

Confraternities, *Memoria*, and Law in Late Medieval Italy¹

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To view medieval brotherhoods or confraternities as associations of laymen or clerics with predominantly religious functions² almost automatically leads to the conclusion that fraternity and *memoria* have much in common. This, at least, can be assumed if we focus on the religious or socio-religious dimension of the notion, marked in the following article by the Latin term *memoria*.³ Such an understanding of *memoria*, emphasizing its religious dimension, could be further elaborated. It is indeed possible to interpret all the efforts of Christians (or of adherents of other religions) to assure the salvation of their souls as care of *memoria* in a wider sense. In this case, not only prayer and liturgy, but also charitable works, as offered for example by brotherhoods, hospitals, or individual benefactors, could be included because all these pious activities point to the effect that the believer and god ‘commemorate’ each other.

This article, however, concentrates on a narrower idea of *memoria*, defined as performative commemoration that is realised liturgically and collectively. The focus lies especially on commemoration of the dead and prayers for the living. What this meant for confraternities in late medieval Italy is discussed in the first part of this article (I). Next, legal documents and juridical texts will be used to illustrate the role of *memoria* for the perception of confraternities in medieval society (II). The article concludes with some reflections concerning the concept of ‘confraternity’ in modern historical research (III).

I. Commemoration of the Dead and Prayers for the Living in Italian Confraternities.

The affinity between fraternity and *memoria* becomes apparent as soon as we notice the various similarities between ‘unions of prayer’ and institutionalised confraternities. Unions of prayer, or *fraternitates*, the dominant form of mutual liturgical commemoration in early medieval Europe,⁴ and institutionalised

1 This article is a slightly shortened and revised English version of my earlier work “Bruderschaften, *Memoria* und Recht im spätmittelalterlichen Italien.” I am especially grateful to Nadja Kadel (Berlin) and Dr. Caroline Welsh (Berlin) for helping me with the English translation.

2 See below, notes 36 and 38.

3 My notion of *memoria* is distinct, therefore, from the very broad concept proposed by Otto Gerhard Oexle in his introduction to *Memoria als Kultur*, 9–78, especially p. 39, where ‘*Memoria*’ includes “all possible aspects of life” (my translation).

4 An English example can be found in the *Liber vitae* of Durham; see now *The Durham “Liber vitae” and Its Context*.

confraternities have more in common than a mere terminological kinship based on their common reference to the Latin term *fraternitas*.⁵ The main reason for this is that ritual remembrance of persons encourages the formation of groups and is essential if such remembrance is to endure. In addition, many late medieval brotherhoods show that there are forms of transition between ‘union of prayer’ and ‘confraternity.’ A good example is the *compagnia* of Orsanmichele in Florence,⁶ where even a dead person could become a member, which is to say that the souls of the dead were allowed to benefit from the merits of the living in a similar manner to traditional unions of prayer since the early middle ages.

In other cases, brotherhoods sought fraternal bonds with ecclesiastical institutions or ‘fraternalised’ with each other.⁷ Furthermore, in the fifteenth century, despite the existence of a large number of local confraternities all over Europe, wider unions of prayer began to flourish again. These unions explicitly called themselves *fraternitas*, *Bruderschaft*, or *Gesellschaft*, for example the German *Ursulabruderschaften* (fraternities of St Ursula) or the *Rosenkranzbruderschaften* (rosary fraternities).⁸

The engagement of medieval confraternities with *memoria* has left behind traces in texts of a variety of origins and functions: in liturgical or paraliturgical documents, in confraternal statutes, in administrative materials, as well as in last wills where the testator entrusted the care of his remembrance to a confraternity. The classical types of late medieval commemorative writings—necrologies and anniversary books—were primarily prepared and used by clerical confraternities.⁹ However, lay brotherhoods also had to register the names of those they wanted to pray for. This could happen provisionally, as advised by a chapter in the statutes of

5 Oexle, “Liturgische *Memoria* und historische Erinnerung”; Meersseman, *Ordo fraternitatis*, especially 1:55 et seq. (Val d’Elsa). For *Chartulae fraternitatis* in Southern Italy see Ruggiero, *Principi, nobiltà e chiesa nel Mezzogiorno longobardo*, 156 et seq.; Frank, *Studien zu italienischen Memorialzeugnissen*, 79–82, 161, 170–177. New insights in the relationship between unions of prayer and confraternities in the Order of the Holy Spirit are offered by Rehberg, “*Nuntii - questuarii - falsarii*.”

6 Henderson, *Piety and Charity in Late Medieval Florence*, 198, referring to Orsanmichele’s statutes from 1333. See also Meersseman, *Ordo fraternitatis*, 1:112, No. 5 (Tarragona).

7 Meersseman, *Ordo fraternitatis*, 1:172, 176–177 (London). Prietzel, *Die Kalande im südlichen Niedersachsen*, 193. De Sandre Gasparini, “Confraternite e cura animarum nei primi decenni del Quattrocento,” especially p. 295.

