

# **On the Twenty-fifth Anniversary of the *Code of Canon Law*: Looking Back and Forward**

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## **Introduction**

Twenty-five years ago on 25 January 1983, Pope John Paul II by the Apostolic Constitution *Sacrae disciplinae leges* promulgated the *Code of Canon Law* for the Latin Church, and after about 10 months of *vacatio legis* it came into effect on 27 November 1983. While the work codification of 1917 Code began in 1904 got completed within 13 years, the 1983 Code was promulgated exactly 24 years after the announcement of the project and serious consultation, which is unprecedented in the life of the Church. Moreover, the 1983 Code was preceded by Vatican II, an Ecumenical Council, which became the primary legislative source for the new Code.

The celebration of the twenty-fifth anniversary of the Code that came into effect on 27 November 1983 (paradoxically on the 500<sup>th</sup> birth-anniversary of Martin Luther who burnt the *Corpus iuris canonici* as a sign of rebellion against the papal authority!), provides us an excellent opportunity to reflect and see to what extent the Code has served as a means to grow in communion with God and one another, and promote the mission of the Church in the modern world. This reflection does not stop at highlighting only the positive aspects of the Code, but it also points to areas needing legislative improvement or revision. However, the reflection is limited to some select areas.

The analogy given by Prof. Morrissey, of a new building is very useful in developing this study. We all know that there is a difference between a building seen only on architect's drawings and one that has been lived in for twenty-five years. Only after having lived in it, the

residents realize that some things that could have been done differently and they also begin to notice certain cracks appearing in the ceiling, leakages, minor defects that call for repairs. As time passes, the building becomes outdated, weak, damaged because of the environmental factors and therefore requires renovation or reconstruction. The same is true of the Code. After the Code came into effect, some repairs were made with the authentic interpretations, legislative documents and praxis of the Roman Curia. The strength and weakness of this Code became visible only after living with the Code.<sup>1</sup>

## **1. The Code as an Instrument of Ecclesial Renewal**

The *Code of Canon Law* is not merely a legal text but a true gift to the ecclesial community. Law in the Church is not an end in itself and it is always a means as everything else, at the service of *salus animarum* (salvation of souls). It aids the way to truth and grace in the hearts of people. As it has the character of a means and an instrument, the code has a modest role and does not demand exaggerated importance.<sup>2</sup> As Orsy says, "the purpose of canon law is to create in the community structures and norms that favour the freedom of the Spirit. Thus, canon law ought to be intimately connected with, and in the service of, the operation of the Spirit. When God is visiting his people; rules and regulations should "prepare the way of the Lord" (Is 40:3) and never impeded it."<sup>3</sup> According to the Pope, "the code is in no way intended as a substitute for faith, grace and the charisms in the life of the Church and of the faithful. On the contrary, its purpose is rather to create such an order in the ecclesial society that, while assigning the primacy to faith, grace and the charisms, it at the same time renders easier their organic development in the life both of the ecclesial society and of the individual persons who belong to it."<sup>4</sup> Let us now see to what extent the Code has been an instrument of ecclesial development and renewal.

### **1.1. The Code Accords to the Nature of the Church**

The 1983 code fully corresponds to the nature of the Church, especially as it is proposed by the teaching of Vatican II in general, and in a particular way by its ecclesiological teaching. It depicts the

true and genuine image of the Church as the People of God and authority as a service. As the Church is seen as a communion, the Code determines the relations which should exist between the particular Churches and the universal Church, and between collegiality and the primacy; the doctrine, moreover, according to which all the members of the People of God, in the way suited to each of them, participate in the threefold office of Christ: priestly, prophetic and kingly. With this teaching there is also linked that which concerns the duties and rights of the faithful, and particularly of the laity; and finally, the Church's commitment to ecumenism.<sup>5</sup> The law shares in the sacramental character of the Church and promotes communion, participation, collaboration and co-responsibility.

