the current scheme to the Jesuit priest and professor of dogmatics at the Gregorian University, Heinrich Lennerz (1880-1961),⁸⁵ who was not a Consultor of the Holy Office, for final external

79 Cf. Appunto S.O. (Feria II, die 24 martii 1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 21.

80 Cf. Appunto S.O., in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 23-8.

81 Tromp, *Observationes*, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 41-2; Hürth, “*Observationes quaedam ad Schema propositum ab Emo Card. Rossi*” (13 April 1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 47.

82 Cf. Appunto S.O. (Feria IV, 16 apr. 1947; Feria V, 17 apr. 1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 62.

83 “Lo schema fu subito riformato secondo la mente del S. Padre e tenuto conto delle antecedenti osservazioni degli Emi, poi passato al Revmo P. Hürth perché, avendo egli così autorevolmente trattato l’argomento più da principio, volesse ora dire la sua ultima parola in proposto”. Circa Schema Constitutionis Apostolicae “*De sacris ordinibus*”, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 63-4.

84 Cf. Hürth to Ottaviani, 27 April 1947, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 67-8. “Circa lo Schema della Costituzione Apostolica ‘*De sacris Ordinibus*’” (Maggio 1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 79-88.

85 Heinrich Lennerz SJ: 1880 birth in Kempen; 1899 entered the Jesuit order; 1912 ordained priest in Valkenburg; 1914-25 Professor of dogmatics Valkenburg; 1925-61 Professor of dogmatics Gregoriana. Cf. Neufeld, “Lennerz”.

correction.⁸⁶ After the Feria IV on 4 July, Lennerz's comments,⁸⁷ Hürth's remarks⁸⁸ and Rossi's comments were incorporated into the text.⁸⁹

Step 7: Final text, the Apostolic Constitution *Sacramentum ordinis* – Pius XII (30 November 1947)

In the very last editing phase of the Apostolic Constitution, Angelo Perugini (1889-1960),⁹⁰ the secretary of the "Segreteria per le Lettere Latine", gave the final linguistic polish to the Apostolic Constitution.⁹¹ In this case, Antonio Bacci (1885-1971)⁹² and the "Segreteria dei Brevi ai principi"⁹³ were apparently not involved, as was the case in similar instances.⁹⁴ The text of the papal document was still the subject of bitter dispute in the final weeks. Pius XII finally approved of the final draft on 6 November 1947.⁹⁵ Both the Apostolic Constitution *Sacramentum ordinis*, dated 30 November 1947, and the accompanying Decree, dated 27 November 1947, were now

86 "Emi ac Revmi Patres decreverunt: 'Propone lo schema al P. Lennerz S.J. e sentire il suo parere'; Feria V die 5.VI.47, SSmus adprobavit"; Appunto S.O. (Feria IV, die 4.VI.1947; Feria V, die 5.VI.1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 116.

87 Lennerz, Parere, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 127-9; 153-5; Lennerz, "Ad observationes A. Perugini" (24 June 1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 171-5.

88 Cf. Hürth to Ottaviani, 18 June 1947, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 117; Hürth, "De observationibus recenter factis contra textum Constitutionis", in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 130-3, 156-8.

89 Cf. Ponenza "Constitutio Apostolica. De sacris ordinibus. Diaconatus, presbyteratus et episcopatus" (Luglio 1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 139-50.

90 Angelo Perugini: after studies at the Seminario Romano and ordination to the priesthood 1920-28 professor of classical literature there; 1928-48 chair for "Stilus latinus Romanae Curiae" Lateran University; 1931-60 Secretary in the Secretariat of Latin Letters (incorporated into the Secretariat of State in 1967). His "Dizionario italiano-latino" was published posthumously (Vatican City 1976). Cf. Wolf, *Licht*, 285.

91 Cf. Perugini (Segreteria di sua Santità per le Lettere Latine), "Osservazioni sulla Costit. Apost. 'Sacramentum Ordinis' concernenti alcune espressioni di particolare importanza", in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 161-8.

92 Antonio Bacci: 1909 Priest, spiritual director at the seminary in Florence; 1922-31 Employee Secretariat of State; 1923 Papal Secret Chamberlain; 1931-60 Secretary Breviary to the Princes; 1931 Papal House Prelate; 1960 Cardinal; 1962 Bishop, at the Second Vatican Council he was one of the spokesmen of the conservative Council minority. Cf. Bräuer, *Handbuch*, 363.

93 Cf. the contribution by Alejandro Dieguez in this issue: «La 'fabbrica' delle encicliche. Il processo redazionale delle encicliche pacelliane e le fonti per la sua ricostruzione (1939-58)».

94 For example, Antonio Bacci and the "Segreteria dei Brevi ai principi" were involved in the final editing of the Apostolic Constitution "Munificentissimus Deus" (1950). Cf. Daufratshofer, *Lehramt*, 514-21.

95 Appunto S.O. (Feria V, 6 Nov. 1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 239.

completed.⁹⁶ Ottaviani sent the text of the Decree, which Pius XII, – “contrary to usual practice” – wanted to sign himself, to the “Cancellaria Apostolica”.⁹⁷ The *Acta Apostolicae Sedis* did not publish the Latin text until the January 1948 edition.⁹⁸ Surprisingly, however, the Decree was not printed in the *L'Osservatore Romano* in a timely manner, which was actually more customary.

Reception of *Sacramentum ordinis*

Hürth replied to his confrere Herman:

The papal document is certainly one of the most decisive of recent times; theologians will become aware of this more and more in the coming months.⁹⁹

The Jesuit left no doubt about the importance of the result. After the publication of *Sacramentum ordinis*, Hürth kept an eagle eye on the “correct” reception of “his” constitution. When Hürth asked Ottaviani if he could write an article on *Sacramentum ordinis*, the latter discussed it with the Pope:

P. Hurth would do such work in order to guide well the studies and comments by theologians on the Constitution.¹⁰⁰

Pius XII agreed “wholeheartedly”. Hürth therefore wrote the “official” commentary “cum approbatione ecclesiastica”¹⁰¹ – i.e. with the Pope’s approval¹⁰² – as he usually did as a ghostwriter of papal documents. In the introduction, Hürth even revealed:

96 Schema Decreti. Decretum. De Sacris Ordinibus Diaconatus, Presbyteratus, Episcopatus, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 265.

97 “In merito mi reco a premura d’informarLa che il S. Padre, in deroga alla prassi ordinaria, si degnerà di apporre la Sua augusta firma alla Lettera Decretale ‘sub plumbo’, che sarà spedita da cotesta Cancellaria Apostolica, circa la materia e la forma degli Ordini dell’Episcopato, del Presbiterato e del Diaconato”. Ottaviani to Vincenzo Bianchi Cagliosi (Reggente della Cancellaria Apostolica), 10 December 1947, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 261.

98 Pius XII, “*Sacramentum ordinis*”; “Bozze”, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 288.

99 “Das päpstliche Dokument ist sicher eines der entscheidenden der letzten Zeit; die Theologen werden sich dessen in den nächsten Monaten mehr und mehr bewußt machen”. Hürth to Herman, 22 April 1948, in APUG 2721.8.17.

100 “[...] Il P. Hurth farebbe tale lavoro per instradare bene gli studi e i commenti dei Teologi relativi alla Costituzione. ‘Il SSmus approva pienamente.’” Ex Audientia Ssmii die 19 Dec. 1947, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 268.

101 Hürth, *Constitutio Commentarius*, 4.

102 Cf. Hürth to Ottaviani, 12 January 1948, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, f. 287.

From the preparatory files for the constitution *Sacramentum ordinis*, which I examined thanks to special permission and also received special permission to publish, I compiled the following.¹⁰³

Pius XII, or even more so Hürth, obviously wanted to retain sovereignty of interpretation over the constitution. For it was precisely this that was highly sensitive in terms of doctrinal theory. Hürth, but also his confrere Wilhelm Hentrich (1887-1972),¹⁰⁴ who was not only a “Qualificator” (an additional expert) of the Holy Office, but also Pius XII’s private librarian, pulled the strings in the background as multipliers to promote the new constitution. Hürth personally sent his commentary to a whole series of German bishops.