8 Schnyder, *Die Ursulabruderschaften des Spätmittelalters*; Schnyder, “Unions de prières patronnées par Sainte Ursule en Allemagne du Sud à la fin du XVe s.”; Kliem, *Die spätmittelalterliche Frankfurter Rosenkranzbruderschaft*; Schmitt, “Apostolat mendiant et société.” However, some rosary fraternities did not form large networks but remained local phenomena, as in Altenburg (Thüringen); see, Meister, *Sie sollen bruderschaft halden*, 58–76.

9 Lemaître, “La Consorce du Clergé de Lodi”; Rigon, *Clero e città*, 16, 23, 88, 200–203.

the Disciplinati of S. Rufino in Assisi, but fully elaborated anniversary books of lay fraternities also exist.¹⁰

To review briefly the content and form of confraternal practices regarding *memoria*, one may consider the care of deceased brothers as consisting of three phases and a prologue at the bedside. Many statutes connect instructions for the support of sick brothers directly with descriptions of what should happen when the sick person died. In this case, the first phase was the preparation of the burial. This ritual took place with the attendance of—and if necessary at the cost of—the assembled confraternity. The collective appearance at funerals was an important moment, not only for the confraternity's self-identity, but also for its public position. After this, the short-term *memoria* followed as second phase. It consisted of a certain number of funeral masses, celebrated by clerical members or by external priests, and prayers for the soul of the deceased performed by the lay brothers and, if existing, the lay sisters. The third phase included the rituals of long-term remembrance: once or several times a year masses and *officia* were held for the community of all dead members; in special cases the brotherhood organized anniversary functions for selected individuals.

This course of action can be verified in many confraternal sources. As an example, one can refer to the statutes collected in Padua by Giuseppina De Sandre Gasparini.¹¹ Although these texts illustrate some possible variations, they also show the continuing importance of the topic of *memoria* within different types of brotherhoods. Confraternal services for the salvation of the soul were usually limited to members. If extended to persons not belonging to a confraternity, this was done mainly for benefactors, as a regulation from Padua shows. While this regulation derives from a comparatively late statute, written in 1502, the confraternity of S. Bartolomeo in Borgo San Sepolcro, analysed by James Banker, already ordered something comparable as early as 1269.¹² In addition, there were various brotherhoods who guaranteed some primary care of *memoria* to the external

10 S. Rufino (1347): “Et quod prior [fraternitatis] fieri faciat unam tabulam in qua scribantur omnia nomina dictorum nostrorum benefactorum, que tabula poni debeat super altare et dicta nomina semper in oratione legantur.” (Nicolini, “Statuto della fraternita dei disciplinati di S. Rufino,” 324). For Rome, see Pavan, “La confraternita del Salvatore.” The *Liber Anniversariorum* of this confraternity is edited in Egidi, *Necrologi*, 1:311–541.

11 De Sandre Gasparini, *Statuti di confraternite religiose di Padova nel medioevo*.

12 For Padua, see the confraternity of S. Giovanni Evangelista della Morte, 1502: “E perché nui siamo molto più obligati a quelli che hanno lassata ala fraternita nostra qualche chossa stabile dele sue cha ad altra persona, pertanto volemo che a tuti quelli siano facti li soi anniversarii, secondo la lor dispositione, et che tuti nui cum l’habito e disciplina siamo obligati de esser presenti et de pregar devotamente el Signor per le lor anime.” (De Sandre Gasparini, *Statuti*, 211, chap. 35). For Borgo San Sepolcro, see the confraternity of S. Bartolomeo, 1269: “Prior in ipsa congregatione adnuntiat et dicit mortuos Fraternitatis et alios qui non sunt de Fraternitate qui Fraternitati aliquid relinquerunt, dicendo [...] talis non erat de Fraternitate tamen reliquid Fraternitati tamen rogate Deum pro ipsius anima [...]” (Banker, *Death in the Community*, 189).

poor, fostering their own salvation with such an act of charity. The funds necessary for this charitable work came mostly from external contributions and endowments. A somewhat different case must be made for clerical confraternities, frequently engaged in commemoration of deceased outsiders. Many of them pursued this as a business, as a kind of professional service to be paid by the customers. The *Universitas cleri* of Viterbo or the *Consorzio del clero* of Lodi serve as examples of such conduct.¹³

Another form of liturgical commemoration performed by medieval brotherhoods is the suffrages for the living. These were prayers meant to improve both the physical and spiritual conditions of various social groups and persons. One of the most detailed listings of this kind may be found in a liturgical instruction (*Officium*) for performing the weekly ritual of flagellation, written for the Disciplinati of Viterbo around 1340 and still used in the fifteenth century. These prayers were dedicated to the Church, the reigning pope, the bishop of Viterbo, some of his deceased predecessors, all clergymen, virgins and widows, the whole of Christianity, the spiritual and physical welfare of all mankind, pilgrims, the diseased, seamen, heretics and schismatics, the Jews, Pagans and mortal sinners, the souls in purgatory, the Holy Land, peace in the world and in Viterbo, the works of all men and women, and the members of the Viterbo Disciplinati and similar confraternities everywhere, including their benefactors and even their adversaries.¹⁴