### **1.2 Theological Basis of the Code**

The 1917 code was too dependent on Roman law for its terminology, juridic technique, systematic ordering and therefore remained insensitive to the demands of theology. It used a Roman tripartite model of person, things and actions. In this model, the sacraments were placed among things! The notion and mission of ministry were almost ignored; authority prevailed over pastoral function.<sup>6</sup> On the contrary, the 1983 Code uses a theological framework. The Code has been structured according to the *tria munera* of Christ and the Church: the teaching, sanctifying and governing functions. Therefore unlike its predecessor, the 1983 Code operates on the principle of faith and inclines to the theological principle as much as the juridic ones. The ecclesiological foundation determines the nature of the norms or their systematization, while other juridical criteria order the content of canon law. This implies that the legislative order has its own autonomy and can possess its own ecclesiological content. Thus the Code bears the coessentiality of the theological aspect with the juridical.

### **1.3 The 'Last Document' of the Council**

The Pontifical Commission for the Revision of the Code of Canon Law was constituted before the commencement of Vatican II, but it postponed its work until the completion of the Council. The

canonical *aggiornamento* depended on the pastoral *aggiornamento*. Following the council, the code is able to express more clearly the doctrinal and disciplinary thrust of the council, implement its directives of the council and realize the fruits desired by it. Therefore, the council influences the code and not vice versa. In this way, the code may be considered as the final document of the council. During the ceremony of its promulgation, the Pope said: "Beside the book containing the documents of the Council, there is now the new Code of Canon Law [...]. But above all and before these two books must be placed, as the summit of transcendent eminence, the eternal Book of the Word of God, whose centre and heart is the Gospel."<sup>7</sup> The Pope reminds us of an ideal triangle: at the top, there is Sacred Scripture; on one side, the Acts of the Second Vatican Council and on the other, the new Code of Canon Law.

#### 1.4 Recognition of the Vox Populi

The Church as communion cannot de-emphasise the role of communication – speaking and listening with love. Consultation process in the Church obtains importance on the basis of the recognition of charisms. The establishment of participative bodies becomes necessary to enable the people manifest their diverse charisms for the building up of the Church. The 1983 code has made it impossible to think of a particular Church without consultative bodies. Consultation respects the role of the faithful, their co-responsibility and participation in the mission, and serves as a process of building a new way of interaction within the local Church. The *consensus fidelium* is at work in canon 127, which governs the consultation; even the bishops have the obligation not only to consult others in some matters but also to obtain their consent. Acting against a consensus requires an overriding reason. Again, the role of *consensus fidelium* is structured in canon law, although in a very limited way. Public opinion is presented in canon 212 in a nuanced fashion, respecting the needs and the good of the Church.

### **1.5 Recognition of Rights of the Faithful as Flowing from Baptism**

The Church is communion of faithful under the pastors. All have the fundamental and equal dignity by virtue of baptism though they differ with regard to their function. The equality and dignity is not a matter of concession by the authority, but it is the consequences of their baptism, which makes them members of the Church and equal sharers in the mission. It was stated in a lighter vein that the 1917 code had explicitly mentioned only one right of the faithful, that is, right to a Christian burial! In contrast, the 1983 code presents a charter of fundamental rights. In the 1983 code we find a shift with regard to the role of the lay faithful: a transition from passivity to activity; from non-recognition to recognition of their status and vocation in the Church; from the absence to their presence in various activities and ministries; from silence to voice; from exclusion to inclusion. Furthermore, the new code places women in enhanced juridic conditions.

### **1.6. "Juridical" Nature of the Code does not Exclude the "Pastoral"**

The code has tried to avoid the dichotomy between the law and the spirit, institution and charism. The anti-juridical mentality divorced pastoral from the juridical. The code incorporates the third guiding principle of the revision, that is, the code should be pastoral in character. Therefore it provides not only for justice but makes place for charity, temperance, humaneness, and moderation in the legislation itself as well in the application of the law. According to Pope John Paul II, the juridical and pastoral dimensions are united inseparably in the visible Church on earth, and they are in harmony because their goal is the same: salvation of souls. Any opposition between the pastoral and juridical dimensions is deceptive, and it is not that to be more pastoral, the law should become less juridical.<sup>8</sup>

### **1.7 The Other Highlights of the Code**

(a) The code is known for legislative moderation, and follows the principle: "Laws should not be multiplied without necessity." As a

result, it is slimmer than its predecessor.<sup>9</sup> (b) It places emphasis on the diocesan church, the authority of the diocesan bishop; respects the principle of collegiality and subsidiarity. The bishop is no more treated as vicar of the Pope, who often needs to request the Pope for faculties and permissions, rather he is presented as Vicar of Christ having all the ordinary power to govern his particular Church as its proper shepherd. (c) It has highlighted the teaching mission of the Church, and reorganized the means for carrying it out. Liturgical renewal finds a place in the sanctifying office and the sacramental life of the Church.