The professor of dogmatics in Innsbruck Karl Rahner SJ (1904-1984)¹⁰⁵ also gave his confrere Hürth feedback on 4 May 1948:

My dear friend! Totally missed the mark! I have immersed myself in your commentary with great interest. I can confess to you that I have never been under such an overwhelming impression, not only because of the profound knowledge, but even more because of how many questions were pushed aside, through how many scyllas a sure, firm path remained. I was actually gobsmacked. But then the emotion arose: why this enormous amount of work? Besides the duties of the Sanctum Officium? Does Franz [Hürth] want to absolutely destroy himself? And if so, why not work on a [textbook of] moral [theology] that would be present in all seminaries? It was only a fortnight later that I learnt that you had done the work on the encyclical, and so the commentary took on a different face, your preparatory work, your documents for the papal declaration. Are you in the know now? I hope so.¹⁰⁶

103 “Ex Actis praeparatoriis huius Constitutionis, speciali cum facultate inspectis, et obtenta speciali facultate quaedam publicandi, haec afferimus”. Hürth, *Constitutio Commentarius*, 9.

104 Wilhelm Hentrich SJ: 1887 birth in Münster; 1907-09 Novitiate Exaeten; 1909-12 study of philosophy Valkenburg; 1917 Priest; 1921-22 Tertianship Exaeten; 1923-36 Professor of the history of philosophy Valkenburg; 1927-40 Professor also in Sankt Georgen, Frankfurt; 1929-37 Librarian Valkenburg; 1940-69 in the Jesuit Generalate in Rome; 1942-58 Private librarian to Pius XII; 1948-69 Qualifier, then Consultor Holy Office; 1951 Member of the Academia Internationalis Mariana; 1972 death in Münster. Cf. Schatz, *Geschichte*, 204; Scheiper, “Bibliothekar”; Scheiper, “Documents”; Scheiper, “Hentrich”.

105 Karl Rahner SJ: 1932 Priest; 1937-38 Professor of dogmatics Innsbruck; 1939-44 active in Vienna as pastor, in research and through expert opinions; 1939 Final vows; 1944-45 Pastor in Mariakirchen; 1945-48 Professor of dogmatics Pullach; 1948-64 Professor of dogmatics Innsbruck, Conciliar theologian; 1964-67 Chair for Christian world-view Munich; 1967-71 Dogmatist Münster; 1971-81 at the Berchmans College in Munich, since 1981 back in Innsbruck. Cf. Schatz, *Geschichte*, 320.

106 “Mein lieber Freund! Total daneben geschossen! Ich habe mich mit grossem Interesse in Ihren Kommentar vertieft. Ich kann Ihnen gestehen, dass ich noch nie unter

5 “Chi bolla, sbolla?”¹⁰⁷ – Or: Did Pius XII Change a Dogma in 1947?

One and the same sentence is either true or false. It cannot be false once and then suddenly be true as a result of a decision.¹⁰⁸

The Church’s magisterium internalized this principle of theological epistemology in an almost unique way. Above all, the Pope, as the supreme teacher of the Church, saw it as his duty to protect the unchanging, eternal truths and all doctrinal decisions and to pass them on unchanged. There were to be no breaks, mutations, or discontinuities. Magisterial continuity was dogmatically exaggerated, especially in the neo-Scholastic Roman theology of the nineteenth century.

Any change in doctrine and constitution would therefore be a sacrilege, a disregard for the divine founding document of the Church,¹⁰⁹

as the Limburg cathedral canon Matthias Höhler (1847-1923)¹¹⁰ made clear in 1893.

The doctrinal discrepancy between the documents of 1439 and 1947 is obvious, and Ruffini is probably right here. Whether a dogma was really changed, however, should stand and fall with the magisterial binding force of the Decree for the Armenians of 1439. Two questions should therefore be examined in depth: 1. Did the Consultors, Cardinals and also the Pope recognise the problem of the Decree for the Armenians and the question of its binding force at all and was

einem so überwältigenden Eindruck gestanden habe, nicht nur wegen des profunden Wissens, sondern noch mehr, wie viele Fragen beiseite geschoben wurden, durch viele Scyllen doch ein sicherer, fester Weg eingehalten blieb. Ich war tatsächlich platt. Aber da tauchte dann der Affekt auf, warum diese ungeheure Arbeit? Daneben d[ie] Pflichten des S[anctum] Off[icium]? Will der Franz [Hürth] sich absolut kaputt machen? Und wenn ja, warum nicht an einer Moral, die in alle Seminarien kommt? Erst 14 Tage später erfuhr ich, dass Sie die Arbeit an [der] Enzykl[ika] geleistet hatten, und so bekam der Kommentar ein anderes Gesicht, Ihre Vorarbeit, Ihre Unterlagen f[ür] d[ie] Päpstl[iche] Erklärung. Sind Sie jetzt im Bild? Ich hoffe es“. Rahner to Hürth, 4 May 1948, in APUG 2721.8.15.

107 Hürth, “Observationes ad Epistolam Emi Card. Rossi ad Excum Assessorum S.O.” (12 November 1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 243-8.

108 “Ein und derselbe Satz ist entweder wahr oder falsch. Er kann nicht einmal falsch und dann durch eine Entscheidung plötzlich wahr sein“. Wolf, “Dogma”, 179-99: 180.

109 “Jede Änderung in Lehre und Verfassung wäre daher ein Sakrileg, eine Missachtung der göttlichen Gründungsurkunde der Kirche“. Höhler, *Kriterium*, 43. Cf. Wolf, “Erfindung”, 39.

110 Matthias Höhler: Studied in Mainz and at the Germanikum, 1871 Priest of the diocese of Limburg, 1872 Chaplain and secretary to Bishop Peter Joseph Blum, 1884 Cathedral chaplain, 1913 Vicar general. Cf. Schatz, “Höhler”, 312-13.

this reflected in the internal discussions in the Holy Office? 2. How did the actors take account of the problem of possible discontinuity in the schemes and ultimately in *Sacramentum ordinis*?

The Question of the Binding Nature of the Decree for the Armenians in the Internal Discussions of the Holy Office

The discussion about the binding nature of the Decree for the Armenians of 1439 was a recurrent theme throughout the drafting of the new Apostolic Constitution. The question – at least according to the internal logic of the magisterium – as to whether Pius XII was allowed to stipulate the laying on of hands as an essential element of ordination instead of the presentation of the instruments stood or fell with it. There were essentially three interpretations among theologians: a) the Decree for the Armenians as an infallible, solemn decision of the Council, a definition of faith; b) the Decree for the Armenians as a fallible document of the ordinary magisterium; c) the Decree for the Armenians as a practical-disciplinary instruction. It was clear that if the Decree for the Armenians really was an infallible, solemn decision of the Council, then it was actually impossible to change this teaching. In order to make sense of the extremely complicated situation, the three main interpretations of the binding nature of the Decree for the Armenians will first be explained:¹¹¹

a) Infallible, solemn council decision, definition of faith

1) The Decree for the Armenians expressly speaks of a “truth of the Catholic faith” (“*veritas fidei catholicae*”) – a synonym for the term “dogma”, which only emerged in the nineteenth century. 2) The very purpose of the decree, namely to teach the Armenians the “right attitude of faith” (“*fidei rectitudo*”), shows its highest binding nature as a statement of faith. 3) The Decree for the Armenians is a solemn document proclaimed by the Pope and approved by the Council (“*sacro hoc approbante Florentino concilio*”) and thus an expression of the extraordinary magisterium of the Church. 4) The concluding formula also speaks in favour of a solemn teaching: “*Datum Florentiae, in publica sessione synodali, solemniter in Ecclesia maiori celebrata*”. 5) The Florentinum and Eugene IV clearly taught in the area of faith (“*fides*”), which the First Vatican Council later explicitly established as a criterion for a cathedral decision.¹¹²

¹¹¹ Cf. in detail Daufratshofer, *Lehramt*, 356-74.

