

**Was a lease effective as a weapon of lordship?
The use of documents in the principality of Salerno
(10th-11th Century)**

by Yoshiya Nishimura

Reti Medievali Rivista, 18, 2 (2017)

<<http://www.retimedievali.it>>



**Sui patti agrari nell'Italia altomedievale
(secoli VIII-XI).
Tra forme documentarie e contesto sociale**

a cura di Vito Loré e Yoshiya Nishimura

Firenze University Press



Was a lease effective as a weapon of lordship? The use of documents in the principality of Salerno (10th-11th Century)*

by Yoshiya Nishimura

This paper attempts to examine the strategic use of the agrarian contracts by the landlords of the principality of Salerno in the tenth and eleventh centuries. The appearance and the structuralization of the lease would reflect the landlords' will both to strengthen control over tenants and to increase revenue from their estates, imposing new conditions different from customary practices, such as *terraticum*. Here the case of the church of San Massimo in Salerno is examined. The church failed in increasing their portion of rent in kind, whereas they were to some extent successful in urging their tenants to improve the productivity of their land by forceful use of written contracts.

Middle Ages; 10th-11th Century; principality of Salerno; agrarian contracts; landlords; customary practices; *terraticum*.

1. Introduction

It is well known that private charters such as leases in early medieval Italy are characterized by highly structured forms and fixed formulas. This formalism of the "private charters" tends to obscure the reality of Italian countryside and conceal the transformation of the economic climate and social structures that might have happened. *Vice versa*, the change of the forms and formulas

* This paper is a developed and elaborated version of a study carried out in the Deutsches Historisches Institut (DHI) in Rome in 2015-2016. I would like to express my gratitude to the DHI for accepting me as a visiting scholar and providing me with the assistance needed for the research. I am also grateful to Vito Loré for his insightful advice.

Abbreviations

CDC = *Codex Diplomaticus Cavensis*, vols. 1-8, ed. M. Morcaldi *et al.*, Milano, Napoli and Pisa 1873-1893; vols. 9-10, ed. S. Leone, G. Vitolo, Badia di Cava 1984-1990.

Galante = M. Galante, *La datazione dei documenti del Codex Diplomaticus Cavensis. Appendice: edizione degli inediti*, Salerno 1980.

of documents may express only change in the documentation culture of notaries¹.

However, the production of charters was not only the result of the mere writing of documents by notaries. The scribes elaborated the legal instruments through their day-to-day documentation practices, in order that the charters might correspond to the demands of various actors such as the *publicum* and landlords, who were concerned with estate management and socio-economic ties with peasants. In particular, landlords could, in certain cases, intervene in the choice, as well as in the elaboration, of documentary forms and terms, because charters could become, in certain circumstances, effective means both to strengthen social controls over tenants or to increase revenue from their lands².

In this paper, I will try to find any clues to overcome the barrier originating from the rigid formalism of charters, through an examination of the leases of the tenth and eleventh centuries preserved in the monastic archive of the Holy Trinity at Cava dei Tirreni³. Special attention will be given, on the one hand, to the characteristics of the leases in southern Italy under the Lombard traditions and, on the other hand, to the strategic use of these documents by landlords, especially by the church of San Massimo in Salerno. Then, the effects of such strategies will be evaluated, i.e. if, and to what extent, their aims concerning land management and control over tenants were achieved.

2. *Typology of the leases*

The first land lease preserved in the abbey of the Holy Trinity at Cava dei Tirreni dates from 913⁴. Apart from the leases on churches, houses and mills, the *Codex Cavensis* contains about 380 land leases from the early tenth to the year 1076, when the Lombard principality of Salerno was conquered by the Norman leader, Robert Guiscard⁵. The majority of such leases was written

¹ See e.g. Toubert, *Il medievista e il problema delle fonti*, pp. 14-16. The concern about this problem is shared by recent researchers on early medieval agrarian contracts. See Andreolli, *Contadini su terre di signori*; Ghignoli, Libellario nomine.

² Nishimura, *When a lease acquired its own name*, pp. 63-85.

³ CDC. The documents should be complemented by Galante, *La datazione dei documenti*; and Leone, *La fondazione del monastero di S. Sofia*, Appendice, pp. 64-65. The former revised the dating of documents and added some original texts, omitted by the editors of the *Codex Cavensis* in the nineteenth century, for some charters. On the archive material, see Vitolo, *L'archivio della badia della SS. Trinità*; Loré, *Monasteri, principi, aristocrazie*, pp. 7-11.

⁴ CDC I, n. 132. The archive of Cava possesses three charters of the second half of the ninth century which look like land leases, but are actually documents regarding credits: CDC I, nn. 56 (a. 859), 69, 73.

⁵ The leases were redacted in a pair of contracts as a rule, written with the necessary changes of person (see notes 17-18 below and the corresponding text), and some examples of both of them are preserved in the monastic archive. If we count all of these leases, some thirty in all, the number of the documents amounts to a little more than four hundred.

by the scribes of the Principality (Salerno, Nocera etc.)⁶; about 40 % of these leases are concerned with the church of San Massimo, founded by the prince Guaiferius I in c. 865 and these documents were passed to the abbey of Cava dei Tirreni at the end of the eleventh century when the church came under its jurisdiction⁷.

In the Salernitan area various types of agrarian contracts can be generally classified into three, with respect not to the forms but to the contents and the aims of the contracts: contract of *pastinatio*, *parzionaria* contract, and *traditio ad laborandum*⁸. The *pastinatio* contract was used to bring uncultivated or only partially cultivated land into production, such as hazel, chestnut, and in particular vine groves, and can be defined as *ad pastenandum* in the leases; the *parzionaria* contract, or the contract of *pastinatio in partem*, also belongs to the category of *pastinatio* contract in the broader sense, but it differs from the latter, for it sets out the division of the ownership of land, usually into halves between landowner and tenant, after a period of pastination. Different from these two types of leases, the *traditio ad laborandum* was intended to cultivate the existing land, often requiring improvement by the tenant also in increased production. Besides, it was used not only for viticulture or arboriculture but also for cereal growing⁹. If we look at the chronological changes in the proportion of these three types of leases, the pastination contracts were dominant until around the first quarter of the eleventh century, when the contracts *ad laborandum* began to increase in number and before long these would surpass the former. In contrast, the number of *parzionaria* contracts was much smaller, and after the 1020's it became rare¹⁰.

Here one point can be noted: the ambiguity of the categories. As Jean-Marie Martin underlines, the above-mentioned categorization of leases in the

⁶ Leases of Napoli: CDC II, n. 336; VI, n. 927; X, n. 38. Those of Amalfi: CDC II, n. 363; IV, n. 586; V, nn. 762, 763; IX, n. 69/V. n. 755.

⁷ On the church of San Massimo, see Ruggiero, *Principi, nobiltà e Chiesa*; Taviani-Carozzi, *La principauté lombarde de Salerne*, vol. 1, pp. 412-438; Loré, *La chiesa del principe*. On the *notarii* of the principality of Salerno and documents written by them, see Galante, *Il notaio e il documento notarile*; Salvati, *La caratterizzazione nocerina*; Cherubini, *I notai di Salerno*; Taviani-Carozzi, *Il notaio nel principato longobardo*; and in general, Magistrale, *Il documento notarile*.

⁸ Lizier, *Leconomia rurale*, pp. 80-86; Del Treppo, *Amalfi medioevale*, pp. 22-33; Martin, *I contratti agrari altomedievali*, pp. 8-11. See also Pivano, *Contratti agrari*, pp. 281-302.

⁹ For the viticulture, arboriculture and cereal growing in the early medieval principality of Salerno, see Di Muro, *Mezzogiorno longobardo*; Di Muro, *La vite e il vino*; La Manna, *I cereali*; Martin, *Le travail agricole*; Vitolo, *I prodotti della terra*; Vitolo, *Il castagno nell'economia della Campania*.