(d) The code calls for a closer consultation and greater accountability with regard to the temporal goods of the Church. (e) It recognizes, protects and promotes the autonomy of governance of Institutes of Consecrated Life. The religious communities are more in charge of their own lives, but their apostolic activities are more closely regulated. (f) The code has heightened the scope for the development of particular law at the level of dioceses and episcopal conferences. The “complementary legislation” is a promissory step toward a normative pluralism, more attentive to the developing life of the Church.

(g) The code has provided new impetus for new organizations. The law has become a living reality in the ecclesial consciousness of the faithful. New associations, forms of consecrated life, canon law faculties and societies, parish and diocesan structures, translations of the code in various languages, and so on, show the juridical and spiritual vitality of the life of the Church. (h) The code contains the *novus habitus mentis*, and thus shows a movement from *imperium* to *communio*; confessional conflict to ecumenical understanding; defensive isolation to an appreciation of other secular sciences and values; static mindset to a dynamic pastoral approach; language of commands to exhortations, recommendations and suave persuasion.

## **2. Towards a Revised Legislation: Quest for Improvement**

It is said that the biggest room in the world is a room for improvement. The saying applies to all human institutions. However the suggestions which people offer for improvement depends very

much on their perspectives. While making a critique of the code, it must be known that the Church's doctrine will always be richer than canon law, since not everything can be formulated in laws. The juridic style has its own requirements, its own vocabulary and limitations. The code has encountered criticism even for the long time it took for drafting. An Orthodox Bishop says: "If the code had been published shortly after Vatican II, undoubtedly it would have been regarded as an honest attempt to reflect on the canonical level that achievement of that council. Today it looks, at least partly, outdated. Several canonists who cannot be labelled as 'liberals', are already suggesting alterations."<sup>10</sup> In other words, the time gap between the Council and the Code was so much that some felt that the Code was partially outdated at the time of promulgation! Let us now look at some of the areas needing legislative refinement.

### **2.1. Ambiguity in the 'Cooperation' of the Laity in Governance**

Canon 129 is ambiguous with regard to the "cooperation" of the lay faithful in the power of governance. The code has amplified the scope of lay faithful to hold offices, some of which, in the ancient regime were reserved to clerics alone. However, the language of the canons is rather unpleasant and exhibits of some kind of prejudice against the laity. The code is overcautious and makes qualified statements: lay persons "can be admitted", "should be of good repute", "are capable of being employed", "can be invited to participate", "can supply for". Some of the offices, positions, and functions available to laity in the Code seem to be heavily conditioned, carefully qualified, institutionally circumscribed or hierarchically controlled.

### **2.2. Lack of Administrative Tribunals**

While the code contains provisions for administrative recourses, it does not have the mechanism to receive such recourses, and therefore often the matters remain at a "hierarchical" context. The administrative tribunals have not found a place in the 1983 code. The implementation of the local administrative tribunals seems to be a requirement if the legal system of the Church is to be complete. Paul

VI gave his support to the administration of the local administrative tribunals. However, he suggested that experiments be carried out before the new law was promulgated. Unfortunately, his insights went unheeded.

### **2.3. Empower the Synod of Bishops**

The synod of bishops was born during the Vatican II and has positive benefits and experiences. However, since it hardly serves as an instrument of effective episcopal collegiality, canon law should reconfigure the synod to serve as a more adequate expression of collegiality. Otherwise, the lack of a suitable embodiment of collegial authority in the synod represents a serious frustration of the council's doctrine of collegiality.<sup>11</sup> The Pope has acknowledged the need for reform of the synod: "Every General Assembly of the Synod of Bishops is a powerful ecclesial experience, even if some of its practical procedures can always be perfected."<sup>12</sup> The synod truly requires a more perfect form.