¹¹² Council of Florence, “*Exsultate Deo*” (22 November 1439).

b) Fallible document of the ordinary magisterium

Willem van Rossum contributed significantly to this interpretation with his 1914 study.¹¹³ He cited seven arguments: 1) a denial of the Decree for the Armenians would never have been condemned by theologians. 2) the Popes had repeatedly confirmed the Oriental rite, in which - in contrast to the Latin rite - the laying on of hands remained the essential matter. 3) Even Popes had contradicted the Decree for the Armenians, such as Leo XIII in his Apostolic Letter "Apostolicae curae" on the nullity of Anglican ordinations of 1896. 4) At the Council of Trent (1545-63), the 14th Sessio in the Decree on the Sacrament of Extreme Unction mentioned that priests were ordained by the laying on of hands. 5) Even the wording of the Decree for the Armenians argued against a definition, as Eugene IV explicitly distinguished between "definitiones", "traditiones", "praecepta", "statuta" and "doctrina". The section on the sacraments was therefore only a general doctrine ("doctrina communis"). 6) Because the Decree for the Armenians was only addressed to one particular Church, namely the Armenians, the teaching of the Council of Florence could not be valid for the entire Church. 7) Just as the teaching Church is infallible in its teaching, so too is the believing Church infallible in its faith. And only "extremely few" followed the teaching of the Decree for the Armenians. If it fitted in with their own argumentation, even the argument of the "sensus fidelium" was apparently right and proper. The Decree for the Armenians was therefore only a document of the ordinary magisterium and therefore reformable and reversible. Van Rossum even went so far as to accuse of error all those who saw the matter of the sacrament of Holy Orders in the handing over of the instruments. In 1947, the Consultors and Cardinals distanced themselves from this extreme view of the Dutch Cardinal.

c) Practical and disciplinary instruction

During the course of the twentieth century, it was above all the Jesuits of the Gregorian University, including Lennerz and Hürth, who adhered to the interpretation of the Decree as a practical-disciplinary instruction, writing:

The Decree for the Armenians is neither a definition nor a doctrinal decree, but a practical instruction on the rite of ordination and the presentation of the instruments prescribed in this decree.¹¹⁴

¹¹³ Rossum, *Essentia*.

¹¹⁴ "[D]ecretum pro Armenis non esse definitionem neque decretum doctrinale, sed esse instructionem practicam de ritu ordinationis, et traditionem instrumentorum in

The lack of clarity about the quality and binding nature of the Decree for the Armenians was ultimately also the reason why the Holy Office had postponed the decision at the end of the first discussion of the problem in 1912. This is precisely where Hürth came in with his trend-setting vote of 1944, in which he reconstructed the discussions and resolutions of the commission at the time and reported in detail on the two expert opinions by van Rossum and Langogne, which relativised the maximum binding force of the Decree for the Armenians and argued in favour of the magisterial change of the matter to the laying on of hands. However, the Cardinals of the Holy Office were not yet satisfied with this in 1911 but argued that van Rossum should carry out palaeographic studies in the original documents of the Decree for the Armenians. As soon as these results were available, Giovanni Lottini, Commissarius of the Holy Office, was also to write a vote. In addition, the Jesuit Louis Billot (1846-1931)¹¹⁵ wrote a new vote, which Hürth surprisingly did not outline in terms of content and thus subjected it to non-reception. His explanation: Billot's vote could no longer be found in the archives - but Hürth later quoted from it.¹¹⁶ However, this may even have favoured Hürth's argument. After all, Billot was of the opinion that the Decree for the Armenians was an infallible definition.¹¹⁷ As Billot was the only Cardinal in the twentieth century to resign his cardinalate in 1927, he may have fallen out of favour in curial circles anyway.¹¹⁸ After van Rossum was appointed Cardinal in 1911, he put his studies on the Decree for the Armenians on hold. The cardinals of the supreme religious authority found a decision too delicate and therefore pleaded in favour of "dilata" in 1914. The main reason for their hesitation was the uncertainty about the binding nature of the Decree for the Armenians. The files then disappeared into the archive of the Holy Office.¹¹⁹ Over thirty years were to pass.

hoc decreto praescriptam intelligi posse tantum de materia integrante et accessoria, quam Summus Pontifex addi voluit apud Armenos manuum impositioni, quae apud illos iamiam in usu fuit". Hürth, *Sacramentis*, 298.

115 Louis Billot SJ: 1871-75 taught exegesis in Laval; 1879-82 dogmatics in Angers; 1882-85 Scholasticate in Jersey; 1885-1911 at the Gregorian University; 1909-11 Consultor Holy Office; 1911 Cardinal; 1927 Renunciation of the cardinalate. Cf. Walter, "Billot".

116 "In Archivio S. Officii neque Votum Rmi P. Billot neque Votum Rmi P. Lottini inveniri potuit". Hürth, Votum "De traditione instrumentorum in sacramento ordinis administrando" (25 February 1944), no. 64, in ADDF, S.O., D.O. 1947, n. 1, fasc. 2, f. 78. In his annotations to his two schemes, Hürth quoted from Billot's votum of 11 February 1911, so he did have the votum. Cf. Typewritten Hürth "Annotationes ad Schema, quibus quaedam puncta explicetur vel de iis ratio reddatur" (8 May 1945), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 57-71; Ponenza S.O., in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 92-9.

117 Billot, *Sacramentis*, thesis 30, 275-8.

118 Cf. Bernardi, "Cardinal"; Prévotat, *Catholiques*.

119 For a reconstruction of the debates in the Holy Office, see Hürth, Votum "De traditione instrumentorum in sacramento ordinis administrando" (25 February 1944),

In his 1944 vote, Hürth wrote: “Therefore, it must first be examined *whether this decree* [the Decree for the Armenians] *constitutes an obstacle* [...]”¹²⁰ This crucial question was therefore still unresolved.

The Holy See cannot make this declaration if it has been *defined* by the aforementioned decree that the presentation of the instruments of Holy Orders is due to *divine institution*.¹²¹

And then he continued succinctly: “But such a meaning of the decree cannot exist”.¹²² The future discussions alone were to show that the problem could not be solved so quickly.

After van Rossum published his vote as a study in 1914,¹²³ the general theological opinion shifted more and more towards the interpretation of the Decree for the Armenians as a fallible document of the ordinary magisterium that could easily be changed. In addition, Hürth gave van Rossum such a prominent position in his vote that he gradually turned his opinion into something that could be said by the magisterium:

The Decree has not only a practical but also a doctrinal character; the Pope wanted to teach and did teach, not in a solemn form, but by a reformable act of the ordinary magisterium; he taught the more common opinion of the time, namely that the handing over of the instruments is the essential matter of the sacrament of Holy Orders; this reformable opinion of the Decree *can* be departed from *if* there are grave and certain reasons for doing so; it must be departed from if there are such reasons. In other words, the Decree for the Armenians contains an error that we clearly recognise today.¹²⁴

no. 63, in ADFF, S.O., D.O. 1947, n. 1, fasc. 2, f. 78.

120 “Hinc primo loco inquirendum est, *num hoc decretum sit impedimentum*, quominus a S. Sede declaretur: traditionem instrumentorum non esse de essentia sacramentum ordinum de quibus agitur”. Hürth, Votum “De traditione instrumentorum in sacramento ordinis administrando” (25 February 1944), no. 65, in ADFF, S.O., D.O. 1947, n. 1, fasc. 2, f. 78.

121 “S. Sedes hanc declarationem dare non potest, si per laudatum decretum est *definitum: ex institutione divina* traditionem instrumentorum in sacris ordinibus esse peragendam”. Hürth, Votum “De traditione instrumentorum in sacramento ordinis administrando” (25 February 1944), no. 66, in ADFF, S.O., D.O. 1947, n. 1, fasc. 2, f. 78 (emphasis in the original).

