# An Order for Lay People: Penance and Penitents in the Thirteenth Century

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These true proponents of justice conferred together about whether they should live among people or go off to solitary places (1C 35; cf. Merlo 1991, p. 113).

The Franciscans were not the only ones to feel a strong dynamic pull between the attractions of eremetical solitude and the need to immerse themselves in city life by exercising pastoral ministry in contact with the urban crowds. The twofold soul of the Franciscan movement has its roots in the personality of Francis himself and in the nature of his original fraternity.

## 1. Facere poenitentiam

Who was Francis of Assisi when he began to do penance? He was a layman who changed his lifestyle, a penitent in the broad sense of the term since in the Gospel the word "penance" means conversion, *metanoia*. According to Thomas of Celano (1C 21), Julian of Speyer (LJS III, 15) and Jordan of Giano (ChrJG 1), Francis wore a hermit's habit. Given the importance of clothing in the Middle Ages, this was a clear sign of an internal and external change. Francis, then, was a lay penitent-hermit. There is really no need to insist on his withdrawal to isolated and remote places, nor the fact that he wrote a rule for hermitages (*Regula pro eremitoriis*).

Innovative currents within monasticism had recognized the desire for separation from the world and placed it within defined institutional settings (I am referring to Chartreuse, on the one hand, and the Camaldoli-Fonte Avellana axis, on the other). There, the cell was the physical space in which to experience the "desert" and develop an exclusive relationship with God. Francis lay well outside and beyond these currents of eremitic monasticism. The eremitisim of Francis and his Lesser Brothers was unstable and itinerant, a "mobile" sort of eremitism that in no way excluded contact with the world. Consider the well-known testimony of Jacques de Vitry:

During the day they go into the cities and villages giving themselves over to the active life in order to gain others; at night, however, they return to their hermitage or solitary places to devote themselves to contemplation (ed. Huygens 1960, pp. 75-76; cf. Merlo 1991, p. 120, n. 25).

Francis was aware of the strong eremitic background proper to central Italy. I have already mentioned the Camaldoli-Fonte Avellana axis, but it is obvious to mention as well those manifestations of eremitic-penitential life that later (1256) converged to form the Order of Hermits of St. Augustine. But Francis's firm determination to model himself "according to the pattern of the holy Gospel" was bound to move him in the direction of the apostolic life, in other words, a more active life among the people. To the question (mentioned here at the beginning) asked by the brothers upon returning from Rome after their meeting with Innocent III, Francis gave an answer:

Saint Francis did not put his trust in his own efforts, but with holy prayer coming before any decision, he chose not to live for himself alone, but for the one who died for all. For he knew that he was sent for this; to win for God souls which the devil was trying to snatch away (1C 35).

The choice of Francis and his fraternity is spelled out: they would go among the people to win souls. Besides, had not Innocent III given them the following mandate, albeit orally: "Go with the Lord, brothers, and as the Lord will see fit to inspire you, preach penance to all" (1C 33)?

What was meant by "preach penance"? At first, this was probably a kind of exhortation, basically moral in nature, a message of penance and conversion "hard to define in terms of particular topics, teachings or moral precepts" (Zafarana 1981, p. 207).

We do not know of any texts of Francis's sermons. But the *Letter to the Faithful* (which dates from the last years of the saint's life) can certainly be called a written sermon. It is addressed to "all Christians, religious, clergy and laity, men and women, and to all who live in the whole world." Typical

The punctuation creates problems. Most editions (for example, Esser

of a sermon to a lay audience is the *exemplum* of the dying man given at the end of the letter. It is a colorful description of a sick man on his deathbed, surrounded by relatives and friends. Seeing them weeping, he leaves all his goods to them. Then when the priest speaks to him, he finds himself in trouble:

"Do you want to receive penance for all your sins?" "I do," he responds. "Do you wish to make satisfaction, as far as you can, out of your wealth, for what you have done and the ways in which you have cheated and deceived people." "No," he responds. "Why not?" the priest asks. "Because I have placed everything in the hands of my relatives and friends." And the wretched man begins to lose his speech and so dies (2LtF 77-81).