### **2.4. Enhance the Role of Episcopal Conferences**

The norms on episcopal conferences seem to have no enough room for legitimate autonomy to the episcopate and the law is not fully fulfilling its purpose. Faith in the episcopacy is really the first step towards an ongoing reform of episcopal conferences and toward a substantial renewal of petrine ministry. The Pope's first responsibility in the ministry is to "strengthening the episcopate". Just as "an excessive fear of error can lead to the silencing of the truth"<sup>13</sup> so also a surplus control of the actions of the conference by the Roman Curia could be crippling. According to Orsy, "even if a central office [Roman Curia] could detect doctrinal deviations in a hundred submissions, how can it know what is the best manner of proclaiming the gospel in a hundred different places?"<sup>14</sup> The universal law should acknowledge the right of bishops as flowing from ordination to assemble for the pastoral purpose. This is not an innovation since canon law recognizes the right of the faithful flowing from baptism to form associations.

## **2.5. Curtail the Number of Titular Bishops**

The general statistics of the Church shows an increase in the number of titular bishops. Even though the practical reasons for appointing them are easy to understand, the ecclesiological foundations of these developments do not seem to have been made clear. It is often asked, whether the Roman Curia really needs so many bishops. On the subject of the increasing number of auxiliary bishops, it may be pointed out that their function could also be performed by priests acting as episcopal vicars, which would have the evident advantage giving the succeeding diocesan bishop greater freedom to choose his closest pastoral co-workers.<sup>15</sup> Vatican II envisages episcopal ministry as the fact of being the head of a local Church (LG 23), which should make clear that the episcopacy is not an honorary appointment. "What is legally permissible is not necessarily always theologically correct. If the Church in the course of history made provision for titular bishops, the question may be raised whether this institution should grow in such a way that the numbers of diocesan bishops are relatively reduced to such an extent that the actual connection between a bishop and a concrete church is lost."<sup>16</sup>

## **2.6. Participation of the Local Church in the Selection of Bishops**

History reveals a variety of ways by which bishops have been chosen in the Church. Today, Pope directly appoints most bishops in the Latin Church. The early Popes said: "Let a bishop not be imposed upon the people whom they do not want" and "He who has to reside over all must be elected by all". Vatican II has affirmed the variety of traditions on the selection of bishops (LG 24). This variety should be given effect in the code and the participation of the local Church in the selection of bishops be augmented. The papal intervention is not for control but to protect the value of obtaining suitable candidates for episcopacy.<sup>17</sup> Just as the Synod of Bishops of the Eastern Churches has power to appoint bishops, the future Latin Code could make provision of a similar nature, with due regard for ecclesial structures of the Latin Church. The law should also make room for a speedy election to avoid politicking by conflict groups.

## **2.7 Sensitivity to Eucharistic Sharing for Spouses in Mixed Marriage**

Although the code shows considerable amount of sensitivity to sacramental sharing on specific occasions, such as when a person is in danger of death or can't approach one's own minister, it fails to address the situation of spouses in interchurch marriage, which is continuous and ongoing. The Catholic Church considers their marriage as a sacramental union, but it does not allow the non-Catholic spouse to receive the Holy Communion. In the light of this union it may be asked: "Is it fitting for the Roman Catholic Church to instruct them to divide for the reception of Eucharist after the Church received them together for the sacrament of marriage?"<sup>18</sup> As couples are prohibited from receiving the Eucharist together on a regular basis, their children are raised in a Church that does not accept one parent to the eucharistic table. Family is a domestic church but in the eucharistic context, it is a divided domestic Church! While we need to respect the integrity of the Eucharist as a sign of unity for the Church and should not take lightly the church law regarding reception of communion, we should take into account that "eucharistic sharing may at times be an appropriate sign of a growing, though still imperfect unity, and may under such circumstances confer a corresponding grace to move toward greater unity."<sup>19</sup> Therefore, appropriate laws may be made to accommodate these issues.

## **2.8. New Procedure for Marriage Nullity Cases**

The time has come to simplify the procedures for the nullity of marriage. The code has laudably provided for the use of an oral contentious procedure for some cases, except for cases of marriage nullity. This procedure may be allowed in certain type of marriage cases as it would have many advantages. The ex-officio appeal to the second instance could be done away with if for example the affirmative decision was given by a collegial tribunal and parties do not appeal. The third instance tribunal could be established at the local level to facilitate speedy resolution of the cases. The Instruction *Dignitas*