122 “At hic nequit esse sensus decreti”. Hürth, Votum “De traditione instrumentorum in sacramento ordinis administrando” (25 February 1944), no. 66, in ADFF, S.O., D.O. 1947, n. 1, fasc. 2, f. 78.

123 Rossum, *Essentia*.

124 “Decretum non est tantummodo practicum sed etiam doctrinale; Summus Pontifex voluit docere et docuit non quidem solemniter definiendo, sed actu

According to van Rossum and Hürth, if the Decree for the Armenians were to be considered as an expression of the ordinary magisterium, then nothing would stand in the way of a reform. In view of a general revision of the ordinary magisterium, such as encyclicals, this is an extremely remarkable statement. Hürth repeatedly cited his confrere Georg Hofmann (1885-1956)¹²⁵ as another key theological witness, who, as Professor of the History of the Eastern Churches at the Orientale, published an up-to-date study on the Decree for the Armenians as late as 1939.¹²⁶ We can only speculate as to whether this was a “commissioned work” of court historiography, or perhaps the result of the *Congregazione particolare* of 1937.

Ultimately, the only way to obtain clarity about the binding nature of the Decree for the Armenians to date was a palaeographic examination of the Florence Council records, which the Cardinals of the Holy Office had already voted for in 1912. According to Hürth, however, this question was “pointless”, as the files of the papal preparatory commission for the Decree for the Armenians could not be located “by learned and knowledgeable persons”.¹²⁷ In short: These files had been lost. A source-based statement about their binding nature was therefore impossible. Hürth considered further study to be unnecessary anyway: 1) the controversial question of the true meaning of the Decree for the Armenians could simply be circumvented in a new decree; 2) source research on the Decree for the Armenians had brought nothing new to the question of the necessity of handing over the instruments; 3) a palaeographic study of the files of the “*Commissio praeparatoria*” of the Decree for the Armenians was impossible, as nobody knew where the files were, or whether they still existed at all.¹²⁸ What had been the reason behind the non-decision

reformabili magisterii ordinarii; docuit sententiam tunc temporis communiorem, idest traditionem instrumentorum esse materiam essentialem sacramenti ordinis; ab hac sententia reformabili decreti recedi *potest, si* sunt rationes graves eaeque certae; ab ea de facto recedi debet, cum tales rationes adsint. Aliis verbis: Decretum pro Armenis continet errorem; quem nos hodie talem clare cognoscimus”. Ponzia Hürth, *Votum “De traditione instrumentorum in sacramento ordinis administrando”* (25 February 1944), no. 66, in ADDF, S.O., D.O. 1947, n. 1, fasc. 2, f. 78 (emphasis in the original).

125 Georg Hofmann SJ: 1906-13 studied theology in Rome, 1912 Priest, 1920-22 studied church history in Munich, since 1923 Professor for the history of the Eastern Churches Orientale. Cf. Schatz, *Geschichte*, 211.

126 Cf. Hofmann, “Einigung”; Hofmann, *Unione*.

127 “De cetero quaestionem esse otiosam, cum *Acta* ipsius Commissionis Pontificiae hucusque inveniri non potuerint, non obstantibus tot inquisitionibus a viris doctis et peritis factis”. Hürth, *Votum “De traditione instrumentorum in sacramento ordinis administrando”* (25 February 1944), no. 72, in ADDF, S.O., D.O. 1947, n. 1, fasc. 2, f. 78 (emphasis in the original).

128 “Inutiliter et ineffaciter exigeretur novum et ulterius studium decretum pro Armenis; quia: a) Tale studium superfluum est; nam decretum, de quo ferendo nunc

of 1911 was now simply swiped aside by Hürth.

In the Consulta of 24 April 1944, the Decree for the Armenians was one of the main topics. The Master of the Sacred Palace Mariano Cordovani, for example, positioned himself as follows: “I am in favour of a decree that corrects the Decree for the Armenians”.¹²⁹ While in the decisive session on 3 May the Cardinals Francesco Marchetti Selvaggiani (1871-1951),¹³⁰ the Secretary of the Holy Office, Pietro Fumasoni Biondi (1872-1960)¹³¹ and Rossi joined the majority opinion of the Consultors and initially voted in favour of an internal norm and the drafting of a papal document, the Cardinals Giuseppe Pizzardo (1877-1970),¹³² Nicola Canali (1874-1961)¹³³ and Domenico Jorio (1867-1954)¹³⁴ were decidedly of a different opinion and expressed their concerns:

Given the seriousness of the matter, the intervention of Eugene IV, and the age-old practice, it does not seem appropriate to change this with a decree, which would also come out in such stormy weather.¹³⁵

agitur, a solvenda quaestione de plene et vero sensu decreti pro Armenis praescindere potest; b) Iam factae posteriores inquisitiones in fontes huius decreti (in quantum adsunt) nihil novi quoad quaestionem de necessitate traditionis instrumentorum attulerunt; c) Studium paleographicum actorum Commissionis praeparatoriae impossibile est, cum nemo sciat, ubi sint, immo, an omnino adhuc existant”. Hürth, *Votum “De traditione instrumentorum in sacramento ordinis administrando”* (25 February 1944), no. 96, in *ADDF, S.O., D.O. 1947, n. 1, fasc. 2, f. 78* (emphasis in the original).

129 “Io sono per un Decretum che corregga l’altro pro Armenis [...]” *Animadversiones Cordovani, ADDF, S.O., D.O. 1947, n. 1, fasc. 2, f. 83.*

130 Francesco Marchetti Selvaggiani: 1896 Priest, 1900-06 Auditor Apostolic Delegation USA, 1907 Auditor Nunciature in Bavaria, 1914 Papal Privy Chamberlain, 1915 Papal Household Prelate, 1917 Apostolic Protonotary, 1918 Titular Archbishop of Seleucia di Isauria and Internuntius in Venezuela, 1920 Apostolic Nuncio in Venezuela and then in Austria, 1922 Secretary Propaganda Fide, 1930 Cardinal, 1931 Cardinal Vicar of Rome and Archpriest of the Lateran Basilica, 1939 Secretary Holy Office, 1948 Cardinal Dean and Prefect Ceremonial Congregation. Cf. Bräuer, *Handbuch*, 276.

131 Pietro Fumasoni Biondi: 1897 Priest, 1916 Titular Archbishop and Apostolic Delegate to the East Indies, 1919 Apostolic Delegate to Japan, 1921 Secretary Propaganda Fide, 1922 Apostolic Delegate USA, 1933 Cardinal and Prefect Propaganda Fide. Cf. Bräuer, *Handbuch*, 278-9.

132 Giuseppe Pizzardo: 1912 Minutante, 1920 Undersecretary, 1921 Substitute and 1929 Secretary Congregation for Extraordinary Ecclesiastical Affairs, 1930 Titular Archbishop of Nicaea, 1937 Cardinal. Cf. Bräuer, *Handbuch*, 297.

133 Nicola Canali: 1900 Priest, 1926 Assessor Holy Office, 1935 Cardinal, 1939 President of the Pontifical Commission for Vatican City. Cf. Bräuer, *Handbuch*, 290.

134 Domenico Jorio: 1891 Priest, 1918 Secretary Apostolic Datary and Undersecretary Congregation for the Sacraments, 1928 Secretary Congregation for the Sacraments, 1935 Cardinal and Prefect Congregation for the Sacraments. Cf. Bräuer, *Handbuch*, 290.

135 “Attesa la gravità della cosa, l’intervento di Eugenio IV, e la secolare prassi, non sembra opportuno mutare la cosa con un Decreto, che uscirebbe anche in tempo così burrascosi”. *Appunto S.O. “Feria IV, die 3 maii 1944”, ADDF, S.O., D.O. 1947, n. 1, fasc. 2, f. 119.*

Apart from Ruffini, there were evidently other sceptics of a new magisterial document, especially as it would be published during the Second World War.