¹⁰ See the chronological graphs regarding the leases of San Massimo in Taviani-Carozzi, *La principauté lombarde de Salerne*, pp. 416, 418. See also the list of leases concerning the counts or the "private" churches of counts, including that of San Massimo in Loré, *Laristocrazia salernitana*, p. 95, note 137. *Parzionaria* contracts in *Codex Cavensis*: CDC I, nn. 159 (a. 936), 199, 204; II, nn. 224, 271, 287, 311, 373, 417, 430; III, nn. 453, 531; IV, nn. 594, 613, 621; V, nn. 711, 714, 824; IX, n. 27 (a. 1067). See also documents regarding *parzionaria* contracts, such as the charters of division of leased lands: CDC I, nn. 175, 195; II, nn. 230, 303, 379-380; IV, n. 656; V, nn. 722, 775, 780; VI, n. 925 (a. 1038) etc.

Mezzogiorno proposed by Augusto Lizier should be taken into account with a degree of nuance, because cultivated lands as well as uncultivated lands were often leased together at the same time¹¹. Furthermore we are often faced with difficulty in classifying to which type a contract would belong. In a perpetual contract of 1040, for example, Orsando and his nephew Pietro received «una clusuria de terra cum binea et arbustum» in *Arcelle* (east of Salerno) «ad tenendum et laborandum» from Alferio, abbot of the church of San Massimo and he promised to pay half of the wine and fruits (*poma*)¹². This looks like a contract *ad laborandum*: the rate of wine rent here, one half, is normal in this kind of lease drawn up in the principality of Salerno in our period¹³, whereas in the case of pastination contract the rent was in general lower (one third of wine or hazelnuts, for example)¹⁴ or it was even fully exempted for a certain period¹⁵. However, Orsando and Pietro were also required to pastinate vine and «arbustum de bitineo» (a shrub with vine) for twelve years: the setting of the period of pastination could be found normally in the contracts of *pastinatio*. The gradations found between the proper *pastinatio* contract and the *traditio ad laborandum* or straightforward lease of cultivated land probably reflect the extent to which the cultivation or pastination was in progress at the moment of drawing up the contract. It needs to be added that wood or marsh¹⁶ as well as arable land or «terra bacua», “empty” land, was ceded to cultivators for a fixed term in order to create grain-fields through *traditio ad laborandum*.

3. Some remarks on the forms of contracts

Here it is worth making some observations on the forms of agrarian contracts in early medieval southern Italy: double redaction of the same contract, social and economic conditions of the tenants with charters, formation or structuralization of documentary forms, and complementary clause(s) frequently inserted into the documents.

In the principality of Salerno various types of land leases were drawn up following the form of *memoratorium* or *breve*, applicable to various types of contract¹⁷. One of the characteristics of *memoratorium* lies in the fact that one

¹¹ Martin, *Città e campagna*, p. 307. See e.g. CDC III, n. 495; IV, nn. 595, 600; V, n. 740 etc.

¹² CDC VI, n. 960.

¹³ CDC I, nn. 140 (a. 923), 187, 190, 196; II, nn. 219, 228 (= Galante 6), 232, 238 (= Galante 8), 240, 246, 275, 281, 290, 293, 295 etc.

¹⁴ CDC III, n. 518; IV, nn. 566, 666, 692; V, n. 848 etc.

¹⁵ CDC I, n. 132; II, nn. 214/215, 234, 271, 313, 314, 325, 356, 358/360, 359, 393 etc.

¹⁶ *Traditiones ad laborandum* of wood or marsh for cultivation of grain: CDC I, n. 182; II, nn. 318, 324, 443; III, n. 467; IV, n. 701; V, nn. 726, 838; VI, n. 891; VIII, n. 1272.

¹⁷ This form of documents was diffused widely in the territories of the legal culture of the Lombard law in *Mezzogiorno* and it could be applied for various types of charters: besides agrarian contract, exchange or donation of land, lease of a church, marriage contract, division of property, dispute settlements and so on. On this see Magistrale, *Il documento notarile*, pp. 264-267.

of the parties concerned appears in the first person and is at the same time the addressee of the charter. In fact the text of the lease begins usually with a formula such as: «Memoratorium factum a me X [*name of one party, lessor or lessee*] eo quod ante subscriptis testes / ante bonorum hominibus dedit et tradidit mihi Y [*name of the other party*]...», followed, not always but usually, by the specification of the type of the contract, «ad pastenandum» or «ad laborandum», with the description of the holdings concerned. Then there follows the legal core of the contract, the formula of *guadia* (sometimes this was inserted towards the end of the text, before introducing the clause of *sanctio*). It concerns the handover of *guadia*, a legal pledge, and the designation of a *mediator*, a warrantor of the observance of obligation, by the opposite party (Y). In this way, the latter issued to the other party (X) the guarantee regarding the agreements or *convenientie* on his or her duties fixed in the text: «pro taliter per bonam convenientiam et sua bona volumptate guadia mihi X dedit, et mediator mihi posuit».

In brief, the *memoratorium* was written unilaterally at the request, and on behalf, of the receiver of the *guadia*. Moreover, it was redacted for each party. Let us give the example of the pastination contract of 983: Martino, abbot of San Massimo, who appears in the first person, leased «terra bacua», “empty” land, of *Agello* (close to Nocera, north west of Salerno) to Cicero; Martino required him to pastinate vines and shrubs («pastenare vites et arbores») and at the same time exempted him from rent during the term of the contract, i.e. for ten years; the abbot recognized his tenant the right to renew the contract on the condition that the latter would accept to pay 1/3 of the annual rent in wine; and through the handover of *guadia* Cicero was forced to pay a fine to Martino in the case of his breaking the contract. Fortunately, the Cava archive possesses also the other version of this contract: with regard to Cicero, who appears in the first person and as addressee of the document, the abbot Martino was required not only to keep his own obligation, such as *defensio*, but also to pay a fine in the case of failure to keep his promise by way of *guadia*; in addition he subscribed the document¹⁸. This is a clear sign that the contract was addressed to Cicero, his counterpart. Therefore, a pair of *memoratoria* that reported the reciprocal release of *guadie* between the parties was ordinarily redacted, one for the lessor and the other for the lessee.

The double redaction and bilaterality of *memoratorium* lead us to the sphere of *libelli*, typical agrarian contracts of northern and central Italy of the Lombard legal traditions in the early Middle Ages¹⁹. The agrarian contracts

¹⁸ CDC II, nn. 360, 358.

¹⁹ In fact a contract of *libellum* guarantees the rights to be protected and the obligations to be observed for both parties concerned: the lessee engages with the lessor to fulfill the dues he owes, the latter promises the former not to impose more than the amount of service or rent fixed in the text of *libelli*. On *libelli* see, among others, Toubert, *Les structures du Latium médiéval*, vol. 1, pp. 516-545; Feller, *Précaires et livelli*. See also Nicolaj, *Cultura e prassi di notai preirneriani*, pp. 40-57; Ghignoli, *Libellario nomine*; and Nishimura, *When a lease acquired its own name*.

with the form of *memoratorium* are, as *libelli*, bilateral contracts based on mutual agreements (*convenientia*)²⁰.

The other element that the leases of *memoratorium* type share with *libelli* is the variety of the socio-economic conditions of the tenants. In other words a lease with a non-cultivator could be drawn up in the same documentary form as that of lease with a cultivator. We can, however, identify without difficulty the former type of contract by its contents, the type of leased land, the rent and the title of the lessee²¹.

As to the cultivators who appeared as lessees of agrarian contracts, they were not always simple peasants who had neither land property nor auxiliary labour force. But actually, as Lizier noted²², some peasants could have recourse to servile or waged labour force for extraordinary or seasonal works as well as for ordinary works, as the expressions such as «lavorare et at laborandum dare»²³, or «licead illum (i.e. the tenant) et homines quem miserit tenere ad sue potestati terris»²⁴ indicate. There are also cases where a tenant owned one or several pieces of land adjacent to his holding land²⁵. Therefore it is fair to doubt if a part of lessee of the contracts where neither obligation of residence, nor their own properties adjacent to the leased lands, nor their recourse to servile labour force was mentioned in the text, would be small or medium proprietors, or else tenants who were able to make use of auxiliary force. In the principality of Salerno, especially in the territory of Salerno and that of Nocera, where the major part of leased lands in the Cava archive were located, we have much evidence for the fragmentation of land, the condition favourable for the existence of small and medium peasant-proprietors as well as that of land-holding tenants.

We turn now to the third point, the formation or structuralization of documentary forms. From a first superficial glance, the agrarian contracts of the *Longobardia minor* seem to have possessed highly structured forms of mem-

²⁰ See the brief comments by Martin, *I contratti agrari altomedievali*, p. 6.