The Viterbo *Officium* also states explicitly how the interaction between liturgical commemoration and other religious activities of this Disciplinati group was conceived: “In order that God will listen to these our prayers, everybody shall pronounce five Lord’s Prayers and five Ave Marias and thereafter flagellate himself.”¹⁵ Thus, the text reveals how the confraternity wanted its religious functions to be interpreted: it considered itself to be an intermediary to God and believed that one of its essential functions was to contribute to the communication between earth and heaven. In the context of this act of communication, the rituals of *memoria* were an important, but not the only element: all the other religious practices and privileges of confraternities—for example indulgences, the support of the poor, and sometimes even the brothers’ common meal—either contributed directly to the salvation of the participant’s soul or at least reinforced the effects of the rituals of *memoria*. The reasons for the significant increase in demand for these agents of intermediation in the later Middle Ages cannot be discussed here. A productive approach for answering this question may be found in historical investigations focussing on the increasingly difficult relationship between clergy and laymen, on

13 Buzzi, *La “Margarita iurium cleri viterbiensis”*; Frank, *Bruderschaften*, 52–53, 164–165; Frank, “I canonici nell’associazione del clero di Viterbo”; Lemaître, *La Consorce*.

14 Sgrilli, *Testi viterbesi*, 15–17, 65–6, 75–6, 121–123.

15 Sgrilli, *Testi viterbesi*, 123: “Acciò ch(e) Dio exaudeca queste p(ri)arie, ciascheuno dica v P(at)ern(ost)ri et v Avema(r)ia co(n) disciplina” (thus in a fifteenth-century version of the *Officium*).

the development of lay piety, on social change in late medieval towns, and on the structure of local churches.

The close link between confraternities and *memoria* is a phenomenon not limited to Italy. It can be confirmed by examples in many other areas of Europe. A spectacular case is the English campaign of 1388, when the government attempted to clarify the property and legal status of all guilds and confraternities existing in the realm. Jan Gerchow's analysis of the guild returns sent to the royal court reveals that most of the groups claimed explicitly and almost stereotypically that the *memoria* of their members was one of their principal purposes.¹⁶ For Germany and France, the omnipresence of the confraternal commitment to *memoria* is documented in many case studies. We must therefore limit ourselves here to a few indications for further reading.¹⁷ The fact that a review article about historical research on brotherhoods, published in 1998,¹⁸ does not even mention the topic is striking *ex negativo* evidence that many modern historians consider liturgical commemoration as a self-evident aspect of confraternal life.

Summarizing this overview, we may state that confraternities normally helped both their own members and, less frequently, persons from outside to face sickness and death, offering them respectful burial, prayers, and masses for their souls. As a result, *memoria* forms a constant in the history of confraternities. This conclusion is confirmed by the fact that engagement with liturgical commemoration is not limited to Christian brotherhoods, but also evolved in other religious contexts, for example in late medieval and early modern Jewish confraternities.¹⁹ In claiming it a "constant," I do not want to imply that *memoria* was accomplished always and everywhere in the same way and with equal intensity. On the contrary, many differences can be noted, either as a result of an unequal distribution of material resources or because the views about the salutary power attributed to commemorative rituals changed over the time. Moreover, there were regional differences: although I risk being blamed for engaging in generalizations, I would maintain that late medieval Italy produced a much larger number of lay confraternities with strong religious ambitions than, for example, Germany. However, notwithstanding all regional and typological differences, it is certain that *memoria* was one of the core functions of late medieval and early modern confraternities, no matter how multifaceted and versatile these functions may have been in other respects.

16 Gerchow, "Gilds and Fourteenth-Century Bureaucracy."

17 Remling, *Bruderschaften in Franken*, 87, 211, 309 and *passim*; Prietzel, *Die Kalande im südlichen Niedersachsen*; Miltzer, *Quellen zur Geschichte der Kölner Laienbruderschaften*, in particular the editions of statutes in vols. 1 and 2; Meister, *Sie sollen bruderschaft halden*; Vincent, *Des charités bien ordonnées*. A general survey is de La Roncière, "Le confraternite in Europa fra trasformazioni sociali e mutamenti spirituali," esp. 334–335, 350, 358.

18 Pamato, "Le confraternite medievali."

19 Goldberg, *Les deux rives du Yabbok*, esp. 103–165; Horowitz, "Jewish Confraternal Piety in Sixteenth-Century Ferrara."

II. *Memoria* in Legal Documents and Juridical Texts.

Since this finding is not really surprising, there is no need, for the purpose of this survey, to refine the phenomenology of confraternal commemoration rituals by giving further details. Instead, I would like to investigate the functions attributed to these rituals by texts that deal with the legal status of confraternities. Because confraternal groups had to justify their position in society against local competitors as well as secular and ecclesiastical powers, we have to focus on three of the different overlapping legal spheres that form the discursive space of medieval law: local, territorial, and general (that is, canon and Roman law).