To whom was Francis's message of penance addressed? Besides the address of the *Letter to the Faithful*, the following passage from the *Earlier Rule* can never be given too much attention:

All of us lesser brothers, useless servants, humbly ask and beg those who wish to serve the Lord God within the holy Catholic and Apostolic Church and all the following orders: priests, deacons, subdeacons, acolytes, exorcists, lectors, porters, and all clerics, all religious men and women, all penitents and youths, the poor and the needy, kings and princes, workers and farmers, servants and masters, all virgins, continent and married women, all lay people, men and women, all children, adolescents, young and old, the healthy and the sick, all the small and the great, all peoples, races, tribes, and tongues, all nations and all peoples everywhere on earth, who are and who will be to persevere in the true faith and in *penance* for otherwise no one will be saved (ER XXIII, 7; italics ours, here and elsewhere).<sup>2</sup>

This passage is completely indicative of Francis's openness to categories that, from the standpoint of Christian perfection, go well beyond the three established "orders" of monks, clergy and laity. In particular, it shows the important place occupied by "doing penance" in Francis's view of salvation. There is no need to insist on the meaning of "doing penance" in the full and rich sense of a lifestyle more in accord with the Gospel, expressed in a changed relationship to God, one's neighbor and oneself.

Francis was quite aware of the various categories of faithful, but he did not set up hierarchies among them (as exegetes and theologians had

<sup>1978,</sup> p. 114) have "to all Christian religious people, clergy and laity." This changes the meaning considerably from the text here proposed. On the question see Casagrande 1995, pp. 81-82.

<sup>&</sup>lt;sup>2</sup>For the emphasis of this passage cf. Le Goff 1973, and 1981, pp. 99-100.

done and were continuing to do). For him, society was "a set of categories with no hierarchies from a spiritual standpoint..., all of them being equal as far as salvation is concerned" (Le Goff 1973, p. 106). The only line separating those who will be saved from those who will not consists precisely and solely in "doing penance":

Blessed are those who die *in penance*, for they shall be in the kingdom of heaven. Woe to those who do not die *in penance*, for they shall be children of the devil whose works they do and they shall go into everlasting fire (ER XXI, 7-8).

We thank You for Your Son Himself will come again in the glory of His majesty to send into the eternal fire the wicked ones who have not done penance and have not known You and to say to all those who have known You, adored You and served You in penance: "Come, you blessed of my Father, receive the kingdom prepared for you from the beginning of the world" (ER XXIII, 4).

All those, however, who are not living *in penance*, who do not receive the Body and Blood of our Lord Jesus Christ, who practice vice and sin and walk after evil concupiscence and wicked desires, who do not observe what they have promised, and who serve the world with their bodies, the desires of the flesh, the cares and anxieties of this world, and the preoccupations of this life, [all these] are deceived by the devil whose children they are and whose works they do. They are blind because they do not see the true light, our Lord Jesus Christ (2LtF 63-66).

The so-called earlier version of the *Letter to the Faithful* (a shorter and more summary text than the more attested version) clearly divides *those who do penance* from *those who do not do penance*. And these are the titles of the two parts into which the text is divided.

Finally, if we consider the famous beginning of the *Testament*, "The Lord gave me, Brother Francis, thus to begin doing penance," we have clear proof that the concept of penance—in the gospel sense of the term—was fundamental and distinctive in Francis's view of the spiritual life and salvation.

From both versions of the *Letter to the Faithful* we can deduce the essence of penance in terms of behavior and attitudes: love of God, neighbor and enemies; mercy, charity, almsgiving; hatred of the body with its vices and sins; confession of sins, reception of the sacrament of the Eucharist, and respect for the priests who administer it; humility rather than ambition; not

serving the world through the desires of the flesh, cares, ambitions; fasting, abstinence from vices and from an excess of food and drink.

## 2. A Third Order Founded by Francis? An Analysis of the Sources

"Doing penance" describes Francis's experience and is the urgent and insistent appeal that he and his "lesser ones" must address to all the faithful without distinction. This being the case, nothing would be more obvious or natural than to attribute to him the "institution" of the Order, or at any rate an Order of Penance. Since a "third order" of penitents did develop and grow strong in the context of the Franciscan movement, this has raised the question of a more or less direct link between this institutional organism and Francis. Actually, the whole thirteenth century is marked not only by the presence of various penitential experiences (individual and collective), but also by explicit evidence of something called the "order of penitents." Consequently, a desire to trace all "Franciscan" historical realities back to the founder has led researchers to spend much energy trying to discern signs of a direct imprint left by Francis on that often indistinct reality.