²¹ For example, in 1002, Maio, the abbot of San Massimo, leased to Iaquinto *clericus* the lands spread over in the east part of the territory of Nocera for six years (CDC IV, n. 539). Through this *traditio ad laborandum* Iaquinto took responsibility for the management of the estate of San Massimo and he promised to share various types of rent and services: two-thirds of *terratica*, *areatica*, *servitia* and *excaticum*. See also CDC IV, n. 641. Iaquinto himself leased his own *beneficia* held from San Massimo to others with the permission of the abbot (CDC III, n. 495; IV, n. 573; V, n. 723 etc.).

²² Lizier, *L'economia rurale*, pp. 102-106. See also Vitolo, *I prodotti della terra*, pp. 174-175.

²³ CDC II, n. 247. See also CDC II nn. 275, 278, 321, 403; III, n. 467; IV, nn. 544 (a. 1032), 559, 581, 685; V, nn. 799, 843, 862; VI, nn. 891, 894, 904, 906, 918, 919, 924, 953, 963, 1006, 1007, 1027; VII, nn. 1127, 1199; VIII, nn. 1328, 1338.

²⁴ CDC II, n. 264. Another example: «licentiam et potestatem habeant illis et eorum heredibus ibidem in ipsa rebus alii hominibus ad laborandum mitterent sibe ille vel alios omnes potestatem habeant in ipsa casa omnes ad abitandum mittere» (CDC IV, n. 622). See also CDC I, n. 100 (a. 1004); II, nn. 205, 351, 409; III, nn. 467, 518, 531; IV, nn. 565, 574, 581, 588, 595; V, nn. 710, 726, 836, 848; VI, nn. 899, 900, 902, 980.

²⁵ There are references of the kind in the descriptions on the boundary of the leased land in the contracts: CDC I, n. 204; II, nn. 214-215, 271, 320, 357, 358-360; IV, nn. 687; V, n. 781; VI, n. 1021; VII, nn. 1113, 1211, 1213; IX, n. 2.

oratorium and fixed formulas right from the beginning, but this is not the case. Actually the first lease preserved in the Cava archive, pastination contract of 913 between Giovanni abbot of San Massimo and Benedetto, is full of anomalies when compared to the leases of the later date: both of the parties appear in the first person in somewhat confused way; locutions such as «ad pastenandum» or «pastenare arbores et vitis» that are found normally in this type of document, are lacking; missing also is the description of the boundary of leased land; we don't know who wrote this *memoratorium*, for the scribe didn't even subscribe the document; on the other hand, he inserts peculiar clauses such as one which defines the offer of seeds and oxen by the church in order to support the tenant's labour²⁶.

In the middle of the tenth century, however, the Salernitan agrarian contracts came to be enriched with different clauses and locutions: the locutions «ad laborandum/laborandi ordine» or «ad pastenandum/pastenandi ordine» were inserted²⁷; the description of leased land became detailed, enriched with the boundary clause including the mention of the length of each borderline²⁸; various clauses regarding usual tenant's obligations – request towards the landlord to send a supervisor at the moment of harvest²⁹, nourishment of the supervisor during his stay³⁰, transport or preservation of the products such as wine rent³¹, and maintenance of the landlord's *organeum* (ceramic container

²⁶ CDC I, n. 132.

²⁷ The locutions «ad laborandum» and «ad pastenandum» were introduced respectively in 952 and 953 (CDC I, nn. 182, 183). See also «ad laborandum»: CDC I, nn. 190, 196, 205 («laborandi ordine»), 206; II, nn. 234, 238 (= Galante n. 8), 246 («laborandi ordine»), 247, 256, 260 etc. «Ad pastenandum»: CDC I, nn. 199, 204; II, nn. 214-215 («pastenandi ordine»), 356, 358-360 etc.

²⁸ The description of the boundary of the leased land and that about the length of such boundary appeared for the first time respectively in a lease of 936 (CDC I, n. 159) and in 962 (CDC I, nn. 214-215). The latter is the first lease where the descriptions of the boundary as well as the length of the borderline are found.

²⁹ CDC II, nn. 219 (a. 962: «per tempore de vindemie faciant illis scire pars predictae ecclesie et ibidem dirigamus hominem ad recipiendum ipsa nostra sortione»), 234, 238 (= Galante 8), 271, 281, 295 (a. 977: «per bindemie faciant nos scire, ut dirigamus ibidem missum nostrum»), 313, 314 etc. In the lease of 962 between Gregorio abbot of San Massimo and Amato (CDC II, nn. 214-215), only one version of it (CDC II, n. 215), written at the request of, and addressed to the abbot, possesses the clauses concerning the request to the landlord to send a supervisor, nourishment of the latter, transport of wine rent. This suggests later interpolation of such clauses into the original document by the church: the document was presented by the church in a dispute settlement of 987 as a proof (CDC II, n. 395).

³⁰ CDC I, nn. 187 (a. 955: «dum ad ipsa vindemia steterimus sibe nos, sibe noster homo, nutriret nos, seu hominem nostrum, qui ibidem fuerit ad omnem suum spendium»), 190, 196, 205; CDC II, nn. 228 (= Galante 6), 240, 246, 281, 290, 295 (a. 977: «dum fuerit ibidem missum nostrum pro recipiendum ipsa nostra sortione, illis eum notrire, secundum sua possibilitate et eius fuerit mensura»), 314 etc.

³¹ The clause on the transport or the storage of products was introduced and elaborated from 953 on. The transport clause: CDC I, n. 183 («ipso vinum, que nobis exinde hebenerit, ille autem portare illud nobis infra ipso locum Nuceria, ubi ipso organeum meum habuero»), 187, 205; CDC II, nn. 238 (= Galante 8), 246 etc. The preservation clause: CDC I, n. 190 (a. 956, «ipso reponere in casa sua, et salbum eos facere usque ad natibitas Domini absque degeneratione et ingne»), 196; CDC II, nn. 219, 275, 281, 290, 295 etc.

or cask)³² – were introduced and each formula was elaborated³³. In this way the leases have acquired their own formulas and locutions in the 970's and the 980's, i.e. little more than half a century after their appearance.

Here arises a question: what do the appearance and the formation of the documentary forms of agrarian contract in the first half of the tenth century reflect?

Jean-Marie Martin has connected the appearance and increase in number of agrarian contracts to the transformation of social and economic structures: on the one hand, disappearance of the servitude and the linked fragmentation of demesne land and, on the other hand, development of the new mode of production based on the independent or contractual labour of free peasantry³⁴. This connection is possible, even though there is little evidence at present that would suffice to verify the hypothesis. Without eliminating this possibility, or as a complementary explanation to it, the suggestion made by the historian Sandro Carocci on the aim of the redaction of written contracts may point in an interesting direction. He suspects that contracts would have been drawn up «in particular to testify the agreement that breaks with the customary concessions bound by orality»³⁵. In other words, an agrarian contract could be a product of negotiation between landlord and tenant concerning the conditions of the land lease. This implies also that such negotiation might spark some controversy between them over the terms and conditions, different from customary ones, in future.

Here we come to the fourth point. In the Salernitan leases we often find complementary or additional clauses after the end of the text. Frequently it is a question of a clause the scribe omitted unintentionally in the text. For example, in the lease of 993 between Cennamo abbot of San Massimo and two tenants, Pietro and Cicero, the scribe added the clause on the maintenance of lord's *organeum*³⁶.

Furthermore, the complementary clause could be used also in order to add a specific agreement or to modify an arrangement made earlier and written in the same text. In a lease of 1004 to Giovanni on the land of San Mas-

³² CDC I, nn. 183 («ille per tempore de bindemie conciare nobis organeum nostrum»), 187, 190, 196; II, nn. 281, 290, 295 etc.

³³ See Martin, *Città e campagna*, p. 308. Towards the end of the tenth century a clause on *palmentatica* – gift or charge for the use of the landlord's wine press (*palmentum*), composed of chickens or hens – was introduced and then this clause became popular in the Salernitan leases of the early eleventh century: CDC II, n. 455 (a. 993); III, nn. 540, 547; IV, nn. 551, 553, 555, 559, 565, 566 etc. Martin offers the hypothesis that the *palmentatica* would have been introduced in place of marc (*saccapanna*) once collected by the landowners (Martin, *I contratti agrari altomedievali*, pp. 16, 20-21).