On the local level, negotiations between confraternities and authorities are reflected in confraternity statutes as well as in privileges or prohibitions imposed by local ecclesiastical or secular powers. If statutes are introduced or framed by an episcopal confirmation act, we have a formal element indicating that this text should be read as the result of a compromise between the bishop and the confraternity. This is the case, for example, in the regulation of the Roman confraternity *S. Salvatore ad Sancta Sanctorum*, written in 1331, as well as in some statutes from Bergamo dating from the thirteenth to the fourteenth centuries.²⁰ More detailed information has been preserved in Assisi: the Disciplinati of S. Stefano created an important statute in 1327, after having received a privilege from the local bishop in 1325. A few years later, further privileges were added by some functionaries of the Papal States. Each of these texts highlights the devotional engagement of the brotherhood, including *memoria*, as a particularly meritorious pious work.²¹

The awareness that *memoria* is a fundamental issue for the legitimization of confraternal groups can already be found in the writings of the Carolingian archbishop Hincmar of Rheims. Pierre Michaud-Quantin, Otto Gerhard Oexle and others have analysed Hincmar's impatient remarks concerning the *geldonias* and *confratrias* of the ninth century.²² These critical exhortations, a seminal text for generations of historians doing research on medieval brotherhoods, demonstrate that confraternities were often forced to seek justification because their position in society was always controversial. It is true that there are numerous official documents approving brotherhoods, but these can be contrasted with an equal

20 Pavan, "Gli statuti della società dei raccomandati del Salvatore ad Sancta Sanctorum (1331–1496)." Little, *Libertà, carità e fraternità*, 111 (Misericordia, 1265), 125 (San Michele, 1266/1272), 179 (Carcerati, 1320), 193 (Disciplinati, 1336).

21 For the edition of the statutes, see Menestò, "Statuto della fraternita dei disciplinati di S. Stefano." See also Frank, "La testimonianza più antica dello statuto dei disciplinati di S. Stefano di Assisi." A new edition of these statutes is in preparation in the context of the "progetto di S. Stefano", directed by Attilio Bartoli Langelì and Francesco Santucci. For the privileges see Meloni, "Per la storia delle confraternite disciplinate in Umbria nel sec. XIV"; I have used the reprint in *Saggi sull'Umbria medioevale*, Appendices, 2–6, 8–9.

22 *Capitula episcoporum*, 2. Teil, 43 (a. 852). Michaud-Quantin, *Universitas*, 182–184, 228. Oexle, "Gilden als soziale Gruppen in der Karolingerzeit." Oexle, "Coniuratio und Gilde im frühen Mittelalter."

number of critical statements, threats of prohibition, or formal interdictions of confraternal groups. Such restrictions were usually issued by bishops or communal governments and affected only the local level. However, quite often the attempt was made to implement them in ecclesiastical provinces or in secular territories,²³ as in the case of the English investigation of 1388 mentioned above. Let us consider one episode from the Papal States in a more detailed manner.

As we learn from a document in Assisi, on 23 August 1370 Pope Urban V ordered the abolishment of certain *secte et congregationes disciplinatorum* in the entire Papal States, sparing only those pious groups that practised private penitential rites and had masses celebrated. The pope justified his intervention by stating that the rites performed by those “wolves in sheep’s clothing,” namely the Disciplinati, were an insult to God, displeasing and harmful for the parishes. In order to prevent the danger of excommunication announced by the papal delegate, Bishop Petrus of Montefiascone, and in order to prepare an appeal to the pope, the flagellant fraternities of Assisi asked the advice of five lawyers from Perugia. The latter’s *consilia* and a copy of the pope’s mandate to Bishop Petrus have been conserved in a manuscript at the archive of the Disciplinati of S. Stefano in Assisi.²⁴

The jurists scrutinized the proceedings of the papal curia concentrating on questions of procedure and content. The procedural aspect was the main issue in the first *consilium*, written by the *legum doctor* Antonius Aceti, later known as the Signore of Fermo,²⁵ and is of minor importance for our discussion. With regard to the content, two other experts came to the conclusion that Assisi’s confraternities were not at all affected by the papal mandate for the simple reason that these pious associations were permitted by law because *realiter* they behaved well, worshipping god and observing the commandments of religion. It was not forbidden, after all—and the pope himself had admitted this—to congregate for non-public penitence and to celebrate divine service. In short, the threat of excommunication pronounced by the bishop of Montefiascone had no effect.²⁶

23 Examples of the fourteenth-fifteenth century: Michaud-Quantin, *Universitas*, 228–229; Schnyder, *Ursulabruderschaften*, 28; Hefele/Hergenröther, *Conciliengeschichte*, 8:51, 54; de La Roncière, “Le confraternite,” 373–375.