Throughout the drafting process, Cardinal Rossi intervened with the greatest commitment. In his vote of 3 May 1944, he reflected on the form of the new magisterial letter and summed up his proposition in this way:

1) That this decision, if and as it will be approved by the Holy Father, be *published*; 2) That it not be made by a simple proposition and resolution of a doubt, but by an act responding to the gravity and sanctity of the matter. And bearing in mind that this decision cannot fail to appear in opposition to the Decree of Eugene IV, it would be opportune for it to be promulgated by an act *of the Supreme Pontiff*; 3) That the document should make mention of the aforementioned Decree and explain its content and scope, justifying the new decision. All the more reason to accept the document issued by the Supreme Pontiff, the only one who has the authority to authentically interpret an act of his predecessor which was issued *with the approbation of the Council*; [...] 5) [...] Unfortunately, it will not be without wonder that at different times different principles are being applied.¹³⁶

Commenting on his two schemes, Hürth was quite blunt:

The question of whether a papal document on the essence of the three ordinations of the diaconate, presbyterate and episcopate should be drawn up is no longer a matter for discussion, since the Holy Father in the audience of 4 May 1944 ordered that such a document be prepared.¹³⁷

136 “Mens autem est: 1a - Che questa decisione, se e come sarà approvata dal S. Padre, si faccia pure *publici iuris*; 2a - Che non si faccia per una semplice proposizione e risoluzione d'un Dubbio, ma con atto rispondente alla gravità e santità della cosa. E tenuto presente che questa decisione non potrà non apparire in opposizione al Decreto di Eugenio IV, sarebbe opportuno che venisse promulgata *con un atto del Sommo Pontefice*; 3a - Che nel documento si faccia menzione del sopracitato Decreto e se ne spieghi il contenuto e la portata, a giustificazione della nuova decisione. Ragione di più perché il documento emani dal Sommo Pontefice, il solo che ha autorità d'interpretare autenticamente un atto del Suo Predecessore, ed emesso *approbando Concilio*; [...] 5a - [...] Purtroppo non riuscirà senza meraviglia che in diversi tempi si applichino principi diversi”. Rossi, Votum “De traditione instrumentorum in Sacr. Ordinis. Administrando” (3 May 1944), in ADFF, S.O., D.O. 1947, n. 1, fasc. 2, ff. 91-102.

137 “Quaestio, num de essentia trium diaconatus, presbyteratus, episcopatus ordinationum aliquod documentum pontificium sit conficiendum, non est amplius discutienda, cum Sanctus Pater in audientia d.d. 4 maii 1944 tale documentum praeparare iusserit”. Typewritten Hürth “Annotationes ad Schema, quibus quaedam puncta explicetur vel de iis ratio reddatur” (8 May 1945), in ADFF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 57-71; Ponzona S.O., in ADFF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 92-9.

In his first scheme, Hürth dealt very openly with the discrepancy and put the following words into the Pope's mouth:

This declaration and order of ours differs in some points from the Decree for the Armenians of Eugene IV, which he issued and promulgated under the approval of the Holy Council of Florence.¹³⁸

Pius XII himself gave direction to the dispute: The Decree for the Armenians was to be addressed, but "briefly and far from any polemical form". According to the Pope, it should be made clear "that there is no contradiction between the new *Constitution* and this *Decree*".¹³⁹ In addition, "theologians should be given guidance on how to resolve the apparent antinomy".¹⁴⁰ Luigi Traglia (1895-1977)¹⁴¹ criticised this point in the discussion on the "Schema reformatum":

On the one hand, the Decree for the Armenians is praised, on the other, it is abolished. This contradiction should be mitigated to a certain extent. To this the Relator replied: The orthodoxy of the Decree is defended, and it is argued that Eugene IV was able to order it in this way. On the other hand, it is taught that the Pope can also decide otherwise for serious reasons. The reasons for his actual decision are also explained.¹⁴²

138 "Haec Nostra declaratio et dispositio in aliquibus discrepat ab Eugenii IV pro Armenis decreto, quod sacro approbante concilio Florentino edidit et promulgavit". Typescript Hürth, "Schema 'Constitutionis Apostolicae' (2 Schemate)", in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 47-56; Ponzona S.O., in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 86-91.

139 "Desiderat S. Pontifex, ut quaedam dicantur de *Decreto pro Armenis*, breviter et absque forma polemica, ut clare innotescat non esse oppositionem inter novam *Constitutionem* ac illud *Decretum*, et ut detur theologis directio quaedam ad solvendas difficultates. Viam autem solutionis iam indicatam fuisse a Patre Hürth, scilicet ex indole speciali Sacramenti Ordinis, quae natura sua non tantum sit collatio gratiae, sed etiam collatio potestatis". Ponzona "Schema reformatum Constitutionis Apostolicae. De sacris Ordinibus" (Maggio 1946), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 185-205.

140 "Si parli del Decreto di Eugenio IV per dare l'indirizzo ai teologi come risolvere l'apparente antinomia". Appunto S.O. (Feria IV, die 9 januarii 1946; Feria V, die 10 januarii 1946), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 12-13.

141 Luigi Traglia: 1917 Priest, 1919-36 Lecturer Urbaniana, 1927-30 Collaborator Congregation for Seminaries and Universities and Propaganda Fide, 1930 Assessor and Subpromotor Fidei Propaganda Fide, 1932 Papal House Prelate, 1936 Auditor Roman Rota, 1936 Titular Archbishop and Vice-Regent of the Diocese of Rome, 1951 Papal Assistant to the Throne, 1953 President of the Special Committee for the Marian Year 1953-4, 1959 President of the Commission for the Roman Diocesan Synod 1960, 1960 Cardinal, 1965 Cardinal Vicar of Rome, 1974 Dean of the College of Cardinals. Cf. Bräuer, *Handbuch*, 358-9.

142 "Ex una parte decretum pro Armenis extollitur: ex altera parte derogatur. Fiat quaedam mitigatio huius contradictionis. Nota relatoris: Defenditur orthodoxia decreti et Eugenium ita disponere potuisse. Ex altera parte docetur Papam ob graves rationes etiam aliter disponere posse. Et rationes, cur reapse faciat, adduntur". Appunto S.O.

Francesco Morano even insisted that the new papal constitution could in no way be brought into line with the Decree for the Armenians, which is why the Cardinals absolutely had to be sent the text before a final vote.¹⁴³ This way, no one could say that they did not know what they were doing. And again, Cardinal Rossi spoke at length:

The Holy Father had deservedly ordered that mention be made of the *Decretum pro Armenis*, and it is acknowledged that it was made. But as for reconciling the Decree of that time with the Constitution of today, it seems to me that it has not been clarified; it seems, therefore, that the drafters of the scheme have found themselves in an embarrassment from which they have not been able to sufficiently free themselves.¹⁴⁴

In the “*Schema denuo reformatum*”, Hürth therefore deleted all elements

that require a theoretical and scientific examination of the papal decision: likewise, elements were removed that point to a further path of magisterial development or allude in this direction.¹⁴⁵

In plain language: Hürth not only erased the controversy, but also any explicit reference to the Decree for the Armenians completely from the text. Even on the last few metres of the making of Apostolic Constitution, the opinion of the dogmatic theologian Lennerz was taken into account. He wrote in his book: “The real intention of the Council

“*Feria die 17 junii 1946 - Schema reformatum Constitutionis Apostolicae de Sacris Ordinibus*” (17 June 1946), in *ADDF*, S.O., D.O. 1947, n. 1, fasc. 3, f. 206.

143 “Insistit decretum novum cum decreto de Armenis componi non posse. Detur E. mis Cardinalibus textus Decreti pro Armenis ut videant”; *Appunto S.O. “Feria die 17 junii 1946 - Schema reformatum Constitutionis Apostolicae de Sacris Ordinibus*” (17 June 1946), in *ADDF*, S.O., D.O. 1947, n. 1, fasc. 3, f. 206.