³⁴ Martin, *Città e campagna*, pp. 308-309. In his paper published in 2006, Martin connected the increase in the production of leases between 950 and 1050 with the growth in agricultural production (Martin, *I contratti agrari altomedievali*, pp. 3-4, 14).

³⁵ Carocci, *Signorie di Mezzogiorno*, p. 423.

³⁶ CDC II, n. 455. Other examples of this type: CDC IV, nn. 559, 583-585, 601; V, nn. 729, 746 etc.

simo in *Arcelle*, a description on the right of the church to concede a part of leased lands to other cultivators «ad pastenandum» was included in the complementary clause³⁷. In 1019, when Eupraxius abbot of the church of San Nicola in Vietri leased a piece of land to Alfano, he imposed on the tenant half of the rent in chestnut; at the end of the text, however, the scribe inserted a complementary clause in which the proportional rate of rent was corrected to $1/3$ ³⁸. Eight years later, on the contrary, in the lease between Iaquinto *primicerius* of San Massimo and Giovanni of a piece of land in *Agella* near Nocera, the rent in hazelnut was raised from $1/2$ to $2/3$ ³⁹. In brief, the occasion to make contract and redact a pair of documents was also the moment of negotiation, or more exactly renegotiation, between landlord and tenant, and by way of such legal transaction and potential pressure the landlord could impose on the tenant, whether he was proprietor or not, the conditions of lease different from local customary practices; though it is not fair to emphasize only one-sided pressure by landowners in these negotiations, as the above mentioned lease of 1009 shows⁴⁰.

4. *The strategic use of leases by the church of San Massimo*

If landlords had recourse to the written contracts to negotiate or renegotiate the conditions of contract different from local customary, and to make the tenants accept eventual additional burdens, we may suppose the strategic use of written words by landlords. Through an examination of the *dossier* of San Massimo we are able to verify some aspects of the use of the leases by the church of San Massimo.

The *dossier* contains only two *parzionaria* contracts, a small number in comparison with contracts *ad pastenandum*. This indicates that the church of San Massimo chose the proper *pastinatio* contracts, rather than *parzionaria* contracts, when they leased to cultivators uncultivated or only partially cultivated lands. In this respect Alessandro Di Muro has indicated that, rather than dividing the land between the parties after a fixed term, the church of San Massimo offered the pastinators the possibility to continue to cultivate it with favourable terms ($1/3$ of crops instead of $1/2$, customary rate of rent)⁴¹. A few reservations should be made about his remark: in the first place, until

³⁷ CDC IV, n. 565. Addition of new terms: CDC II, n. 409; III, n. 472; IV, nn. 683, 704; V, n. 740 etc.

³⁸ CDC V, n. 715.

³⁹ CDC V, n. 795. Modifications of the terms: CDC III, n. 518; IV, nn. 637, 663; V, nn. 720, 755, 767 etc.

⁴⁰ Another example: in a lease of 1015 concerning «una pecia de terra cum arbusto bitatum» of Maio at *Solofre* (terr. Rota) to Falco, a complementary clause was inserted, according to which the latter would be exempted from failed pastination of vine if he tried to pastinate them for three times in vain (CDC IV, n. 683).

⁴¹ Di Muro, *Mezzogiorno longobardo*, pp. 51-52; Di Muro, *La vite e il vino*, p. 153.

the 970's and 980's the abbots of San Massimo, like other landowners, had conceded land by way of pastination contracts as well as *parzionaria* ones⁴². In addition, until the middle of the tenth century the contracts to pastinate land had been concluded in the short term⁴³. Around the 960's and 970's the church of San Massimo began to fix renewable or perpetual contract *ad pastenandum*⁴⁴. The abbots preferred giving tenants of the ecclesiastical land the security of permanent tenure with favourable conditions rather than to grant a portion of land after a fixed term. This means that the church of San Massimo now aimed for the perpetuation of socio-economic ties with their tenants.

In connection with this matter, Bruno Andreolli points out that the *pastinatio* leases in general might give the cultivators the liberty to organize their labour as long as they performed their obligations as defined in the contracts⁴⁵. If so, tenants of San Massimo were able to gain not only security of permanent tenure, but also liberty to organize their labour together with his neighboring landowners; sometimes cultivators themselves were in practice even allowed to make use of auxiliary work forces⁴⁶.

The abbots of San Massimo seem not to have been indifferent to any organization of labour force. Rather, there are some indications of their attempts, from the end of the tenth century on, to strengthen their control over the labour force of lease-holding free peasantry in the countryside where labour service at the demesne land had disappeared. In a lease of 1009 the right of the church to seize not only the movables of the lessee but also of the *persona* of the latter was incorporated into the penalty clause for the first time: «obligabit se in pars ipsius ecclesie ad pignerandum omnis sua causa etiam persona sua»⁴⁷. Then, from 1025 onward the right of the church to interrogate the tenants for the latter's labour was sometimes specified in the formula: «potestatem abeant pars ipsius ecclesie per annum illis requirere, si illum laboraberit, sicut inde obligati sunt»⁴⁸. At the end of the previous century,

⁴² *Parzionaria* contracts made by the church: CDC II, nn. 224 (a. 963), 373 (a. 985).

⁴³ Lease of ten years in CDC I, n. 132 (a. 913) and that of seven years in CDC I, n. 183 (a. 953).

⁴⁴ CDC I, nn. 214-215 (a. 959); II, nn. 313 (a. 979), 314 (a. 979), 325 (a. 980) etc. See the chronological graphs in Taviani-Carozzi, *La principauté lombarde de Salerne*, pp. 416, 418. On the shift from short-term leases to permanent or long-term ones in Campania in general, see Martin, *I contratti agrari altomedievali*, pp. 9-11.

⁴⁵ Andreolli, *Contratti agrari e trasformazione dell'ambiente*, p. 119 (= in Andreolli, *Contadini su terre di signori*, p. 236). Martin mentions that a cultivator non-landowner could become almost independent from his landlord, or even become nearly proprietor/joint owner, through a perpetual or renewable contract of *pastinatio* (Martin, *Città e campagna*, p. 309; Martin, *I contratti agrari altomedievali*, pp. 9, 25). See also Toubert, *Paysages ruraux*, p. 210. On the social mobility of tenants, connected with the nature of the leases, see Skinner, *Medieval Amalfi*, pp. 37-45.

⁴⁶ See the notes 22-24 above and corresponding text.

⁴⁷ CDC IV, n. 622. See also CDC V, n. 781.

⁴⁸ CDC V, n. 761. Similar clauses in CDC VI, n. 1044; VII, nn. 1061-1062, 1109, 1123. See also CDC V, n. 765: «potestatem abeant ipsius ecclesie per omnis annum nos perquirere pro faciendi laborare ipsa rebus, sicut inde obligati sumus». See Martin, *I contratti agrari altomedievali*, p. 16.

however, the church of San Massimo seems to have already taken a certain interest in the reinforcement of social control over lease-holding tenants. A clause of transport or preservation of wine as rent, dependent on the arbitrary decision of the landowner, reflects obviously such interest. In general, some tenants were obliged to transport wine to the warehouse (*cellario*) of San Massimo, others bound to preserve it until an agent of the church came to collect it⁴⁹. But the formula which underlined the authority of the church to order their tenants how to hand over rent in kind – whether transport or preservation – appeared in a lease of 983, and from that time this kind of formula came to be applied increasingly in the leases of San Massimo⁵⁰.

The church of San Massimo tried not only to intervene in the organization of tenants' labour force, and to strengthen control over the labour force of lease-holding tenants, but also to increase their portion of rent in wine or fruits when contracts were renewed. In fact, the abbots often changed a contract *ad pastenandum* to *traditio ad laborandum*, in this way imposing on the same tenant or his heir heavier rent in kind (i.e. from 1/3 to 1/2 of wine) at the moment of the renewal of the contract. This is the case of Iaquinto, Pietro and Giovanni, sons of Sellicto on the «terra cum arbustum vetere et pastinu de arbustu et avellanietum», land with old shrub and newly pastinated shrub and hazelnut groves, in *Agella*: in 1021 they promised abbot Maio the payment of a half of wine produced from the «arbustum vetere», as well as 1/3 of hazelnuts and wine from the «pastinu de arbustu»; twenty years later these brothers were required to pay half of the crops (wine, hazelnuts and other fruits) as annual rent⁵¹.