24 Assisi, Archivio Capitolare della Cattedrale di San Rufino, S. Stefano, ms. 80, fols. 1r–6r. The affair is mentioned by Meloni, *Per la storia*, 78–79, who followed an indication given by Ilarino da Milano, but does not identify the manuscript. See, Frank, *Bruderschaften*, 315. Urban V was generally an adversary of flagellants and Disciplinati brotherhoods. As early as 1 April 1370 he had asked the rector of the Duchy of Spoleto to hand over a *domus fraternitatis laicorum* to the chapter of S. Vincenzo in Bevagna (Umbria), driving out the owners of the *domus*, namely “personae certis temporibus publice se flagellantes, quarum statum papa merito suspectum habet.” The pope intended to extinguish these flagellants *de fidelium finibus*: Urban V, *Lettres communes*, vol. 9, n. 27043.

25 Esch, *Bonifaz IX.*, 148–149 and *passim*; Anon., “Aceti, Antonio.”

26 A *consilium* written by Franciscus de Coppolis de Perusio (for this family see Nicolini, article “Coppoli, Francesco”) states: “In fraternitatibus de quibus loquitur nulla mala fi-

“Realiter,” the survival of Assisi’s Disciplinati probably had more to do with the unfavourable political situation the Avignonese curia had to face in the Papal States in the 1370s than with the effectiveness of this juridical argumentation. However, the incident shows that experts in Roman and canon law considered the proof of the religious usefulness of the confraternities to be the most convincing argument for their justification. In a more generalized perspective, we may argue that at least in situations of tension and conflict, most texts dealing with confraternities shed an especially brilliant light on their religious functions. This is not only the case in academic juristic discussions, or when the legal doctrine is used in concrete law suits, but also in confraternity statutes and in privileges issued by local authorities. The reference to religious engagement opened a space where it seemed possible to create a consensus about the legitimacy of the confraternities’ existence. A closer reading of the *consilia* of the Perugian *doctores* shows that they mention two concrete religious functions: penitential practices and the organization of the divine service. Both activities are affiliated with *memoria*: on the one hand with prayers for the living, enforced through flagellation, and on the other with masses for the deceased.

But even the religious or *memoria* argument did not always give unquestionable results. As the pope’s image of the wolf in sheep’s clothing shows, one could always claim that this argument was false. However, despite the intrinsic openness of the legal discourse, it is worth investigating more attentively the writings of the jurisconsults. Although the major collections of Roman and canon law do not say much about confraternities, there are nevertheless some indications in the doctrine of the corporations (*universitates*, *collegia*), developed since the thirteenth century by canonists and legists. Even if they are only a minor concern in these debates, confraternities are mentioned several times as a possible version of *collegia causa religionis vel pietatis*. Important steps in the juridical construction of corporations were taken by Pope Innocent IV (1243–1254) in his role as a canonist. For the legists, it was Bartolus of Sassoferrato (1313–1357) who elaborated the definitive doctrine, claiming the general harmlessness and therefore the legitimacy of associations pursuing religious goals.²⁷ Bartolus’s statement was the authoritative reference for

unt, quin immo omnia bona, quia religio et divinus cultus realiter in eis observatur.” (Assisi, Archivio Capitolare, ms. 80, fol. 5r). An additional *consilium*, by Angelus magistri Francisci de Perusio, *legum doctor* (otherwise unknown) says: “[...] dictas fraternitates posse licite et in p[ro]p[ri]e congregari, dummodo sint fraternitates hominum [...] fidelium et devotorum D[omi]ni se congregantium realiter et effectualiter ad cultum divinum iuxta ritum sancte matris ecclesie pro possendo [sic] secrete agere penitencias peccatorum et pro faciendo divina officia ministrari, quia hoc permisit summus pontifex in fine dictarum litterarum.” (Assisi, Archivio Capitolare, ms. 80, fol. 5v). The two main *consilia*, by Antonius Aceti and Franciscus de Coppolis, are confirmed also by Angelus de Bernard(is) and Iulianus Bini (for the latter see <http://www.cirfid.unibo.it/irnerio/autori.php>).

27 Bartolus de Saxoferrato, *Commentaria*, vol. 6, on Dig. 47, 22: “Not(a) quod causa religionis collegia sunt permissa de iure communi (ut hic et lex I circa principium, supra: ‘Quod cuiuscumque universitatis nomine’ [Dig. 3, 4, 1]), et ibi no(ta) unde collegia

the positive judgement on fraternities pronounced by the five Perugian *doctores* mentioned above.

However, considering the long tradition of juristic and historical research on medieval corporation theory it is not necessary to enter into further details here. For our interests, a more specific issue discussed by medieval jurists deserves greater attention, since it is in this perspective that the problem of confraternities as bearers or media of *memoria* comes to the fore. This debate tried to resolve the question, raised by the growing success of the mendicant orders in the thirteenth century and later extended to confraternities and hospitals, whether all these orders, pious groups, and charitable institutions were supposed to pay a tax, the *quarta portio canonica*, to the local bishops and parish priests for the testamentary bequests they received. The juristic discussion about the *quarta* was analysed some time ago by Richard Trexler, who used Florence as his main example.²⁸ What was at risk here for the confraternities and hospitals was perhaps not their existence, but their legal status. The question was whether they were to be classified as a kind of *ecclesiastical* institution (*locus pius*) or as lay groups: in the first case they would have to pay the *quarta portio canonica*, whereas in the second case there would be no obligation to the bishop or the parish priest. The solution depended on the definition of *locus pius*.