But the question is complicated and debated. Even if we wanted to see the *Letter to the Faithful* (and especially its so-called earlier version) as a text addressed by Francis to *his* penitents, when we look carefully there is no clear proof of this. Our discussion in the previous paragraph shows that while the message of penance is indeed characteristic of Francis, it is addressed to all without distinction, to anyone who wishes to be saved. That cannot mean that all must necessarily become brothers or sisters of the Order of Penance in order to be saved. Rather, all must become penitents in that sense that all must change their lives, convert, and adopt a different attitude in accord with the behavior indicated by Francis in these texts. But to go from there to some kind of institutional form is no small leap!

If we cannot establish a direct link between Francis and the Order of Penance on the basis of his writings, we cannot deny that such a link was already suggested by some of the saint's first biographers in the 1230s and 1240s. We are referring to Julian of Speyer, the *Anonymous of Perugia* and the *Legend of the Three Companions*. While the date of Julian's writings is sufficiently certain, historical-philological criticism has led to important changes in the date of the other two texts. We can take that which is more accepted today (the 1240s).

When Thomas of Celano, in the *First Life*, speaks of the "the triple army of those being saved" (1C-37), he seems to be referring generically to the three "orders" of the people of God (monks, clergy, laity). It is to Julian

of Speyer (c. 1232-35) that we owe the interpretation of those words in an institutional sense. We find this in both his works, the rhymed *Divine Office* of St. Francis and the prose Life of St. Francis. In the former we read:

Three were the Orders he arrayed:
The Friars Minor he called the first;
And the Poor Ladies were next,
Becoming the middle order;
Then thirdly came the Penitents,
Comprising men and women (Off 18, III; cf. also 14, V).

In the *Life*, after presenting the first Order (the Friars Minor) and the second (the Poor Ladies), he describes the third as follows:

The Third, also an order of considerable perfection, is called the Order of Penitents, which profitably brings together clerics and laity, virgins, unmarried, and married persons of both sexes (LJS IV, 23; cf. also II, 14).

Strictly speaking, we must say that the tradition of the "three Orders," clearly expressed and articulated, goes back to Julian of Speyer. It is one of the things that shows the central position of this (previously underestimated) author in a logical and coherent description of the link between Francis's life and the institutional result of his heritage, shortly after his death.

Especially significant is a passage from the *Anonymous of Perugia*, a work that seems to go back to the years 1240-41. After speaking of the first and second Orders, the author writes:

Similarly, married men said: "We have wives who will not permit us to send them away. Teach us, therefore, the way that we can take more securely." The brothers founded an order for them, called the Order of Penitents, and had it approved by the Supreme Pontiff (AP 41).

Note that the attention of the *Anonymous of Pergia* is focused, not on the individual person of Francis, but on the collegiality of the brothers ("teach [pl]," "the brothers founded," "[they] had it approved"). The author wishes to indicate that the Order of Penitents is a collective work, a result of the brothers' apostolic and pastoral activity. Note also how approval by the Apostolic See is mentioned (Julian of Speyer did not mention this), even though it is not easy to see what specific approval is being referred to. Perhaps to the favor accorded the Penitents by Gregory IX?

This passage from the *Anonymous of Perugia* is supported by the following, from the so-called *Legend of the Three Companions* (which we are inclined to date around 1246):

Similarly, both married men and women given in marriage, unable to separate because of the law of matrimony, committed themselves to more severe penance in their own homes on the wholesome advice of the brothers. And thus, through blessed Francis, a perfect worshipper of the Holy Trinity, the Church of God was renewed in three orders, just as the earlier repair of the three churches foreshadowed. Each one of these orders was in its time approved by the Supreme Pontiff (L3C 60).

Here the differences with respect to the *Anonymous of Perugia* are obvious and not limited to the metaphorical sequence: Trinity, three churches, three Orders. There is also the reference to "women given in marriage" in addition to "married men," plus the use of terms that are clearly technical and canonical ("in their own homes," "more severe penance") and are found in contemporary exegetical works and documents. Although the three Orders are providentially attributed to Francis, there remains an emphasis on the collective role of the brothers in the spiritual guidance of the laity ("on the wholesome advice of the brothers").