The abbots also appears to have tried to increase their portion of *terraticum* – fixed rate of rent for the produce from soil such as grain, flax, and sometimes vegetables⁵² – through the semantic shift of the term itself. In this regard, many historians have taken it for granted that in southern Italy the usual rate of *terraticum* fixed in customary practices was 1/3 of the produce⁵³.

⁴⁹ See note 31 above.

⁵⁰ CDC II, n. 359 (a. 983): «totum et inclitum illud nos portemus ad ipsi parieti de Nuceria (...) et si infra ipsa predicta rebus ipso predicto vinum voluerint reponere in sua organea in ipsa habitatione nostra, nos autem vel nostris heredibus ipso vinum eorum salbum faciamus absque degeneratione et de ignem». Similar clause in CDC III, n. 495; CDC IV, nn. 551, 553, 555, 578, 601, 616, 622, 623; V, nn. 729, 740, 771, 772, 795; VI, nn. 861, 936; VII, n. 1123. This discourse brings to mind the hypothesis of Ghignoli on the *iustitia* clause. According to her, the *iustitia* clause might reflect the will of the landowners to record the fact that the tenant must obey the landowner because the latter was the patron of the leased land (Ghignoli, *Libellario nomine*, pp. 32-57).

⁵¹ CDC V, n. 729; VI, n. 985.

⁵² The payment of *terraticum* was also frequently required in the leases concerning land with shrubs (*terra cum arbustis*), which indicates a *coltura promiscua*, connecting vine with trees as support, as well as cereals. On this, see Martin, *Le travail agricole*, pp. 119-120; Martin, *Città e campagna*, p. 318; and in general Desplanques, *Il paesaggio rurale della coltura promiscua*, pp. 29-64.

⁵³ See e.g. Pivano, *Contratti agrari*, p. 293, n. 18; Lizier, *L'economia rurale*, p. 96; La Manna, *I cereali*, p. 296. A. Di Muro points out that the diversity of the rate of *terraticum*, derived from

Recently, however, Martin and Carocci claimed that the *terraticum* must have been far less than the rate usually supposed: it fluctuated between 1/4 and 1/10 in Campania⁵⁴, and 1/10 at least in land of public origin⁵⁵.

If we examine the leases by laymen, monasteries and churches, apart from those of San Massimo, we can distinguish two kinds of rent in cereals: *terraticum* and *bictalium* or *victus (et labore)*. *Terraticum* was by and large required «secundum consuetudine de ipso locum»⁵⁶; when the rate of *terraticum* was specified, it was less than one third: 1/6, 1/7 or 1/10⁵⁷. It is true that rent for the produce from soil was fixed at 1/3 in some leases, but in these cases, as Martin indicates, the term *terraticum* was not used⁵⁸; instead, *bictalium*, *victus* or *victus et labor* was applied: «de que per annum in ipsa rebus seminaberit (...) omnis victum et lavorem quod ibi abuerit, ibique ad aira inter nos dibidamus in tertiam partem»⁵⁹; otherwise, the scribe of the documents avoided using the word *terraticum*: «de quod ibidem seminaberimus, demus in pars ipsius ecclesie tertiam pars»⁶⁰. Furthermore, there are cases in which a tenant was exempted from the payment of *victus*, but not of *terraticum*, i.e. 1/10 of the produce from soil: «omnis bictaleum qui ibidem fecerit totum illut abeat (...) preter annualiter deant nobis (...) terraticum de decem modia unum»⁶¹. In this case we can accept without difficulty that the tenant was exempted from *bictalium*, probably corresponding to 1/3 of cereals, but instead he had to pay 1/10 of *terraticum*, the customary rent for produce from arable ground⁶².

Here a problem remains: what makes *bictalium* or *victum* different from the customary *terraticum*? It is difficult to respond to this clearly, though there are a few clues at hand. First, tenants tended to pay heavier rent in grain, 1/3 of *victum*, when they had some support for their labour from their landlords. In a short-term lease of 980 on an “empty” land and wood, «terris bacibe et silbis», at Tusciano, south east of Salerno, Alphano asked from his tenants, Pietro and Nicola, sons of Giovanni, 1/3 of products from “empty” land, partly

the fertility of the land, would have brought the *consuetudines loci* (Di Muro, *Mezzogiorno longobardo*, pp. 58-59). See also Martin, *Città e campagna*, p. 308.

⁵⁴ Martin, *I contratti agrari altomedievali*, p. 8.

⁵⁵ Carocci, *Signorie di Mezzogiorno*, pp. 396, 422.

⁵⁶ CDC I, nn. 182, 187; II, nn. 234, 275, 324; III, nn. 351, 364, 378, 393, 431, 443; IV, nn. 561, 580, 619, 620, 621, 636 etc.

⁵⁷ 1/6: CDC VI, n. 986; 1/6 or 1/7: CDC II, n. 245; 1/10: CDC II, n. 448; V, nn. 851-854.

⁵⁸ Martin, *I contratti agrari altomedievali*, p. 8.

⁵⁹ CDC IV, n. 666 (a. 1013). See also CDC II, n. 318; III, nn. 471 (1/3 and 1/4 of *victum*), 472, 519 (= Leone, *La fondazione del monastero di S. Sofia*, Appendice I); IV, nn. 543, 666; V, nn. 773, 799; VI, nn. 948, 964, 1011 (1/2 of *lavori*); VII, nn. 1125, 1181, 1233 (1/4); IX, nn. 11 (2/5), 17, 48.

⁶⁰ CDC IV, n. 637 (a. 1010). See also CDC IV, nn. 542, 544, 647; V, nn. 713, 805, 810, 817, 848; VI, n. 904.

⁶¹ CDC II, n. 448 (a. 992). The request of the customary *terraticum* instead of *victum*: CDC II, nn. 318, 324, 351; III, n. 467; IV, nn. 690, 701.

⁶² See also CDC IV, n. 542 («de que per annum ibidem seminaberit, deant inde nobis inclita tertia pars: preter, de cepolle quod per annum ibidem abuerit, deant inde nobis decem combinas una pro terraticum»).

because he would offer them 1/3 of the seeds to be sown («nos demus eorum tertiam partem de semente et illis due sortis») and because he would support them for farming such as at harvest («per tempore ipsi lavori communiter studiemus et recolligamus et tritulemus»); with regards to the wood (*silbis*), on the other hand, he required of them the customary *terraticum*, since the brothers were obliged to cut trees down in order to make the land arable for six years by themselves⁶³. In the short-term contract of 994 between Desigio and Stefano archpriest of Stabia on the «*terris laboratorie et silbis*» in the territory of Stabia, all of the produce would belong to the tenant, Stefano, for the latter would sow his own seeds («*seminemus de nostra semente*»); all that he had to do was to pay the customary *terraticum*⁶⁴. In sum, the cultivators were obliged to pay only the usual *terraticum*, if they would cultivate their holdings without any support from landowners.

Secondly, tenants seem to have owed heavier rent than others had in cases where there were some kinds of dependence in the relationship with landowner. The short-term contract of the same year between, on the one hand, the count Friderisio and, on the other hand, Pietro and Ragemprando concerning a piece of arable land at *Ribus Altu* (Rialto) shows this clearly. The two tenants were required not only to transport the rent in kind, 1/3 of *bictum*, to the *domus* of the count within the *civitas* of Salerno, but also to perform a *servitium* like other tenants of the count («*quale serbitium alii hominibus in ipsa rebus de predictum locum Ribus Altu quod lavoraverint, fecerint*»); and the land in tenancy was located near the centre of the estate's management («*sala mea*»)⁶⁵. Regarding this burden (*servitium*), the *dossier* of San Massimo contains a few land leases in which the person who was allowed to sublet the leased land was also given the right to have his share of *servitium*, together with other burdens such as *terraticum*, imposed to the direct cultivators⁶⁶. These circumstances lead us to suppose that the two brothers were under the strong control of landlords in the well-organized estate and were required to render service as well as rent in kind like other cultivators of the estate⁶⁷; even if it is not clear what this *servitium* consisted in – there is a mention of *servitium* such as transport of products, or visiting the landlord to give him gifts in later leases⁶⁸ –.