144 “Del Decreto pro Armenis il S. Padre aveva meritamente disposto che se ne facesse menzione, e se n'è fatta, si riconosce. Ma quanto al nuovo di conciliare il Decreto d'allora con la Costituzione d'oggi, mi sembra [che] esso non si sia chiarito; sembra, quindi, che gli estensori dello schema si sono trovati in un imbarazzo [da cui] non sono riusciti sufficientemente a liberarsi”. Rossi, *Annotationes* (26 June 1946), in *ADDF*, S.O., D.O. 1947, n. 1, fasc. 3, ff. 213-17.

145 “Conformiter ad has normas expuncta sunt in Schemate priore omnia quae theoreticam atque scientificam Decisionis Pontificiae ferendae probationem exhibent; item, quae ulterioris evolutionis doctrinalis viam indicarunt vel insinuarunt; tandem ea, quae ad controversias solvendas et ad obiectiones praecavendas priori Schemati fuerunt inserta. Decreti pro Armenis in praesenti Schemate nulla explicita fit mentio; sed in nn. 1,5,7 huius novi Schematis afferuntur facta et principia, ex quibus responso ad difficultates, quae ex laudato Decreto peti queunt, facile erui potest”. Ponzana, *Schema denuo reformatum, Constitutio Apostolica “De sacris Ordinibus”*. *Votum R.P. Francisci Hürth, S.I., Consultoris*, in *ADDF*, S.O., D.O. 1947, n. 1, fasc. 4, f. 9.

[of Florence] can hardly be determined with certainty”.¹⁴⁶ And again there was heated debate and Cardinal Jorio warned

[...] that any hint of changing what has hitherto been done and observed by the Church, and in particular by the Holy See, be excluded. Such a principle, once admitted, and what is more in *sacramental matters*, would at least make a bad impression.¹⁴⁷

He may have hit the bull’s eye. Shortly before the publication of *Sacramentum ordinis*, Rossi once again expressed fundamental concerns. He raised the question of the substance of the sacraments, whether matter and form were both the substance and whether Christ instituted the sacraments “in specie” or “in genere”.¹⁴⁸ Hürth was extremely piqued by Rossi’s submissions:

Finally, it should be pointed out that the remarks made by His Eminence Cardinal Rossi have all already been subjected to examination and deliberation in the course of the discussion (which has been taking place in the Holy Office for almost six years) and the answers given now, and even more, have already been given in various previous votes.¹⁴⁹

Hürth expressed his tireless commitment to the drafting of *Sacramentum ordinis* to Ottaviani as follows:

I am not moved – I can assure you – by any personal motive; only by my love for the Church and the Holy Father, which will be to issue a document of the highest importance that will have a wider echo than the *Decretum pro Armenis* of Eugene IV.¹⁵⁰

¹⁴⁶ Lennerz, *Sacramento*, 1947, 138.

¹⁴⁷ “[...] che si escluda ogni accenno a cambiare ciò che finora è stato fatto e osservato dalla Chiesa, e in particolare dalla S. Sede. Un tale principio, una volta ammesso, e quel che più monta in *materia sacramentale*, farebbe per lo meno cattiva impressione”. Osservazioni del Card. Iorio, in ADDE, S.O., D.O. 1947, n. 1, fasc. 4, f. 176.

¹⁴⁸ Cf. Votum Tromp (12 November 1947), in ADDE, S.O., D.O. 1947, n. 1, fasc. 4, f. 250.

¹⁴⁹ “Tandem notare liceat: Observationes, ab Emo Card. Rossi nunc factas, in decursu discussionis (nunc per sex fere annos in S.O. habitae) omnes iam examini et deliberationi subiectas esse, et responsa nunc data, immo etiam ulteriora, in variis antecedentibus Votis iam haberi”. Hürth, “Observationes ad Epistolam Emi Card. Rossi ad Excum Assessorum S.O.”, in ADDE, S.O., D.O. 1947, n. 1, fasc. 4, ff. 243-8.

¹⁵⁰ “Non mi muove – posso assicurarlo – alcun motivo di carattere personale; solo l’amore alla Chiesa e al Santo Padre che sarà per emanare un documento di altissima importanza il quale avrà, forse più vasta eco del Decreto pro Armenis di Eugenio IV”. Hürth, “Observationes ad Epistolam Emi Card. Rossi ad Excum Assessorum S.O.” (12 November 1947), in ADDE, S.O., D.O. 1947, n. 1, fasc. 4, ff. 243-8.

The Decree for the Armenians was therefore the decisive topic of internal discussions in the Holy Office from the very beginning. Harmonising the new papal document with the old Decree seemed to be tantamount to squaring the circle. The relatively many revisions of *Sacramentum ordinis* are therefore largely due to the dispute over the Decree for the Armenians.

Pius XII: “everyone knows that the Church has the power to change and abrogate what she herself has established”

But how did Pius XII specifically deal with the doctrinally difficult legacy of the Decree for the Armenians in *Sacramentum ordinis*? Did he succeed in harmonising the two contradictory doctrinal statements? And finally, what was the magisterial quality of the Apostolic Constitution he promulgated? While the theological discussions and disputes surrounding the Decree for the Armenians were problematised surprisingly openly in the first schemes, the final text no longer even refers to the relevant section of the Decree for the Armenians, which had been the valid doctrine until then. There was not even a reference in a footnote. This is astonishing and speaks volumes. After all, new magisterial documents are usually not sparing with quotations from previous popes and councils: this is how continuity is created. But if Pius XII had done the same in this case, the break with the Decree for the Armenians and with over five hundred years of magisterial tradition would have been openly on the table. Instead, the previously valid doctrine was to fall into oblivion, it was to be insidiously erased from the collective memory, a kind of magisterial “*damnatio memoriae*”.¹⁵¹ Incidentally, Pius XII did cite the Decree for the Armenians, namely when he referred to the consistent practice of the laying on of hands in the Greek Church. Thus, the Decree for the Armenians suddenly became a pretended guarantor of continuity, although there was actually a break in the magisterium.

Since Pius XII, for all his rhetoric of continuity, was well aware of the problematic nature of the Decree for the Armenians, he, or rather his ghostwriters, added the following sentence:

If it was at one time necessary even for validity by the will and command of the Church, everyone knows that the Church has the power to change and abrogate what she herself has established.¹⁵²

¹⁵¹ Michael Seewald calls this “obliviscation”. Cf. Seewald, *Perspectives*, 58-65.

¹⁵² “Quod si ex Ecclesiae voluntate et praescripto eadem aliquando fuerit necessaria ad valorem quoque, omnes norunt Ecclesiam quod statuit etiam mutare et abrogare valere”. Pius XII, “*Sacramentum ordinis*” (30 November 1947), 6.

A statement from the mouth of a Pope that contains doctrinally explosive force. Had the doctrinal continuity that is otherwise repeated like a prayer wheel suddenly become obsolete? This unheard-of innovation, this surprising paean to discontinuity and the autocorrection of the magisterium in a papal document requires a closer examination of the files.

The relevant sentence first appeared in the vote of Hürth in 1944:

On the basis of these considerations, however, we should not deviate from the intention to issue a decree, because if the Church could establish something by her will, she can also abolish something by her present will.¹⁵³

This sentence was to guide the further preparatory work and opened the door to changing the doctrine. In Scheme I, Hürth – in a concession to Cardinal Rossi – discussed the Decree for the Armenians in detail. Here he formulated: “However, the Church can later revoke or change what it has decided to do”.¹⁵⁴ Although Hürth excluded the discussion about the Decree for the Armenians in Scheme II, he formulated it in even more detail there:

If that tradition was once ordered by the Latin Church for the valid performance of the sacrament, the Church also has the right to revoke or change this order. For if the Church can legitimately give such an order, she can also revoke or change it.¹⁵⁵

The “Schema reformatum” of the *Commissione speciale* also contains the sentence:

If, however, this tradition, once established by the Church in the Latin rite, is considered necessary for the valid administration of

153 “[...] at, ob hanc rationem ab intento decreto ferendo non est abstinendum; quia, si quid Ecclesia per suam voluntatem statuere potuit, ibidem per praesentem suam voluntatem etiam auferre valet”. Hürth, *Votum “De traditione instrumentorum in sacramento ordinis administrando”* (25 February 1944), no. 96, in *ADDF, S.O., D.O. 1947, n. 1, fasc. 2, f. 78*.