*connubii* has helped the tribunal in handling the cases as per the present code and the jurisprudence, but has not offered any solace by exterminating the cumbersome process and undue delays. It would appear some people have begun losing faith in the ecclesiastical tribunals. In 1986 the Pope advised the judges not to delay too long the examination of causes, as it would have adverse effect on the faithful seeking a response from the tribunal to their petition: "May none of the faithful take the excessive duration of the ecclesiastical court process as grounds for not presenting his own cause or for giving up on it and choosing solutions in clear contrast with catholic doctrine."<sup>20</sup>

### 3. The Code in the Indian Ecclesial Scenario

To a great extent the Church in India has received the 1983 code with much enthusiasm and made efforts to implement its provisions. In the post-Code era, the faithful have a fair awareness of their rights in the Church and their role in the administration thanks to the 'catechesis of law' imparted to them through seminars, diocesan bulletins, and meetings. The 1917 code was inaccessible to people on account of Latin language, which many could not understand, but the 1983 code is available in English, which many could read and grasp. Moreover it has been translated into vernacular languages, such as, Tamil.

There is another side, which reveals that in many dioceses the code has been a stranger or an unwelcome guest. Even after 25 years of its existence, some dioceses have not made an effort to implement diocesan and parish pastoral council; what is more disconcerting is the fact that even the mandatory bodies such as finance councils have not found a place in some parishes and dioceses. Leave alone the lay faithful, even priests have been kept at bay, as some dioceses lack a council of priests! The lack of trained personnel and at times, the lack of interest have prompted many dioceses to remain without its own tribunal. Lack of knowledge about the prescriptions of the law among many bishops and major superiors appears glaring. Love for the Church should also entail a love for the law or at least a lack of animosity

against it; the service of the Church entails respect for its laws. "If those in authority do not take the legislation seriously, then those under them cannot be expected to act otherwise."<sup>21</sup>

The code makes provision for lay faithful to hold some offices, such as, of chancellor, defender of the bond, seminary professors, notaries, advocates, promoter of justice, diocesan *economus* or finance administrator. In India, these offices are still the prerogative of clerics. If the laity has no required formation, how will they be competent to exercise these offices? It calls for the empowerment of the laity through formation programmes, a priority which has not been attended to. Just recall the Pope's exhortation Asian Bishops: "To this end, I join the Synod Fathers in proposing the establishment at the diocesan or national level of lay formation centres to prepare the laity for their missionary work as witnesses to Christ in Asia today."<sup>22</sup>

The code represents a sincere attempt at regulating the cultural adaptations of ecclesiastical institutions and therefore avoids specifics so as to reflect the initiatives of various particular Churches. It is up to the bishops in their dioceses or gathered in episcopal conferences to make the fullest use of the scope of action given by the code. The adaptation of law through complementary legislation helps in the process of a genuine incarnation of ecclesial structures and strengthening of the faith. Unfortunately, it appears that the episcopal conference has lagged behind in the use of the scope for legislative creativity assured by the code. In some cases, it has merely repeated the norms of the code, and issued 'complementary norms' - some of them do not complement but only repeat!

## Conclusion

The new code, in the past 25 years of existence has served as a norm of life and a pastoral rule, a school of justice, of discretion, and of charity in action. Above all, it has ably demonstrated itself as the law of a society that is visible but also supernatural; a society which is built up through the word and the sacrament, and whose objective is to lead people to salvation. The efficacy of the code does not solely

depend on the text or the provision it contains, but especially on the attitude of the faithful for whom the law is made, their spirit of faithful adhesion, and on the sincerity of the pastors, who have the task of implementing its directives, so that the code becomes a living reality that shapes the Christian life of the faithful in justice and charity.

The immediate task of making the code more effective belongs to the pastors and the faithful, and not to the legislator. In fact, the drive towards reform of laws requires the support of practical observance. The first concern is not what areas require a change in legislation, but what areas of law remain to be implemented and how to do it. The Pope, the supreme legislator is fully aware of the limitations of the code. Even before the code was a year old, he said: "Now, the law, even with its possible limitations and defects, is a choice already made by the legislator after careful reflection and which, therefore, demands full adherence. Now it is no longer a time for discussion, but for implementation."<sup>23</sup> And the Pope is right!

