

## HENRY OF LANGENSTEIN AND JUAN DE SEGOVIA ON THE *CENSUS*

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### RESUMEN

Henry de Langenstein merece un lugar destacado en la historia de la economía europea. El teólogo español Juan de Segovia pudo haber estado entre aquellos que fueron influidos por los tratados de Langenstein. En este artículo se desarrolla y analiza esta interesante hipótesis.

PALABRAS CLAVE: Henry de Langenstein, Juan de Segovia, Censu.

### ABSTRACT

Henry of Langenstein precise place in the history of European economic. The Spanish theologian, Juan de Segovia, might have been among those who Langenstein's Tract interesting enough to borrow from it. This article attempts to substantiate and expand upon that suggestion

KEY WORDS: Henry of Langenstein, Juan de Segovia, Censu.

Although Henry of Langenstein's (d. 1397) precise place in the history of European economic thought might be disputed, there can be no doubt that his *Tractatus bipartitus de contractibus emptiois et venditionis* attracted a substantial audience, especially in the fifteenth century<sup>1</sup>. According to Johann Frie-

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<sup>1</sup> On HENRY OF LANGENSTEIN (CA. 1325-1397), see *Dictionnaire de Theologie Catholique* (8, pp. 2574-76), «Langenstein (Henri de)» by J. ZEMB; Konrad Josef HEILIG, «Kritische Studien zum Schrifttum der beiden Heinriche von Hessen,» *Römische Quartalschrift* 40 (1932), pp. 105-76; *Lexi-*

drich von Schulte, this tract was «without question among the most interesting of its time»<sup>2</sup>; and, to judge from the number of extant manuscripts, many of Langenstein's contemporaries apparently agreed<sup>3</sup>. In a previous article, the present author suggested that the Spanish theologian, Juan de Segovia (d. 1458), might have been among those who found Langenstein's tract interesting enough to borrow from it<sup>4</sup>. This article attempts to substantiate and expand upon that suggestion.

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*kon für Theologie und Kirche* (5, pp. 190-91), 2nd ed.; «Heinrich Heinbuche v. Langenstein», by C. J. JELLOUSCHEK; Nicholas H. STENECK, *Science and Creation in the Middle Ages; Henry of Langenstein on Genesis* (Notre Dame, IN: University of Notre Dame Press, 1976), chap. 1; George KREUZER, *Heinrich von Langenstein: Studien zur Biographie und zu den Schimatraktaten unter besonderer Berücksichtigung der Epistola pacis und der Epistola concilii pacis*, Quellen und Forschung aus dem Gebiet der Geschichte, Neue Folge Heft 6 (Paderborn: Ferdinand Schöningh, 1987); Michael H. SHANK, «Unless You Believe, You Shall Not Understand»: *Logic, University and Society in Late Medieval Vienna* (Princeton, NJ: Princeton University Press, 1987); and *Dictionary of the Middle Ages* (6, pp. 166-67), «Henry of Langenstein,» by Arjo VANDERJAGT (with additional bibliography). On LANGENSTEIN'S *Tractatus de contractibus* (ca. 1392) and on his economic thought in general, see Adolf BRUDER, *Studien über die Finanzpolitik Herzog Rudolfs IV, Von Oesterreich (1358-1365)* (Innsbruck: Verlag der Wagner'schen Universitäts-Buchhandlung, 1886); Wilhelm ENDEMANN, *Studien in der romanisch-kanonistischen Wirtschafts- und Rechtslehre bis gegen Ende des siebenzehnten Jahrhunderts*, 2 vols. (berlin: Guttentag, 1874-83), 2, pp. 109-10; Edmund SCHREIBER, *Die volkswirtschaftlichen Anschauungen der Scholastik seit Thomas von Aquin*, Beiträge zur Geschichte der Nationalökonomie, Heft 1 (Jena: Gustav Fischer, 1913), pp. 196-202; Manuel ROCHA, *Travail et salaire através la scolastique*, Bibliothèque de l'école des sciences politiques et sociales de université catholique de Louvain (Paris: Desclée de Brouwer, 1933), chap. 2; Wilfred TRUSEN, *Spätmittelalterliche Jurisprudenz und Wirtschaftsethik dargestellt an Wiener Gutachten des 14. Jahrhunderts*, Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte Beihefte 43 (Wiesbaden: Franz Steiner, 1961), and especially Errich SOMMERFELD, «Ökonomisches Denken in Deutschland vor der frühbürgerlichen Revolution: Der 'Tractatus de contractibus' des Heinrich von Langenstein» (Ph. D. dissertation, University of Berlin, 1969). While TRUSEN 212ff., emphasizes LANGENSTEIN'S influence on other late medieval authors, Raymond DE ROOVER has minimized, if not actually denied, his importance. See DE ROOVER has minimized, if not actually denied, his importance. See DE ROOVER, «The Concept of the Just Price: Theory and Economic Policy», *Journal of Economic History* 18 (1958), pp. 419-20. For more on the scholarly disagreement over the significance of LANGENSTEIN'S economic views, see SOMMERFELD p. 114 (with notes 1-4) and p. 133 (with notes 3-4). The *Tractatus de contractibus* was printed in Cologne by JOHANNES KORLHOFF THE ELDER in his 1483-84 edition of the works of JEAN GERSON (vol. 4 fols. CLXXXV-CCXXIII). All citations will be to this edition.