We have seen the generic nature of the "triple army of those being saved" in Thomas of Celano's First Life. The Second Life and the Treatise on the Miracles (which speaks of "the two Orders" in a passage whose meaning is disputed: 3C 1) are silent about the three Orders. Thus, he is the only exception to the early statement of a direct link between Francis, the Friars Minor, and the Order of Penance made by Julian of Speyer and, with different nuances, by the Anonymous of Perugia and the Legend of the Three Companions. The later biographies (Bonaventure, Bernard of Besse, the Monastic Legend etc.), which contain longer or shorter references to the three Orders "promoted" by Francis, continue in the line of what is by now a solid tradition, when it is easy enough to imagine that a lay movement around the Friars Minor had become so strong that it could not be ignored.

On the other hand, this tradition has parallels in sources outside the Franciscan Order.

The reason for the three Orders "instituted" by Francis reappears, first of all, in Gregory IX. In his letter of 1238 to Agnes of Prague, he traces the Order of Friars Minor, the cloistered Sisters, and the *collegia* of Penitents back to Francis, with considerable discernment (Meersseman 1982, pp. 52-53; cf. Stewart 1991, p. 61). The statement may seem logical from the pontiff's viewpoint. On the one hand, he wanted to protect the Order of Penitents (for the many papal letters cf. Meersseman 1982, pp. 43-55) by deepening the interest already shown by Honorius III, in a political context of extreme tension between pope and emperor, which might increasingly lead to the formation of a faithful corps of laity. On the other hand, he

wanted to "normalize" religious ferments under the banner of an inspiring figure who was both holy and charismatic.

Most thirteenth-century chronicles maintain an uneasy silence. The exceptions are the *Life of Pope Gregory IX* (c. 1240), which makes the same pope the founder of the Order of Penitents while he was cardinal bishop of Ostia; the *Speculum bistoriale* (1244-1259) by the Dominican Vincent of Beauvais, who borrows from Julian of Speyer; and the *Chronicle* by a Franciscan from Erfurt (1261-66), who attributes to Gregory IX the confirmation of the Order founded by Francis: "This same Gregory IX confirmed two orders, which St. Francis had founded, the one of the Poor Consecrated Ladies, the other of the Penitents. The latter includes people of both sexes: clerics, married folk, virgins, and continent people." But by now we are in a tradition that goes back at least to Julian of Speyer. In the famous *Chronicle* of Salimbene de Adam of Parma we cannot "find a single sure piece of evidence for the existence of a Franciscan Order of Penitents" (Stanislao da Campagnola 1973).

Between silence, adaptations of the Franciscan tradition, and attributions to Gregory IX, the sources offer no one single answer to the question of the relationship between Francis and the Order of Penance/Third Order.

The question was forcefully raised by Meersseman, who stated:

It is certain that Francis and his companions propagated among the laity the state of voluntary penance, but this state existed and was canonically recognized since antiquity. St. Francis neither invented it nor had it approved by ecclesiastical authority. Moreover, no document portrays St. Francis or his companions as founders of any local fraternities of Penitents (Meersseman 1982, p. 7).

In other words, the Dominican scholar describes the phenomenon of the Penitents as an autonomous movement, a result of the revival of interest in voluntary penance. While this was certainly due to the example and preaching of Francis and his companions, it was potentially free to orient itself spiritually toward either of the two new mendicant Orders (Franciscans and Dominicans).

Various positions have been staked out since the historical discussion begun by Meersseman. Some scholars would allow that Francis may have been father of an Order of Penitents, thus ascribing to him a role as founder, promoter and spiritual animator (Rivi 1989, pp. 157-58; Stewart 1991, p. 215; D'Alatri 1993, p. 87). According to others, Francis did not actually found any Order of Penance, but that did not prevent devout

laypeople from beginning to gather spontaneously around Franciscan fraternities, thus beginning a relationship that was ultimately expressed in institutional terms (for a summary of this position cf. Rivi 1989, pp. 156-57).

Francis was unquestionably the great inspirer and propagator of penitent life. Whether or not he himself founded an Order of Penance, we can imagine that the idea of forming a lay-religious movement or order, whose inspiration was Franciscan and, thus, could be traced to Francis himself, developed very early among the saint's followers (as shown by some of the early-thirteenth-century legends) and among church leaders, the first being Pope Gregory IX (for the political and religious reasons mentioned). It is important to note that such an initiative or desire did not appear ex nihilo. There was already the canonically-recognized penitential state as well as, for example, the Third Order of the Humiliati, whose forma vitae called Propositum had been approved in 1201 by Innocent III.