154 “Ecclesia vero, quod faciendum statuit, postea suppressere aut mutare potest”. Hürth, *Schema I, “Schema ‘Constitutionis Apostolicae’ (2 Schemate)”*, in *ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 47-56*; Ponzona *S.O.*, in *ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 48-54*.

155 “Si illa traditio ab Ecclesia in ritu latino olim disposita sit ad validam sacramenti administrationem, Ecclesiae etiam ius competere hanc dispositionem abrogandi vel in aliam mutandi. Si enim Ecclesia potest huiusmodi dispensationem legitime facere, etiam potest eam tollere vel mutare”. Hürth, *Schema II, “Schema ‘Constitutionis Apostolicae’ (2 Schemate)”*, in *ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 47-56*; Ponzona *S.O.*, in *ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 55-6*.

the sacrament, the Church also has the right to confirm, revoke or change this disposition. For what the Church can legitimately establish according to her law, she can also confirm, revoke or change according to her law.¹⁵⁶

In the “Schema denuo reformatum”, Hürth tightened up the sentence:

If it was ever necessary for validity according to the inculcated will of the Church, the Church can also amend or revoke provisions that it has made.¹⁵⁷

It was precisely this sentence that was to cause a furore in the further course of the preparatory work. Cardinal Rossi put his finger in the wound in November 1947:

This *presentation* [of the instruments] is therefore an ecclesiastical institution, *et Ecclesia quod statuit etiam mutare et abrogare valet*. Undoubtedly. But will such a formulation appear in a papal document? This Latin translation of the popular saying: *chi bol-la, sbolla?*¹⁵⁸

Hürth replied in his usual matter-of-fact manner:

The way in which this was expressed has already been changed by replacing the words “Ecclesia quod statuit etc.” with “omnes norunt Ecclesiam quod statuit... abrogare valere”.¹⁵⁹

156 “Quodsi illa traditio ab Ecclesia in ritu latino olim disposita censenda sit ad validam Sacramenti administrationem, Ecclesiae etiam ius competit hanc dispositionem confirmandi vel abrogandi vel in aliam mutandi. Quod enim Ecclesia suo iure potest legitime constituere, potest etiam suo iure confirmare vel tollere vel mutare”. Typewritten “Schema post sessiones 28 Jan. 4 Feb., 18 Feb. 1946 reformatum ut tradatur redactori textus italicis”, in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 118-25.

157 “Quod si vero ex Ecclesiae voluntate et dispositione haec aliquando fuit necessaria ad valorem, Ecclesia quod statuit etiam mutare et abrogare valet”. Ponzena, Schema denuo reformatum (22 January 1947), Constitutio Apostolica “De sacris Ordinibus”. Votum R.P. Francisci Hürth, S.I., Consultoris, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 9-14, 11v.

158 “Dunque questa *treditio* è d’istituzione ecclesiastica, *et Ecclesia quod statuit etiam mutare et abrogare valet*. Indubitato. Ma sarà al suo posto una simile frase in un documento pontificio? Questa traduzione latina del volgare *chi bol-la, sbolla?*” Hürth, “Observationes ad Epistolam Emi Card. Rossi ad Excum Assessorum S.O.” (12 November 1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 243-8 (emphasis in original).

159 “Modus loquendi iam modificatus est, ponendo loco ‘Ecclesia quod statuit etc.’ verba ‘omnes norunt Ecclesiam quod statuit... abrogare valere’”. Hürth, “Observationes ad Epistolam Emi Card. Rossi ad Excum Assessorum S.O.” (12 November 1947), in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 243-8.

The phrase “as all know” was therefore inserted in case anyone should have doubts as to whether there was a break in the doctrine. This was intended to insinuate that this doctrinal novelty had long been common practice, in the sense of: “As everyone knows”. This insertion further obscured the break in continuity. At the same time, Hürth completely rejected Rossi’s concerns:

This prevents the use of the saying “Chi bolla sbolla”; not one Pope teaches one way and the other another, but everyone proclaims the same *doctrine*.¹⁶⁰

No less exciting is the question of the doctrinal binding force of the *Sacramentum ordinis* of 1947. After all, Pius XII was by no means changing an external trifle, but the innermost core of a sacrament. It is therefore hardly surprising that when it was published, the question arose as to whether or not Pius XII had even endeavoured to make an infallible decision *ex cathedra* with his Apostolic Constitution. This was also discussed in the Holy Office beforehand: There was a consensus that “given the gravity and importance of the matter”, a “simple decree” was not sufficient; an “actum Pontificium” was needed.¹⁶¹ In his Annotations to his first two schemata, Hürth quoted a statement by Billot, which he regarded as “exaggerated”:

In practical terms, it [i.e. the controversy over matter and form] is completely *insoluble* as long as (which I hardly consider possible) no *real definitio ex cathedra* is issued by the highest authority of the Church.¹⁶²

160 “Sic praecavetur applicatio proverbii ‘Chi bolla sbolla!’; non unus Pontifex docet sic, et alius aliter; sed uterque eandem *doctrinam* profert”. Hürth to Ottaviani, 12.11.1947, in ADDF, S.O., D.O. 1947, n. 1, fasc. 4, ff. 251-2.

161 Typewritten Hürth “Annotationes ad Schema, quibus quaedam puncta explicetur vel de iis ratio reddatur” (8 May 1945), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 57-71; Ponzonza S.O., in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 92-9.

162 “R. mus P. Billot S.J. in suo de essentia ordinationis voto d.d. 11 febr. 1911 controversiam de materia et forma dicit in ordine speculativo indifferentem et nullius plane momenti; deinde vero pergit: ‘In ordine autem practico est penitus *insolubilis*, quamdiu saltem non intervenerit (quod vix futurum crediderim), *vera definitio ex cathedra, de suprema Ecclesiae auctoritate emanata*’” Typewritten Hürth “Annotationes ad Schema, quibus quaedam puncta explicetur vel de iis ratio reddatur” (8 May 1945), in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 57-71; Ponzonza S.O., in ADDF, S.O., D.O. 1947, n. 1, fasc. 3, ff. 92-9.

After its publication, however, even Augustin Bea SJ (1881-1968),¹⁶³ who as the Pope's confessor was usually well informed about internal curial processes, was uncertain and took the precaution of asking his confrere Hürth:

What valor dogmaticus [sc. dogmatic validity] does this Constitutio Apostolica have? Surely not that of a Definitio ex cathedra, despite the solemn formula in n[umero] 4? Or does it? In any case, Pius XII had the courage to make use of his summa potestas docendi et gubernandi.¹⁶⁴

And even the spin doctor Hürth found himself in serious difficulties explaining the attribution, about which he was also involved in a heated academic discussion with his confrere Brinkmann.¹⁶⁵ While Brinkmann put forward convincing arguments in favour of a papal ex-cathedra decision, Hürth vehemently argued against a cathedral decision, because Pius XII would then have changed a dogma through a dogma. Nevertheless, Hürth called the papal decision solemn, infallible and inerrant.¹⁶⁶ However, this would be a new category of the degree of bindingness of the magisterium. Although it claimed to be supremely binding – which was unavoidable with such a fundamental sacramental-theological question – Pius XII had not proclaimed it in a solemn act ex cathedra, which would have been consistent.