What do we know about the case of the church of San Massimo? At first, the church seems to have followed the distinction between *bictalium* and *ter-*

⁶³ CDC II, n. 318.

⁶⁴ CDC III, n. 467.

⁶⁵ CDC III, n. 472. See also CDC V, n. 848, a lease by the same lessor. On the close connection of *servitium* with *homines/pertinentes/curtesani* of landowner, see CDC VI, n. 891; VII, n. 1124; X, n. 11.

⁶⁶ CDC IV, nn. 539, 641; VI, n. 894.

⁶⁷ It is indicative that the large part of the leased lands where 1/3 of *victum* were imposed is located east or south east of Salerno, such as the Tusciano and the Picentino Valley.

⁶⁸ CDC VII, n. 1125 (a. 1049); VIII, n. 1303 (a. 1061). On the ambiguous meanings of *servitium*, see Martin, *Le travail agricole*, p. 146. See also Carocci, *Signorie di Mezzogiorno*, pp. 439-444.

*raticum*⁶⁹. In the later tenth century, however, the abbots began to deviate from the usual meaning of the word *terraticum*. They considered the term as a synonym for the word *victus/bictalium*, and through this arbitrary interpretation they tried to exact a higher rate of rent in kind than they could in accordance with local customs: «totum ipso vinum et terraticum in tertiam partem cum pars eidem ecclesie dividamus, nos due sortes et illis unam»⁷⁰. They justified this claim in the following manner: «terraticum que omne annum de ipsa clusuria exierit, in tertiam partem illos dividamus, sicut superius legitur de ipso vinum et abellane»⁷¹. That is to say, «since you are required to hand over 1/3 of wine and hazelnuts as rent collected from fruit growing, you should give me also the same rate of *terraticum*, rent imposed to cereal growing!»⁷². It is not correct that the abbots of San Massimo have not respected the traditional *terraticum* as customary rent at all⁷³. After a period of pastination during which any rent in kind was exempted except for customary *terraticum*, however, tenants were often required to pay 1/3 of rent in wine or hazelnuts, as well as 1/3 of rent in cereals (*terraticum*) in the contracts of *pastinatio*⁷⁴. In other words, the church was successful in imposing an additional burden (1/3 of *terraticum*) instead of the traditional, customary rent in cereals, by offering pastinators relatively favourable conditions (1/3, not 1/2, of rent in wine, hazelnuts or other fruits)⁷⁵.

⁶⁹ In the lease of 913 of a vineyard at Castelione, abbot Giovanni imposed on Benedetto a half of *bictalio* if he would offer seeds and bulls to the tenant. On the contrary, Benedetto was required of «terraticum secundum legem», if he would sow and cultivate without the assistance of his landlord (CDC I, n. 132): «si illu adiutaberimus bobi et semente, ipso bictalio spodimus nobiscum debidere per equaliter; et si illu non adiutaberimus bobi et semente, spodimus nobis dare de ipse nostre terre terraticum secundum legem».

⁷⁰ CDC II, n. 214 (a. 962).

⁷¹ CDC II, n. 428 (a. 990). See e.g. CDC II, n. 356.

⁷² When the tenant was a non-cultivator, the *terraticum* seems to have followed the customary usage. In CDC IV, n. 539, for example, the *terraticum* collected from direct cultivators was to be divided between the lease-holding non-cultivator and the landowner, 2/3 of *terraticum* was for the landowner, and the rest remained for the former, custodian of landowner: «quanta terratica et areatica et serbitia et exaticum de ipsis rebus (...) tollere et abere potuerit, totum sue sint potestatis, et dividant illud in tres sortis: due sortis exinde deant michi vel in partibus predictae ecclesie, et tertiam partem exinde sivi abeant». See also CDC IV, n. 641; VI, n. 894.

⁷³ CDC I, nn. 140, 190, 205; II, nn. 217, 219, 228 (= Galante 6), 238 (= Galante 8), 246, 247, 256, 264, 281, 295 etc.

⁷⁴ CDC I, nn. 214-215 (a. 962); II, nn. 314, 356, 358-360, 359, 428 (a. 990). See also CDC III, n. 503 (a. 997) and the next section. It is indicative that all of the lands, object of these contracts, are located in the area of Nocera.

⁷⁵ It remains problematic why the church of San Massimo preferred collecting more grain than wine or hazelnuts as rent from its tenants. It is difficult to answer this, but for the moment we can suppose that the abbots wished to respond to growing demands for grain, especially wheat, in the food markets of Salerno, Amalfi and other places such as Tunisia. On the commerce of Salerno in the tenth and eleventh centuries, see Loré, *Laristocrazia salernitana*, pp. 73-74; Di Muro, *Mezzogiorno longobardo*, pp. 117-126. A case study of agricultural investment connected with maritime trade by *amalfitani* in the principality of Salerno: Figliuolo, *Gli amalfitani a Cetera*. See also Skinner, *Medieval Amalfi*, pp. 58-79.

5. *How effective was the strategy of San Massimo?*

In the preceding section, we looked at the attempt at San Massimo both to strengthen the control over the tenants' labour force and to increase their portion of rent in crops through agrarian contracts. The next issue to be examined is how effective this strategy was. To verify this we limit ourselves to the result of the strategy on *terraticum* and the effectiveness of the penalty clause in the agrarian contracts.

Let us begin from the *terraticum*. I said that the church of San Massimo succeeded in imposing on its tenants 1/3 of grain under the name of *terraticum* in a series of *pastinatio* contracts during the later tenth century. Fortunately we have a few cases in which such a contract was renewed. In a pastination contract of 979 between, on the one hand, abbot Martino and, on the other, Nando, Pietro and Giovanni Ballense, for example, the abbot exempted them from rent in kind, except for a customary *terraticum*, for twelve years corresponding to the period of pastination «darent [...] terraticum secundum consuetudinem de ipso locum»; then, from the thirteenth year on, they were allowed to cultivate the same holding, if they would accept to pay 1/3 of rent in kind, whether it is wine or grain (*terraticum*). Sixty years later, the contract was renewed between the church and Falco, son of Giovanni Ballense, one of the three preceding tenants; in this perpetual contract, Falco promised the church to pay half of the rent in wine together with «terraticum secundum consuetudo ipsius loci»⁷⁶. Thus, Falco was obliged to pay heavier rent in wine than his father did, but at the same time his burden of rent in grain was now reduced.

We can see a similar example in a case of dispute settlement. In 962 Amato had promised abbot Gregorio to pastinate vine and other shrubs in two pieces of lands at *Puteum Regente* near Nocera for nine years without any burden; thereafter he would owe 1/3 of the rent in wine and 1/3 of *terraticum* as long as he and his heirs wished to remain there (Amato was also a landowner, since his own parcels adjoined the leased lands). Twenty-five years later, however, abbot Cennamo accused him in a public court of negligence of his duties to pastinate vine and asked him either to pay the compensation defined in the document or to return the holdings to the church. Amato rejected both requests, and he even dared to ask the abbot to divide in half the ownership of the lands. In the end, through the intervention of *boni homines* present at the court, both parties agreed to renew the contract on different conditions: Amato promised to pastinate an uncultivated part of the lands for ten years and at the same time he was obliged to pay one half of wine together with the customary *terraticum*. After that time he would be able to retain possession of them if he would continue to pay the same rate of rent in wine and *terraticum*⁷⁷.

⁷⁶ CDC II, n. 314; VI, n. 942. See also similar cases: CDC II, nn. 358-360; III, nn. 497-498.

⁷⁷ CDC II, nn. 214-215, 395. It is interesting to note that Amatus was asked to treat a *missus* of

It is possible to suppose here that the church of San Massimo now would prefer wine to grain as rent in kind: by proposing new terms in favour of their tenants, i.e. the customary *terraticum* instead of 1/3 of rent in grain, the abbots might be able to increase the rate of rent in wine, from 1/3 to 1/2. However, if we take into consideration that in both cases the contracts were renewed after a long term, it seems more reasonable to think that the type of lease was merely changed from contract *ad pastenandum* to *traditio ad laborandum* because the period of pastination was already over — the standard rate of rent in wine or hazelnuts in the *traditio ad laborandum* in the principality of Salerno was 1/2⁷⁸. Ultimately, from the early eleventh century on, the church never succeeded in imposing 1/3 of rent in grain (*terraticum*) on their tenants: all San Massimo could do was to ask them «terraticum secundum consuetudine de ipso loco». So, as far as *terraticum* is concerned, the strategy of San Massimo did not bear fruit in the long run. It was not easy for the church to change the tenacious customs concerning the tenants' labour⁷⁹.