Our interest, then, must shift from a search for some "foundation" by Francis, which is bound to end in speculation, to knowledge of the concrete historical reality of the Penitents, whether they were Franciscan or not. The existence of the Order of Penance in the thirteenth century is a given fact. It is an Order that developed over time by assuming increasingly distinct institutional and "regular" characteristics. Thus we must follow the process of normalization and the forms of presence of the Order of Penance as these can be seen in the documents.

## 3. From Memoriale propositi of 1221-28 to Supra montem of 1289

The so-called *Memorial propositi* was drawn up between 1221 and 1228, probably by a canonist, perhaps someone close to the Roman Curia (Hugolino of Ostia?). It is a legal document, the concrete expression of a firm desire to impose a lifestyle marked by precise norms. The text is addressed to penitents living in their own homes, for whom it lays down a long series of rules on their behavior in the world and within the fraternal group (Meersseman 1982, pp. 91-112). No connection between the Order of Penance and the new mendicant orders (Franciscans and Dominicans) can be seen in it, unlike for example the *Propositum* of 1221 for the Humiliati laity. The question of a connection is by no means a minor one. From *Memoriale* comes an autonomous order, not yet precisely oriented, much less "taken over" by religious orders.

However non-specific this first document, the 1289 Supra montem of Nicholas IV (the most recent edition is in Pásztor 1988, pp. 84-90) is clear and explicit. In his letter, the pope lays down a definite rule for the Penitents that incorporates the text of Memoriale—and not the hypothetical

rule of Caro, a Friar Minor and visitator of the Florentine Penitents in 1284, as Meersseman maintained (1982, pp. 128-38; cf. D'Alatri 1993, pp. 48-50). In it the pope (the first Franciscan to ascend the papal throne) settles the question in favor of the Franciscans. He declares that Francis was founder of the Order, and he decrees that the individual fraternities must have only Friars Minor as visitators, although they can still appeal to the diocesan bishop.

Supra montem comes at the end of a journey (not all of whose paths can be easily described) marked by relations between the Friars Minor and devout laypeople. What happened between the 1220s and the 1280s?

With *Memorial propositi* the canonical status of voluntary penitent had acquired the outlines of a definite "order," giving a single direction to the various fraternities, communities, and local groups of penitents. Certainly some of these groups had become close to the Friars Minor (which might allow the latter to speak of them as elements of a Franciscan "Third Order"), but this did not mean an exclusive relationship. It is plausible that with time bonds between the Penitents and Friars Minor became progressively stronger.

We have mentioned the late-thirteenth-century biographies (Bonaventure's Major Legend, the Monastic Legend, the Book of Praises of St. Francis by Bernard of Besse). On the one hand, these confirm a tradition in some ways already established; on the other, they come from a period when relationships between Friars Minor and laity were fully established. But other sources also indicate a desire to link the Order of Penance/Third Order to the Friars Minor. The Franciscan Vito of Cortona, in his biography of Umiliana dei Cerchi, written between 1246 and 1248, "incorporates" the Florentine beata into the Third Order. In 1247, Innocent IV tried to make the Friars Minor the official visitators for all Penitents in central Italy, the Kingdom of Sicily, and Lombardy (in other words, all of Italy). But the pope had to withdraw this provision for the Penitents in Lombardy (Meersseman 1982, pp. 57-59). In fact, it seems that the Penitents did not necessarily want to be linked to the Friars Minor; on the other hand, Memoriale did not link them to any of the new mendicant orders and established the right of appeal to the bishop. In an exhortation to the brothers of Penance (1263-77) by the Dominican Humbert of Romans (ibid., pp. 125-28), there is no sign of affiliation to the Franciscans or Dominicans at the very time when the Order was spreading considerably, especially in Italy. This is confirmed by the long list of places where it appears between 1221 and 1289 (Casagrande 1995, pp. 106-11).

But despite some resistance and desire for autonomy, they must have been growing closer. Margaret of Cortona is said to have received the

habit of the Third Order in 1275; in at least seven cities (Orvieto, Verona, Bologna, Città di Castello, Padua, Prato, Pisa) documentary sources attest to the bond between the Penitents and the Franciscan Order prior to Supra montem (ibid., pp. 102-03). Attention focused, for example, on the cases of Orvieto (1269) and Città di Castello (1280), where the Order was traced back to Francis himself, although this is expressed in different terms (ibid., p. 103). On the one hand, this indicates what is by now a widespread conviction ("imposed" in the 1230s and 1240s); on the other, it signifies some sort of established relationships between Penitents and Friars Minor.