The new code is far from perfect, but it does not close the door to the future; it contains the seeds of a possible adaptation to the challenges which are manifest in society today and which await those of tomorrow. This is not least of its qualities.<sup>24</sup> However, the image of code depends upon those who are implementing the law. Now, a quarter of a century later, we all can agree that many areas of the code have been flexible enough to respond to the 'signs of the times' and current ecclesial thinking. The code has been and it will be an effective instrument by the help of which the Church will be able to perfect itself in the spirit of Vatican II and to show itself as a sacrament of salvation.

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## Endnotes

<sup>1</sup> F.G. Morrissey, "*Decimo anno...* On the Tenth Anniversary of the *Code of Canon Law*," in *Studia canonica*, 28(1994), pp. 100-101.

<sup>2</sup> R. J. Castillo Lara, "La place du droit canonique dans une vision conciliaire de l'Église," in *Studia canonica*, 24(1990), p. 18.

- <sup>3</sup> L. Orsy, "Episcopal Conferences and the Power of the Spirit," in *The Jurist*, 59 (1999), p. 411.
- <sup>4</sup> John Paul II, Apostolic Constitution, *Sacrae disciplinae leges*, 23 January 1984.
- <sup>5</sup> Ibid.
- <sup>6</sup> J. Gaudemet, "Theologie et droit canonique," in *Revue de droit canonique*, 39(1989), p. 13.
- <sup>7</sup> John Paul II, Address at the Ceremony of Official Presentation of the New Code of Canon Law, 2 February 1983, in *L'Osservatore Romano*, 14 February 1983, p. 7.
- <sup>8</sup> John Paul II, Allocution to the Roman Rota, 18 January 1990, no. 4.
- <sup>9</sup> The 1917 Code contained 2414 canons and the 1983 Code has 1752 canons. The canons on sanctions (crimes and punishments) are reduced from 220 to 88 canons; so also the treatment of the Roman curia from 24 canons to 2; the canons on the sacraments from 425 to 325; those on sacred times and places from 100 to 48 and the canons on judicial processes are cut down from 450 to 320 canons.
- <sup>10</sup> Bishop P. L'Huillier, "An Eastern Orthodox Viewpoint on the New Code of Canon Law," in *The Jurist*, 46(1986), p. 393.
- <sup>11</sup> J.A. Coriden, "The Synod of Bishops: Episcopal Collegiality Still Seeks Adequate Expression," in *The Jurist*, 64(2004), pp. 124-125.
- <sup>12</sup> John Paul II, Apostolic Exhortation, *Pastores gregis*, 16 October 2003, no. 58.
- <sup>13</sup> L.Orsy, "Episcopal Conferences and the Power of the Spirit," in *The Jurist*, 59 (1999), p. 418.
- <sup>14</sup> Ibid., p. 426.
- <sup>15</sup> A. Cattaneo, "The Bishop and the Local Church: Reflections from an Ecumenical/ Canon Law Point of View," in *The Jurist*, 66(2006), footnote 15, p. 327.
- <sup>16</sup> M. Wijlens, "Bishops and Their Relationship to a Local Church: A Canonical Perspective," in *The Jurist*, 66(2006), p. 241.
- <sup>17</sup> J.M. Huels and R.R. Gaillardetz, "The Selection of Bishops: Recovering the Traditions," in *The Jurist*, 59(1999), pp. 362-365.
- <sup>18</sup> L. Orsy, "Interchurch Marriages and the Reception of the Eucharist," in *America*, 175 (October 12, 1996), p. 2.
- <sup>19</sup> As cited in George Kilcourse, *Double Belonging: Interchurch Families and Christian Unity*, New York, Paulist, 1992, p. 6.
- <sup>20</sup> John Paul II, Allocution to the Roman Rota, 30 January 1986, p. 190.
- <sup>21</sup> F.G. Morrissey, "Decimo anno ... On the Tenth Anniversary of the *Code of Canon Law*," p. 118.
- <sup>22</sup> Pope John Paul II, Post-Synodal Apostolic Exhortation, *Ecclesia in Asia*, 6 November 1999, no. 45.
- <sup>23</sup> John Paul II, Allocution to the Roman Rota, 26 January 1984, no. 4.
- <sup>24</sup> R. Metz, "Les deux codifications du droit de l'Église," in *Vitam impendere vero: Studi in onore di Pio Ciprotti*, W. Schultz and G. Feliciani (eds), Vatican City, Libreria Editrice Vaticana, 1996, p. 207.