The above-mentioned case of dispute settlement leads us to the second point: the effect of the penalty clause in the agrarian contracts. From the end of the tenth to the first half of the eleventh century, the abbots of San Massimo often accused their tenants of breach of contract, especially of negligence of obligations to pastinate vine or hazel groves⁸⁰. These conflicts were resolved by renewal of the contracts. Sometimes lease was renewed in the same terms⁸¹, but the term was often modified: a tenant owed heavier rent in wine (1/2) temporarily before paying normal rate of rent (1/3)⁸²; a part of the land where a tenant failed to pastinate was returned to the church and the rest was renewed to the former in a perpetual contract with additional burdens just for a few years⁸³; a leased land was divided into two portions and one of them was leased again to the same tenant with the same terms, another portion leased to another cultivator⁸⁴; a pastination contract was replaced by a *traditio ad laborandum*⁸⁵. Instead of applying rigidly the penalty clause, the

the abbot during harvest time “with respect”: «dum fuerit ibidem missum predictae ecclesie pro recipiendum ipso vinum, daret ei manducare et vivere secundum suam possibilitatem et onorifice illum ibi abere, sicut meruerit» (CDC II, n. 395).

⁷⁸ See note 13 above.

⁷⁹ As I noted above (note 74), all the lands where the church tried to increase its portion of rent in grain were concentrated in the densely populated area of Nocera. On the other hand, in the ninth and tenth century the rural landscape of this territory was, as well as that of Salerno, already highly “humanized”, i.e. characterized by the mixture of various types of agricultural land, including the *coltura promiscua* (see e.g. Martin, *La Longobardia meridionale*, p. 352; and Di Muro, *La vite e il vino*, pp. 161-163). Judging from such a situation, it seems to have been quite difficult for the church of San Massimo to alter the *consuetudo loci* that had firmly taken root here.

⁸⁰ CDC II, nn. 373 (a. 985), 395, 410, 440; IV, nn. 593, 623; V, n. 861 (a. 1033).

⁸¹ CDC II, nn. 373, 440; V, n. 861.

⁸² CDC IV, n. 593.

⁸³ CDC II, n. 410.

⁸⁴ CDC IV, n. 623.

⁸⁵ CDC II, n. 395.

abbots of San Massimo preferred maintaining the socio-economic relationship with their tenants regardless of additional burdens or sanctions⁸⁶. This does not mean that the penalty clause was invalid. Rather, it should have had certain effect in so far as it must have urged tenants to pastinate land or at least not to let it deteriorate, otherwise they would have risked losing a part of their holdings or owing additional burdens.

6. Conclusions

In southern Italy under the Lombard tradition, the appearance of the agrarian contract with the form of *memoratorium/breve* in the early tenth century, and the following structuralization and elaboration of documentary forms would to some extent reflect the landlords' will to impose new conditions different from customary practices on the cultivators of their land. Making use also of the occasion of making contract and redacting documents, landlords tried to strengthen control over tenants and increase revenue from their estates.

Thus, the strategic use of documents can be illustrated from the agrarian contracts regarding the church of San Massimo in the later tenth and early eleventh century. By offering the tenants favourable terms, the abbots aimed at perpetuating the socio-economic ties with the lease-holding tenants; through the introduction in the text of the penalty clause involving the seizure of the *persona* as well as the movable of the tenants, that of the clause on the right of interrogation by the church, and that of the clause on the payment of rent in kind affected by the arbitrary directions of landlords, the abbots made effort to strengthen social control over their tenants and to intervene in the organization of the latter's labour force; both by renewing the leases for replacing the contract *ad pastenandum* with one *ad laborandum*, and by changing the meaning of the term *terraticum*, they pursued the increase in rent in kind, particularly grain.

The result of such attempt by the church of San Massimo was dual: they failed in increasing their portion of rent in kind, whereas they were to some extent successful in urging their tenants to improve the productivity of their land by force of written contracts. A written lease was effective for the landlord as a means both of estate management and of control over the peasantry, in so far as the latter's share in agricultural products, determined by customary practices, was not exposed to menace.

The agrarian contracts of San Massimo ceased to be drawn up in the end of the 1050's, probably because the church was faced with serious economic difficulties caused by the expropriation of its land by the Normans: these had settled in the areas of Nocera-Rota-Montoro, where the lands of the church

⁸⁶ See e.g. Taviani-Carozzi, *La principauté lombarde de Salerne*, pp. 417-421.

were concentrated⁸⁷. So we can't go further with these contracts. As far as other leases preserved in the Cava archive are concerned, however, we can find some indications that suggest the transformation of the lordship on the eve of the Norman conquest of Salerno⁸⁸: the clause on the *servitium*, which appeared sporadically in the end of the tenth and the beginning of the succeeding century, increased in number from the 1040's⁸⁹; the clause on *salute* or *exenio*, a symbolic gift of homage to be brought to the landlord two or three times per year, appeared in the 1050's and soon became popular⁹⁰; the clause on *corvée* (*opera*) appeared for the first time in the early 1060's⁹¹.

It is just in the same years that the documentary forms of agrarian contracts changed: the documentary form of court procedure was adopted in a lease of 1061 for the first time and this form gradually replaced that of *memoratorium* in the late eleventh century⁹². The *iudex* now played the leading role in place of the parties concerned: he appeared in the first person in the documents, administered the contract, and ordered the scribe to redact duplicate copies of leases. In addition, the signature of the *iudex* replaced gradually those of the scribe and the witness. This innovation found in the Salernitan agrarian contracts as well as other types of private charters was one element of the formalization of the roles played by judges of the city⁹³. To verify the transformation of socio-economic structures of the countryside and the possible connection between this change and innovation of documentary form, we need to examine further the leases of the Norman age⁹⁴.

⁸⁷ Loré, *L'aristocrazia salernitana*, pp. 76-78. The last agrarian contract regarding the church of San Massimo: CDC VIII, n. 1273 (a. 1058).

⁸⁸ On the development of land lordship and the new patterns of dependence in later eleventh-century Salerno, see for the moment Taviani-Carozzi, *La principauté lombarde de Salerne*, vol. 1, pp. 883-888 and Martin, *I contratti agrari altomedievali*, pp. 16-17.

⁸⁹ CDC III, n. 472 (a. 994); IV, nn. 703, 706; V, n. 781; VI, n. 891, VII, nn. 1124, 1125; VIII, nn. 1303; X, n. 11. See also CDC VI, n. 977; VII, n. 1107.

⁹⁰ CDC VII, nn. 1172 (a. 1052), 1184, 1199; VIII, nn. 1303 (*servitium*), 1328, 1338; IX, nn. 11, 48; V, n. 755/IX, n. 69; X, n. 101.

⁹¹ CDC VIII, n. 1324 (= Galante 59 [a. 1061]); IX, nn. 43, 80. See also CDC VIII, n. 1303.

⁹² The initial formula of the text begins in this way: «Ante me [name of iudex] iudicem [name of lessor] – coniunctus est cum [name of lessee] et ipse [name of lessor] – per conbenientiam tradidit ...» On the leases which adopted this type of formula in *Codex Cavensis* are: CDC VIII, nn. 1324 (= Galante 59 [a. 1061]), 1328, 1334; IX, nn. 2, 11, 17, 26, 27, 43, 48, 51, 80; X, nn. 8, 101. This type of documents maintained certain characteristics of *memoratorium*, i.e. the double redaction of documents and the bilateral contract based on mutual *convenientia*.

⁹³ Delogu, *La giustizia nell'Italia meridionale*, pp. 304-306.

⁹⁴ On the lordship in the Norman age, see in general Vitolo, *La conquista normanna*; Martin, *Città e campagna*, pp. 309-312; Loud, *L'attività economica dei monasteri*; and Carocci, *Signorie di Mezzogiorno*.