But to show how complicated developments were in the years before *Supra montem* (they were by no means all the same), we should note that the Dominicans—perhaps even more strongly than the Franciscans—were also pressing for the establishment of a direct and stable relationship with "their" Penitents. In 1285, the master general of the Dominicans, Munio di Zamora, laid down a very strict rule for them. It stated that the Dominican Penitents were strictly subject to the master general and provincial priors of the Order, and that every fraternity must have a Dominican priest as master and director (Meersseman 1982, pp. 143-56).

In the confused and fluid situation of the lay penitential movement, Nicholas IV's Supra montem represented a decisive step forward. Memoriale, although couched in terms of a general rule and valid as such, had never been officially and solemnly approved by the pope. Its statement that the Order of Penance was instituted by Francis and its requirement that the visitators be Friars Minor expressed the relationship of the Penitents to the Franciscans, yet it left ample room for their autonomy, unlike the rule of Munio di Zamora, which decreed that the fraternities were strictly subject to the Dominican Order. The intervention by the Franciscan pope, requested by the Penitents themselves (D'Alatri 1993, pp. 54-55), was based on the fact that by now there existed a solid and mature relationship between Penitents and Friars Minor. But other, higher motives lay behind Supra montem. There was a desire to "reclaim fully the charismatic authority of the Church" (De Matteis 1991, p. 103), there was the tension caused by the Order's Franciscan organization, and there was a political and religious desire to quash all heretical, anti-ecclesiastical, and anti-papal currents (D'Alatri 1993, pp. 55-58). Perhaps it was also an implicit act of compliance with Canon 23 of the Second Council of Lyons (1274), which limited the indiscriminate proliferation of orders.

There was no lack of resistance. The same pontiff had to back up Supra montem with the letter Unigenitus Dei filius (1290), repeating that the fraternities must accept the Friars Minor as visitators (Meersseman 1982, pp. 76-66). It is a sign of the complex relationship among the various parties.

The Penitents (or at least some groups of them), were jealous of their autonomy, an autonomy that evidently went back to the beginning and referred to the diocesan ordinary; the bishops themselves were not adverse to intervening with regard to the Penitents; the Franciscans and Dominicans wanted to absorb organized communities of laypeople (the former, however, not without questions, such as those expressed in the 1260s by the anonymous compiler of the *Determinationes quaestionum*); finally, the papacy planned to circumscribe the potentially dangerous energy of the lay religious experiences within regulated and definite forms.

Among many possible examples, that of the Florentine penitents is worth considering (cf. Casagrande 1995, pp. 150ff). The division between "black" and "gray" Penitents seen there at the time of Supra montem does not come, as Meersseman thought, from conflicting Franciscan and Dominican influences, but from tension between obedience to the pope and the autonomy represented by Bishop Mozzi, who had described the Penitents who accepted Supra montem as apostates. The forced union that took place in 1296 thanks to Bishop Monaldeschi, who demanded acceptance of Supra montem and the spiritual guidance of the Friars Minor, nevertheless reveals a search for an autonomy "unwilling to yield to the pastoral guidance of the bishop or the will of the pope." But the bishop's action did not end the quarrel, and two years later Matthew of Acquasparta had to intervene (Benvenuti Papi 1990, pp. 42-47, citation on p. 45; documents in Meerseman 1982, pp. 241-75).

In fact, Supra montem definitively confirmed the institution of the Order of Penance/Franciscan Third Order, the first third order officially linked to a mendicant order. That of the Dominicans, Munio di Zamora's rule notwithstanding, would have to wait until 1405 for definitive papal approval.

## 4. The Success of Supra montem: the fortunes of an Order

The rule of Nicholas IV, perhaps because it was also quite flexible, became a kind of large umbrella under which a variety of forms of religious life found shelter and refuge, under the banner of a recognized canonical-legal-ecclesiastical status that was "regular" because it had a rule.