163 Augustin Bea SJ: 1912 Priest; 1913-14 Tertianship Exaeten; 1914-17 Superior of the Statio in Aachen; 1919-21 Prefect of studies Valkenburg; 1921-24 Provincial of the newly founded Upper German Province of the Jesuits based in Munich; 1924-28 Professor of biblical theology Gregorian University; 1930-49 Rector Pontifical Biblical Institute; 1931-59 Consultor Pontifical Biblical Commission; 1945-58 Confessor to Pius XII; 1949-59 Consultor Holy Office, 1950 Consultor Congregation for Rites; 1959 Cardinal; 1960 President of the Secretariat for Christian Unity; 1968 death in Rome. Cf. Schatz, *Geschichte*, 99.

164 "Welchen valor dogmaticus [sc. dogmatische Gültigkeit] hat diese Constitutio Apostolica? Doch wohl nicht den einer Definitio ex cathedra, trotz der feierlichen Formel in n[umero] 4? Oder doch? Auf jeden Fall hat Pius XII. Mut, von seiner summa potestas docendi et gubernandi Gebrauch zu machen". Bea to Hürth, 9 April 1948, in APUG 2721.8.1.

165 Cf. Brinkmann, "Äußerungen"; Brinkmann, "Kathedralentscheidung"; Brinkmann, "Konstitution"; Hürth to Brinkmann, 23 June 1948, in APUG 2687.1.18, ff. 111-12; Brinkmann to Hürth, 14 June 1948, in APUG 2687.1.18, ff. 113-14; Dauftratshofer, *Lehramt*, 375-87.

166 Dauftratshofer, *Lehramt*, 380-3; Hürth, "Costituzione", 623.

6 Conclusion: And the Papal Magisterium Is Changing After All...

Engine rooms are usually oily, sooty, dark halls on ships, trains or power stations where loudly roaring machines, aggregates, generators or transformers are installed to generate energy. From the outside, it is impossible to see what is going on inside, and the processes are difficult for the layman to understand. Only the energy produced is sent out through the circuit. An analogy with the writing workshop of the papal magisterium would be as follows: The laity only learn what the Pope teaches and is therefore to be believed by the faithful. The actual work, however, takes place in the engine room of the Magisterium, in the Holy Office. Only the Palazzo del Sant'Ufficio is visible from the outside. Inside, the Consultors and Cardinals meet "sub secreto Sancti Officii"¹⁶⁷ and draft magisterial documents in what are usually lengthy editing processes. Nothing is allowed to get out. Officially, only the Pope as the supreme teacher of the Church can issue a doctrine anyway. This facade must be maintained. The newly opened files of Pius XII make it possible for the first time to illuminate the previously dark engine room in the Holy Office, the writing workshop of the Apostolic Constitution *Sacramentum ordinis*.

The relatively long editorial period of three years, from 1944 to 1947 - Hürth even spoke of six years of discussion - illustrates the difficult subject matter. The decisive impetus came from the Congregation for the Sacraments, which, like the Sacred Penitentiary, would later no longer play a role. The drafting of the constitution then took the usual course of such papal documents: In the Holy Office, first the Consultors deliberated during their regular meetings on Monday (Feria II), then the Cardinals on Wednesday (Feria IV), after which the Assessor Ottaviani presented their results in the audience with Pius XII, usually on Thursday (Feria V). The main protagonist of the entire editorial work - alongside the Consultor Tromp and Cardinal Rossi - was Consultor Franz Hürth. The Jesuit was already involved in answering the relevant *dubia* in the 1930s, wrote the initial vote, then the decisive schemes and finally edited the final version. With his official commentary, he also had a decisive influence on the reception of the Pope's document. Hürth's collaboration on *Sacramentum ordinis* is an example for his more than 25 years of work in the Holy Office. He drafted a large number of encyclicals, wrote expertises for book censorship, was a member of the secret *Commissione speciale* for the reopening of the First Vatican Council between 1948 and 1951 and was significantly involved in the drafting of the dogma of the Assumption of the Blessed Virgin Mary from 1939 onwards.

¹⁶⁷ Cf. Hecht, "Schweigepflicht"; "Geheimhaltung".

In addition to this work in the Holy Office, he was also the sole author of the drafts of many allocutions of Pius XII, especially in matters of moral theology and canon law. Pope Pacelli placed his absolute trust in him. It was not for nothing that Hans Küng (1928-2021)¹⁶⁸ called Hürth a “holy ghostwriter”.¹⁶⁹ Ottaviani, now Cardinal Secretary of the Holy Office, even introduced Hürth to the new Pope John XXIII (1958-63)¹⁷⁰ as a “pillar of the Holy Office”.¹⁷¹ Pius XII himself was surprisingly often involved in the preparatory work for *Sacramentum ordinis*, not only by giving his approbation, but also by making concrete suggestions and setting the direction.

The Pope found himself in a doctrinal quandary on a highly important sacramental theological issue. It was clear to him that the laying on of hands had to be established as the only matter of the sacrament of Holy Orders, if only because of the many practical uncertainties in the presentation of the instruments. And after all, the Pope could rely on clear biblical evidence on this issue. He therefore had to seek a highly magisterial clarification of this theological issue, which in retrospect could not be disputed by anyone. However, tradition and the ecclesiastical magisterium of the last five hundred years caused him problems: although there were repeated discussions among theologians that questioned the decision of the Decree for the Armenians of 1439, the Council of Florence had clearly established the handing over of the instruments as a matter of doctrine.

Regardless of what magisterial bearing the Decree for the Armenians ultimately possesses, the discussions in the Holy Office make it clear that if the Church or the Pope deem it necessary to carry out a reform, there is no lack of more or less sound arguments and, if necessary, dodges to make this possible. The newly accessible files show that even if the discussions in the Holy Office were channelled in the direction that the Decree for the Armenians was hardly a definitive doctrine, the consistently heated discussions prove that there was an almost overpowering fear of a doctrinal change. It was precisely here that the “teaching authority” of the theologians

168 Hans Küng: 1948-55 studied philosophy and theology Gregoriana; 1954 ordained priest in Rome; 1957 Doctorate in theology in Paris; 1959-60 Research assistant at the University of Münster; since 1960 Professor of fundamental theology; 1963-80 Professor of dogmatics and ecumenical theology at the Faculty of Catholic Theology at the University of Tübingen; 1979 Withdrawal of ecclesiastical teaching licence; 1980-96 Professor of ecumenical theology. Cf. Bischof, “Küng”.

169 Cf. Küng, “Erinnerungen”, 98.

170 John XXIII (1958-63): 1881 born Angelo Giuseppe Roncalli in Sotto il Monte (Lombardy); 1904 Priest; 1925 Bishop; 1935-44 Apostolic Visitor Bulgaria, Apostolic Delegate for Greece and Turkey Istanbul; 1945-53 Apostolic Nuncio Paris; 1953-58 Patriarch of Venice; 1958 elected Pope. Cf. Alberigo, “Johannes XXIII.”.

171 Häring, *Erfahrung*, 59.

was important for the teaching authority of the pastors.¹⁷² If it had been the Dominican Thomas Aquinas in 1439, it was to be the Jesuit Hürth in 1947. The constitution *Sacramentum ordinis* and its genesis show something very clearly: The repeatedly propagated narrative of the continuity of Church teaching, which was deeply interwoven with the self-claim and self-image of the magisterium and thus anchored in the DNA of the Church, turns out time and again to be a fiction of continuity.

Whether the Decree for the Armenians was a dogma can hardly be resolved without the Acts of the Council of Florence. Hypothesis continues to stand against hypothesis here. Even among the Consultors, however, it was completely undisputed that Pius XII had changed the ordinary magisterium. The fact that the Decree for the Armenians was a “*veritas fidei catholicae*” and a dogma in the parlance of the nineteenth century speaks volumes historically. From both points of view, the Apostolic Constitution *Sacramentum ordinis* could unfold a hitherto underestimated potential for reform in the Catholic Church.¹⁷³

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¹⁷² Cf. Wolf, “Lehramt”, 240; Unterburger, *Lehramt*, 109-10.

¹⁷³ Cf. Dauftratshofer, *Lehramt*, 387-402, 557-68.

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