Works Cited

- B. Andreolli, *Contratti agrari e trasformazione dell'ambiente nel Mezzogiorno normanno-svevo*, in *Uomo e ambiente nel Mezzogiorno normanno-svevo*. Atti delle ottave giornate normanno-sveve (Bari, 15-17 ottobre 1987), Bari 1989, pp. 111-133 (in Andreolli, *Contadini su terre di signori*, pp. 229-248).
- B. Andreolli, *Contadini su terre di signori. Studi sulla contrattualistica agraria dell'Italia medievale*, Bologna 1999.
- S. Carocci, *Signorie di Mezzogiorno. Società rurali, poteri aristocratici e monarchia (XII-XIII secolo)*, Roma 2014.
- P. Cherubini, *I notai di Salerno e la tradizione del documento*, in *Scrittura e produzione documentaria*, pp. 333-374.
- P. Delogu, *La giustizia nell'Italia meridionale longobarda*, in *La giustizia nell'alto medioevo (secoli IX-XI)*, Spoleto 1997 (Settimane di studio del Centro italiano di studi sull'alto medioevo, 44), pp. 257-308.
- M. Del Treppo, *Amalfi: una città del Mezzogiorno nei secoli IX-XIV*, in M. Del Treppo, A. Leone, *Amalfi medioevale*, Napoli 1977, pp. 3-175.
- H. Desplanques, *Il paesaggio rurale della coltura promiscua in Italia*, in «Rivista geografica italiana», 66 (1959), pp. 29-64.
- A. Di Muro, *Mezzogiorno longobardo. Insediamenti, economia e istituzioni tra Salerno e il Sele (secc. VII-XI)*, Bari 2008.
- A. Di Muro, *La vite e il vino, in Mezzogiorno rurale*, pp. 133-274.
- L. Feller, *Précaires et livelli. Les transferts patrimoniaux "ad tempus" en Italie*, in «Mélanges de l'École française de Rome. Moyen Âge», 111 (1999), pp. 725-746.
- B. Figliuolo, *Gli amalfitani a Cetara: vicende patrimoniali e attività economiche (secc. X-XI)*, «Annali dell'Istituto italiano per gli studi storici», 6 (1979/1980), pp. 31-82.
- M. Galante, *Il notaio e il documento notarile a Salerno in epoca longobarda*, in *Per una storia del principato meridionale*, ed. M. Amelotti et al., Roma 1982, pp. 71-94.
- A. Ghignoli, *Libellario nomine: rileggendo i documenti pisani dei secoli VIII-X*, in «Bullettino dell'Istituto storico italiano per il medio evo», 111 (2009), pp. 1-62.
- S. Leone, *La fondazione del monastero di S. Sofia in Salerno*, in «Benedictina», 1-2 (1973), pp. 55-66.
- A. Lizier, *L'economia rurale dell'età prenormanna nell'Italia meridionale*, Palermo 1907.
- V. Loré, *L'aristocrazia salernitana nell'XI secolo, in Salerno nel XII secolo*, pp. 61-102.
- V. Loré, *Monasteri, principi, aristocrazie. La Trinità di Cava nei secoli XI e XII*, Spoleto 2008.
- V. Loré, *La chiesa del principe. S. Massimo di Salerno nel quadro del Mezzogiorno longobardo, in Ricerca come incontro. Archeologi, paleografi e storici per Paolo Delogu*, ed. G. Barone, A. Esposito, C. Frova, Roma 2013, pp. 103-124.
- G.A. Loud, *L'attività economica dei monasteri nel principato di Salerno durante il dodicesimo secolo, in Salerno nel XII secolo*, pp. 310-336.
- F. Magistrale, *Il documento notarile nell'Italia meridionale longobarda, in Scrittura e produzione documentaria*, pp. 257-272.
- F. La Manna, *I cereali, in Mezzogiorno rurale*, pp. 275-359.
- J.-M. Martin, *Le travail agricole: rythmes, corvées, outillage*, in *Terra e uomini nel Mezzogiorno normanno-svevo*, pp. 113-57.
- J.-M. Martin, *Città e campagna: economia e società, in Storia del Mezzogiorno, 3 (Alto medioevo)*, Napoli 1990, pp. 257-382.
- J.-M. Martin, *La Longobardia meridionale, in Il regno dei longobardi in Italia: archeologia, società e istituzioni*, ed. S. Gasparri, Spoleto 2004, pp. 327-365.
- J.-M. Martin, *I contratti agrari altomedievali di area campana, in Contratti agrari e rapporti di lavoro nell'Europa medievale. Atti del Convegno internazionale di studi (Montalcino, 20-22 settembre 2001)*, ed. A. Cortonesi, M. Montanari, A. Nelli, Bologna 2006, pp. 1-25.
- Mezzogiorno rurale. Olio, vino e cereali nel Medioevo*, ed. P. Dalena, Bari 2010.
- G. Nicolaj, *Cultura e prassi di notai preirneriani. Alle origini del rinascimento giuridico*, Milano 1991.
- Y. Nishimura, *When a lease acquired its own name. Further notes on the forms and formulas of the private charters in Southern Tuscany (8th and 9th centuries)*, in «HERSETEC: Journal of Hermeneutic Study and Education of Textual Configuration», 1 (2007), 1, pp. 63-85.
- S. Pivano, *Contratti agrari in Italia nell'alto medioevo*, Torino 1904.

- B. Ruggiero, *Principi, nobiltà e Chiesa nel Mezzogiorno longobardo. L'esempio di S. Massimo di Salerno*, Napoli 1973.
- Salerno nel XII secolo. *Istituzioni, società, cultura*, ed. P. Delogu, P. Peduto, Salerno 2004.
- C. Salvati, *La caratterizzazione nocerina nel processo di formazione del documento notarile*, in «Rassegna storica salernitana», n.s., 3 (1986), 2, pp. 109-124.
- Scrittura e produzione documentaria nel Mezzogiorno longobardo*. Atti del Convegno internazionale di studio (Badia di Cava, 3-5 ottobre 1990), ed. G. Vitolo, F. Mottola, Badia di Cava 1991 (Acta Cavensia, 1).
- P. Skinner, *Medieval Amalfi and its Diaspora, 800-1250*, Oxford 2013.
- H. Taviani-Carozzi, *Il notaio nel principato longobardo di Salerno (sec. IX-XI)*, in *Scrittura e produzione documentaria*, pp. 273-286.
- H. Taviani-Carozzi, *La principauté lombarde de Salerne (IX^e-XI^e siècle). Pouvoir et société en Italie lombarde méridionale*, 2 vols., Rome 1991.
- Terra e uomini nel Mezzogiorno normanno-svevo*. Atti delle setteme giornate normanno-sveve (Bari, 15-17 ottobre 1985), ed. G. Musca, Bari 1987.
- P. Toubert, *Les structures du Latium médiéval. Le Latium méridional et la Sabine du IX^e siècle à la fin du XII^e siècle*, 2 vols., Rome 1973.
- P. Toubert, *Paysages ruraux et techniques de production en Italie méridionale dans la seconde moitié du XII^e siècle*, in *Potere, società e popolo nell'età dei due Guglielmi*. Atti delle quarte giornate normanno-sveve, Bari 1979, Bari 1981, pp. 201-229.
- P. Toubert, *Il medievista e il problema delle fonti*, in P. Toubert, *Dalla terra ai castelli. Paesaggio, archeologia e poteri nell'Italia medievale*, Torino 1995, pp. 3-19.
- G. Vitolo, *L'archivio della badia della SS. Trinità di Cava*, in S. Leone, G. Vitolo, "Minima cavensia". *Studi in margine al IX volume del "Codex Diplomaticus Cavensis"*, Salerno 1983, pp. 191-200.
- G. Vitolo, *I prodotti della terra: orti e frutti*, in *Terra e uomini nel Mezzogiorno normanno-svevo*, pp. 159-85.
- G. Vitolo, *La conquista normanna nel contesto economico del Mezzogiorno*, in «Rassegna storica salernitana», n.s., 9 (1988), pp. 7-21.
- G. Vitolo, *Il castagno nell'economia della Campania medievale*, in «Rassegna storica salernitana», n.s., 6 (1989), 1, pp. 21-34.

Yoshiya Nishimura
Meijo University
ynishi@meijo-u.ac.jp