From one point of view Supra montem marked a point of arrival, but it was also a starting point. It was a point of arrival since, in the vast panorama of lay religious aspirations, it allowed laypeople as such to belong to a religious order as such that was recognized and approved. Safely

<sup>&</sup>lt;sup>3</sup>A work previously attributed to Bonaventure of Bagnoregio: ed. *Opera omnia*, VIII, pp. 368-69.

protected by Supra montem, they could live in their own homes, with their families, carry on their own work, dispose of their own goods. Safely protected by Supra montem, they could also live as hermits or in communities, which would later acquire a conventual dimension in the case of the men, or monastic in the case of the women. We can say that Supra montem eventually became a large receptacle capable of containing various possible ways of life and different religious orientations, guaranteeing them legitimacy and autonomy. For example, it is likely that the more irregular and independent phenomenon of voluntary reclusion, which (we cannot fail to mention) was widespread in central Italy (cf. Casagrande 1995, pp. 17-74), was "conquered" and "assimilated" by the growing success of the "third orders." Beyond the Alps, communities of Beguines and Beghards joined the ranks of the Third Order; the rule of Nicholas IV was professed by the socalled orthodox Clareni. In the fifteenth century, the Observant movement favored the Third Order John of Capestrano distinguished himself with his Defensorium) as a source of new energy, perhaps also a way of opposing the Conventuals and the Fraticelli.

If medieval people were religious (homo religiosus) and if the meaning of "religious" is extended to include anyone who, in the words of Henry Suso, "lives in a holy and religious manner, even though not professed" (Meersseman 1982, p. 308), then those who belonged to the Order of Penance/Third Order fit well into an area of reconciliation between religious life and life in the world. Penitents could even be rich without detracting from their religious choice. A parenthetical addition to the now usual description of the Franciscan Third Order in the Monastic Legend (c.1275) is significant:

The third [Order] is called that of Penitents which comprises both sexes, and is known to have been fittingly set up both for the married and single, for clerics and lay people, who do not yet presume to renounce their property (AFX, p. 699; italics ours).

By not imposing poverty and the renunciation of personal property as essential conditions for a true religious life, the Order of Penance opened a front for the laity to occupy actively. The Order, first given norms by *Memoriale*, then institutionalized and regularized by *Supra montem*, did not require drastic renunciations. Thus, it suited the new active and hardworking social classes, who were seeking ways to integrate the social and religious and not interested in forms of penance that involved separation from the world. By this time, documentary sources show a large group of penitents-tertiaries involved in the economic and work life of the commune (cf. Casagrande 1995, pp. 121-27). Yet this could not exclude more radical

forms of poverty, as we see in the case of individuals who were beatified or canonized (Margaret of Cortona, Peter Pettinaio of Siena, Angela of Foligno). These, however, were personal choices and not required by the rule.

The Order of Penance/Third Order was an ecclesiastical institution designed to accept laypeople, but we must remember that the canonicallegal status of these laypeople was not without ambiguities and problems. The canonical-legal picture of penitents as deduced from the Decretum Gratiani tends to be the same as that of ecclesiastics-clerics. The spread of the Order of Penance at first, then the Franciscan Third Order, had eventually made the question of the juridical status of these lavpeople more urgent. As lay people they were an anomaly, since, as many papal letters stated (Meersseman 1982, pp. 41-81), they were not bound to military service (both Memoriale and Supra montem established this, although it is formulated differently), nor to accept public office. Celestine V (1294) would be forced to grant the Penitents exemption from all fiscal obligations and the privilegium fori, that is, the right to be judged exclusively in ecclesiastical courts (ibid., p. 80). Apparently there was a move toward clericalization of the Order. Although it met with resistance, it was based on ecclesiastical privileges, an approved rule (Supra montem), and the opinion (consilia) of many legal experts (Bartolo of Sassoferrato, Baldo degli Ubaldi, and finally John of Capestrano). The juridic status of the Penitents-Tertiaries inevitably moved toward their being recognized as ecclesiastical persons. The Order was clericalized (Casagrande 1995, pp. 127-38).

Probably, the clericalization of the Order of Penitents alienated laypeople who wanted something more autonomous, especially men who could find more room for lay expression in the various confraternities. On the other hand, it showed what was needed if the Order was to develop in a truly "regular" direction. We have mentioned the communities that gradually arose between the fourteenth and fifteenth centuries, under the banner of Supra montem. In general, the picture shows considerable development of women's communities and monasteries (we know of the congregation in central Italy whose leading figure was Angelina of Montegiove). It is as if the possibilities offered by the Third Order were understood especially by women, who were able to find in it a way to lead a community-monastic life without enclosure (although later the nonobservance of enclosure would become a hot question), outside the traditional monastic channels (Benedictines, Poor Clares, Augustinians etc.). Ever since Memoriale the Order of Penance was clearly an Order open to women; thus we can say that it is no accident that women were able to find

within it an alternative place, especially between the fourteenth and fifteenth centuries.