Some jurists pleaded for an interpretation of the notion of *locus pius* that would be broad enough to include every association pursuing pious purposes and thereby allow for confraternities to be integrated into the ecclesiastical sphere and subject to episcopal supervision. Others tried to narrow down the semantic extension of *locus pius* in such a way that confraternities would normally be excluded. Construing the argument in this way, they postulated a space of religious action open to laymen without forcing them to enter the terrain of the church. Moreover, these basic positions influenced the answer to the question of whether confraternities, craft guilds, and semi-religious groups (e.g. Third Orders) were comparable to each other and could be analysed as subspecies under the general term of *universitas*, or whether they had to be distinguished. Whereas the advocates of the church were sceptical about the comparability of the different types of associations, their critics emphasized the similarity between them.²⁹ The reason is clear: if confraternities were like craft

disciplinatorum et ista collegia misericordie et similia que pietatem respiciunt sunt approbata de iure communi." See von Gierke, *Das deutsche Genossenschaftsrecht*, 3:192–501; Le Bras, "Confréries chrétiennes," esp. 343; Kantorowicz, *The King's Two Bodies*, 302–313; Michaud-Quantin, *Universitas*, 11–76, 201–231; Canning, "The Corporation in the Political Thought of the Italian Jurists"; Sydow, "Fragen zu Gilde"; Black, *Guilds and Civil Society*, 12–31, whose focus is the debate on craft guilds.

28 Trexler, "The Bishop's Portion."

29 For an episcopal position see the treatise written by the bishop and cardinal Francesco degli Atti, "Tractatus de canonica portione" (attributed to Lopus de Castellione and quoted under this name in Le Bras, *Confréries*, 346–347, while Trexler, "The Bishop's Portion," 354–355, identifies Francesco degli Atti as the author). For the polemic between Francesco and Gallitius de Ancona about the applicability of the notion of *locus pius* to

guilds, there was no justification for the bishop's demand for controlling rights nor an obligation to pay taxes to him.

The Perugian jurist Baldus de Ubaldis (1327–1400) was one of those critics, though a moderate one. He considered confraternities to be secular associations not subordinated to episcopal jurisdiction.³⁰ Accordingly, he disapproved of the taxation of bequests granted by testators to confraternities. Fraternal groups, he argued, were associations of *persons* and therefore the bequests they received were dedicated to personal use, which by law was exempt from taxation. On the other hand, he accepted the payment of the *quarta* if a bequest was intended for the poor of a specific hospital, even if it was managed by a confraternity.³¹

Baldus applied this general criterion, based on the distinction between a place (*locus*, e.g.: a hospital) and the people who operate or live at the locus, to concrete cases of legal dispute as well. In one of his *consilia* he argued that the confraternity of S. Vitale in the *contado* of Assisi, having been named heir by a testator from that town, was not a *collegium ecclesiasticum*. For this reason and because the heritage had been left *ex quadam devotione*, not *ad pias causas*, the confraternity did not owe the *quarta portio canonica* to the bishop. In another case, he categorized a hospital owned by a lay confraternity in Amelia (Umbria) as *locus profanus*. To justify this opinion, he emphasized the fact that the hospital had been founded more than a hundred years before without any participation from the local bishop and that the confraternity, the founder, and owner, was a *collegium* permitted by the law

confraternities and about the comparability of confraternities and craft guilds see Francesco degli Atti, "Tractatus," fol. 194rb, and Trexler, "The Bishop's Portion," 331–332. The similarity of these groups was also denied by Petrus de Ubaldis, "Tractatus de canonica portione episc(opali) et paroc(hiali)," esp. fol. 209vb, against the opinion of Petrus's brother Baldus: "quia collegium scholarium vel mercatorum non est deputatum ad pios usus, sicut collegium eorum de fraternitate." For Petrus see below, note 34.

30 Baldus de Ubaldis, *Commentaria*, Lyon 1585, on Cod. 1, 3, 48 (49), fol. 58rb. Trexler, "The Bishop's Portion," 332 and *passim*, quotes this passage from the edition Venice 1577. Against Francesco degli Atti, Baldus argues: "Sed respondeo, licet [disciplinati] habeant ista singularia [that is, *statuta firmata ab episcopo*], tamen secundum veram existentiam statu[s] eorum ipsi sunt praecise laici. Unde, sicut alias dixi de bechetis [semi-religious groups], isti habent accidentia sine subiecto. Praeterea ea ratione qua isti tenerentur ad quartam, tenerentur ad similia legis dioecesanae; cur non ad charitativum subsidium, quod adhuc magis est privilegium quam quarta legatorum? Sed istud est falsum, quia nullo iure cauetur, quod tenerentur ad charitativum subsidium." For the continuation, see Trexler, "The Bishop's Portion," 332, n. 143.