The clericalized nature of the Penitents-Tertiaries very likely gave them an aura of credibility. For that reason, in various communes (Bologna, Ferrara, Florence, Imola, Perugia, Pisa, Prato, Siena) they ended up, especially between the end of the thirteenth and the end of the fourteenth century, holding public offices, especially administrative ones (which required assurance of the person's trustworthiness), despite privileges to the contrary.

But eventually their clericalized status, which exempted them from military service and certain fiscal obligations, upset the local powers that be. On the other hand, the secular clergy could not look too kindly on these layreligious who were related to the mendicant Orders (Franciscans, Dominicans, etc.). The result was a clear distinction between Tertiaries who lived in their own homes and Tertiaries who lived in communities (collegialiter). Only the latter could enjoy the rights and privileges associated with the First Order to which they were related; only they would continue to be considered "religious persons" (Fifth Lateran Council, 1512-17, constitution Dum intra mentis arcana). Thus the Franciscan Third Order was divided into two branches, secular and regular, from now on with separate histories.

Whether and in what sense Francis actually "instituted" the Order, or his Order of Penance/Third Order can remain an open question. But it is certain that the man from Assisi was the great spiritual inspiration of a vast call to penance; the Friars Minor and ecclesiastical authority may have done the rest. Nicholas IV's Supra montem clearly marked the definitive incorporation of the Penitents into the Franciscan family and in fact opened the door to a wealth of possible forms of religious life. From "seculars" in their own homes to "regulars" in community settings, it apparently proved to be a valid alternative for women.

#### Critical Note

Historical discussion and research regarding the penitential movement in general, and the Order of Penance/Franciscan Third Order in particular, have increased since the early 1960's. The appearance in 1961 of Meersseman's *Dossier* (2<sup>nd</sup> ed. 1981; cf. also Meersseman 1977), which clearly raised the question of the foundation of an Order of Penitents by Francis, without necessarily excluding the role of Francis and his companions in the renewed penitential movement, and which presented for the first time in a coherent manner a varied and articulate collection of documents (papal

letters, rules etc.) on the subject, has been seen as a dividing line from which to begin new investigations and reflections.

The rash of studies on the subject merits a separate bibliography. This can be found in the Bibliographia franciscana, starting with Vol. XIII (1964), in the section Relationes de Tertio ordine saeculari S. Francisci. A strong desire to rethink the entire question of the relationship between Francis and the Order of Penance/Third Order in a critical manner, as well as to learn more about the spread and individual aspects and developments of the penitential-tertiary phenomenon, came from a series of symposia and their proceedings: L'Ordine della penitenza 1973; I frati Penitenti di san Francesco 1977; Il movimento francescano 1980; Prime manifestazioni 1983; La Beata Angelina 1984; La "Supra montem" 1988. The proceedings of the symposium I frati Minori e il Terzo Ordine (Atti Todi 1985), important for relations between the Friars Minor and the laity, do not deal specifically with Francis and the Third Order; worth mentioning here is the piece by Desbonnets on the Letter to the Faithful. Amid the vast and almost uncontrollable sea of historical literature, sometimes written from a "tertiary" perspective and thus eager to establish a direct and immediate connection between the Penitents, the Order of Penance/Third Order and Francis (for example Andreozzi 1988 and 1993; Pazzelli 1982 and 1987; Tamassia, Testi e documenti 1991), it should be noted that there has been serious research on the entire penitential phenomenon, aimed not simply at solving that dilemma, but also at showing the variety and richness of the forms and manifestations of what we might call the "Penitential Middle Ages." Along this line, the following recent volumes should be mentioned: Rivi 1989, Benvenuti Papi 1990, Stewart 1991, D'Alatri 1993, Casagrande 1995 (largely repeated here), Sensi 1995, Le terziarie francesane 1996. Additional bibliography on the subject may be found in these same volumes.

Of course the specific question dealt with in this article, insofar as it is part of the section entitled "Franciscan Institutions," must be seen in the much broader context of the pastoral and apostolic activities of the Friars Minor with regard to the laity, and vice versa, the reactions and relationships of contemporary society with regard to the Friars Minor. See at least *Atti Assisi* 1981 and, in this series, the article by Antonio Rigon, "Friars Minor and Local Societies."

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