31 Baldus de Ubaldis, *Commentaria*, fol. 58va. In practice, Baldus did not always maintain this concession to the interests of the bishops. *Consilium* 28 in a supplementary edition to the five volumes of his *consilia* (Baldus de Ubaldis, *Consiliorum vol. sextum*, 1602) denies generally the obligation of lay (including confraternal) hospitals to pay the *quarta*. For a similar argument see Baldus de Ubaldis, *Consiliorum* (1589), vol. 4, No. 259, where he underlines, however, the importance of the local *consuetudo*.

because erected *causa pietatis*. However, he conceded that the bishop should have the right to control the appropriate use of the heritage.³²

For Baldus, too, the border that protected confraternities and their hospitals from the bishop's tax claims was marked by the limits of the notion of *locus pius*. The Perugian jurist combined the Roman legal formula *ad pias causas*, that is, the qualification of a testamentary bequest as dedicated "to pious purposes," with his characterization of the receiving institution as *locus pius*. However, he distinguished between bequests intended *ad pias causas* on the one hand and religious motivations in a broader sense (cf. above: *ex quadam devotione*) on the other. As far as hospitals were concerned, Baldus agreed to consider them as *loca pia* if the diocesan bishop had approved their foundation.³³ But this qualification did not automatically apply to the confraternity who eventually owned the hospital: the confraternity was to be regarded as *locus pius* only under the condition that it was not only approved by the bishop but also formally erected *auctoritate episcopi*.

Thus, Baldus de Ubaldis chose a middle course between the jurists pleading for the secular character of confraternities and the supporters of an extensive episcopal supervision. Baldus's brother, Petrus de Ubaldis (c. 1335–after 1400), was a representative of the latter and one of his critics. In his discussion of the *quarta portio canonica*, Petrus developed a typology of confraternities centred on three types of purposes:³⁴ brotherhoods could be founded *ad actum disciplinae*, which included flagellation and other rather ambitious religious practices like pilgrimage, vigils, fasting, or prayers; or *ad actus charitatis, misericordiae et pietatis*, that is, mutual help for the brothers, burial, suffrages and alms-giving; or *ad vitam contemplativam*, concentration on praying to God. In this list of religious functions the rituals of *memoria*, if understood in a narrower sense (burial, suffrages, alms for the dead), are not predominant; they do however play an important role. Petrus de Ubaldis concluded that, whenever a fraternal group implemented at least in part the functions enumerated above, this was a clear sign that the group not only constituted an authentic confraternity permitted by the law, but was also a *locus pius*. Thus, there was no reason why it should be exempt from the *quarta portio canonica*.

These few glances at the debate between Baldus de Ubaldis, Francesco degli Atti, Petrus de Ubaldis and others may suffice to demonstrate that the Middle Ages did not find a definite answer to the question of whether confraternities were *loca pia* or not. In other words, the classification of confraternities as part of the ecclesiastical or the secular sphere remained controversial. The role of *memoria* in this debate is twofold. On the one hand, the lawyers turned to *memoria* when they wanted to prove the ecclesiastical character of confraternities. Representatives of

32 Baldus de Ubaldis, *Consiliorum* (1589), vol. 2, No. 134; vol. 3, No. 5, and cf. vol. 5, No. 160, where he underlines, though in a different context, the lay character of the confraternity of S. Agostino in Foligno.

33 Baldus de Ubaldis, *Consiliorum* (1589), vol. 4, No. 167.

34 Petrus de Ubaldis, "Tractatus," fol. 208rb–210va, especially 208rb; at fol. 208vb–209ra, Petrus summarizes his brother's arguments.

this opinion, like Petrus de Ubaldis, mentioned suffrages and commemoration of the dead with more attention than the protagonists of the opposite view. On the other hand, *memoria* served as an argument to strengthen the general legitimacy of confraternities, claiming it was an important element of their religious mission. When that mission, as was the case in Assisi in the years after 1370, had to be defended against critics or authorities, the reference to the merits achieved by liturgical commemoration of the dead and prayers for the living were a good argument in favour of the confraternities' right to exist.

III. The Concept of 'Confraternity' in Modern Historical Research

The medieval debate about the legal position of confraternities invites a reconsideration of concepts of 'confraternity' as they are used by historians. If we were to extend the perspective from our selection of official interventions and juridical texts to literary and theological writings,³⁵ we would find that Italians of the later Middle Ages had a rather complex view of confraternities. They agreed that confraternities, at least lay confraternities, were in some way comparable to craft guilds and semi-religious groups, but this did not mean that these three types of association could not be distinguished in other respects. Yet, there was no consensus about the question of what position in society was to be attributed to confraternities, nor about the possibility of construing a definite legitimation of their right to exist. Contemporary observers, at least the more keen-witted ones, knew that this situation of indeterminacy, where society and confraternities were involved in a continuous process of negotiating limits and distinctions, was a problematic one and had to be treated *as a problem*.

Whatever way a modern concept of 'confraternity' may be designed in order to satisfy the needs of historical research, it should certainly not fall behind the level of complexity already reached by medieval reflection. Nevertheless, reviewing the many attempts to resolve the terminological problems raised by medieval confraternities, one gets the impression that many historians, especially German historians from the nineteenth century to the present day, work out definitions and typologies by putting together sets of fixed distinctive features. These features include the predominance of religious and charitable functions (e.g. *memoria*), dedication to a specific saint or cult, socio-religious rituals such as common meals or processions, voluntary membership, a certain continuity in time, autonomous creation of statutes, oaths of allegiance for new members, and so on. There would be nothing wrong with these criteria if they did not raise two difficulties. On the one hand every researcher, influenced by the specific character of his/her sources and examples, will choose his/her own features; as a result, we have to deal with a great variety of rival notions of 'confraternity.' On the other hand, and this is more important, all these attempts to classify and define confraternities implicitly treat their object as if it were a sociological or juridical 'essence,' a social entity

35 Some bibliographical indication in Frank, *Bruderschaften*, 14.

that may be duly described as soon as a correct set of characteristics has been found. This approach is misleading. It ignores that a 'correct' set of characteristics cannot exist because medieval confraternities had a problematic structure, were open to negotiations with society, had to justify themselves, and were challenged continuously by norms and ideals, for example by the ideal of 'brotherhood' with its manifold Christian significations.

Even more recent and serious proposals for defining confraternities or for developing a more general notion of fraternity-like social groups do not seem to be aware of these pitfalls. This is true not only for the work of Lukas Remling,³⁶ whose definition has become rather influential in German historiography on confraternities, but also for Otto Gerhard Oexle's concept of 'guild,' which is based mainly on the juridical effects of the oath of membership.³⁷

Probably the most recent attempt to sharpen the concept of (medieval) confraternity is my own, published in 2002 in a German monograph about brotherhoods in three Italian towns in the fourteenth and fifteenth centuries.³⁸ My point of departure is Remling's definition, but I try to benefit from the—already medieval—insight that confraternities are characterized by a structure of openness. Accordingly, we must take into account the fact that they referred to religious and social ideals that were also claimed by rival groups and institutions, and that their

36 Remling, *Bruderschaften in Franken*, 49–50, states that confraternities are “voluntary and stable associations dedicated primarily to religious, but often also to charitable activities, who exist within or besides the parish; membership does neither influence the single member's ecclesiastical or juridical status nor will it necessarily change his private life.” See the original German version: confraternities are “freiwillige, auf Dauer angelegte Personenvereinigungen mit primär religiösen, oft auch caritativen Aktivitäten, bestehend innerhalb oder neben der Pfarrei, wobei durch die Mitgliedschaft weder der kirchenrechtliche Status des einzelnen tangiert wird, noch sich im privaten Lebensbereich Veränderungen ergeben müssen”. In the same context, Remling calls confraternities “particular inner-ecclesiastical groups” (“innerkirchliche Sondergruppen”) because he has no doubt that they belong to the sphere of the church.

37 Oexle, “Liturgische *Memoria*”; Oexle, “Gilden”; Oexle, “Conjuratio”; Oexle, “Die Kaufmannsgilde von Tiel”; Oexle, “Kulturwissenschaftliche Reflexionen”; Oexle, “Gilde.”

38 Frank, *Bruderschaften*, 15: “Medieval confraternities were stable associations with both explicitly religious functions, often including works of charity, and implicitly social and economical functions. These functions were translated into actions of mostly ritual character, which affected both the inside of the confraternity and the external world. In doing so they generated a group identity which was influenced by the society's demand of control and the members' interests. Membership did not influence the single member's ecclesiastical or juridical status.” The German original: “Mittelalterliche Bruderschaften waren auf Dauer angelegte Personenvereinigungen mit explizit religiösen, darunter oft auch karitativen, implizit sozialen und wirtschaftlichen Funktionen. Die aus diesen Funktionen entwickelten, meist rituell vollzogenen, nach innen wie nach außen wirkenden Handlungsweisen erzeugten in Auseinandersetzung mit den Kontrollansprüchen der Gesellschaft und den Mitgliederinteressen eine Gruppenidentität. Die Mitgliedschaft berührte den kirchenrechtlichen Status des einzelnen nicht.”

existence was marked by a permanent, more or less productive tension with the rest of society. It makes no sense to presuppose a preexisting 'essence' of confraternities, because such an approach overlooks the fact that they were products of a continuous search for a credible balance between norm and practice, ideal and reality. Thus, the *memoria* performed by brotherhoods was more than an active contribution to the salvation of their members', benefactors', or clients' souls: it was an argument in a never ending struggle for group identity and recognition by other social actors.

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