<sup>2</sup> Johann Friedrich VON SCHULTE, *Die Geschichte der Quellen und Literatur des canonischen Rechts von Gratian bis auf die Gegenwart*, 3 vols. (Stuttgart: Ferdinand Enke, 1875-80; reprint ed., Graz: Akademische Druck- und Verlagsanstalt, 1956), 2: p. 433.

<sup>3</sup> SOMMERFELD 107, notes that the *Tractatus* was «stark verbreitet und in mindestens 50 Abschriften vorhanden.» And, according to TRUSEN 14, this work survives in «äusserst zahlreichen HSS».

<sup>4</sup> Jesse D. MANN, «Juan de Segovia's *Super materia contractuum de censibus annuis*: Text and Context», in *Nicholas of Cusa on Christ and the Church*, eds. Gerald CHRISTIANSON and Thomas M. IZBICKI (Leiden: Brill, 1996), pp. 71-85. For a recent biographical sketch of JUAN DE SEGOVIA, see Rolf DE KEGEL, ed., *Johannes von Segovia: Liber de magna auctoritate episcoporum in concilio generali*, Spicilegium Friburgense 34 (Fribourg: Universitätsverlag, 1995), pp. 37-50.

That Juan de Segovia might have been attracted to Langenstein's ideas about economics and morality is by no means surprising. On at least two other important issues these theologians seem to have shared a common point of view. First, as is well known, Langenstein was one of the earliest proponents of a conciliar solution to the Great Schism<sup>5</sup>, and Segovia was among the most prominent conciliar theorists of the fifteenth century<sup>6</sup>. While there is no evidence directly linking the Spaniard's conciliarism to that of the German, Segovia might well have known about Langenstein's conciliarist proposals and thus have considered him an ideological ally. Second, both Langenstein and Segovia defended the Immaculate Conception of Mary, which was of course defined as a dogma at the Council of Basel (1434), where Segovia led the Immaculatist party in the debates and where Langenstein's views on this doctrine were apparently influential<sup>7</sup>. So, on this point too, the Spaniard might well have seen the German as an ally, if not as an actual source.

Given these affinities, one might expect to find some trace of Langenstein's conciliarist or Mariological works in Segovia's extensive personal library. However, with the exception of a few *propositiones circa materiam schismatis*, such is apparently not the case<sup>8</sup>. The only other works by Langenstein in

<sup>5</sup> See e.g., A. KNEER, «Die Entstehung der konziliaren Theorie», *Römische Quartalschrift*, Ertes Supplementheft (1893): 48-60; KREUZER; and *Dictionary of the Middle Ages* (2, pp. 510-23), «Conciliar Theory», by Francis Oakley.

<sup>6</sup> See Anthony BLACK, *Council and Commune: The Conciliar Movement and the Fifteenth-Century Heritage* (Shepherdstown: Patmos Press, 1979); Werner KRÄMER, *Konzens und Rezeption: Verfassungsprinzipien der Kirche im Basler Konziliarismus*, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters, Neue Folge 19 (Münster: Aschendorff, 1980), esp. chap. 5; and Jesse D. MANN, «The Historian and the Truths: Juan de Segovia's *Explanatio de tribus veritatibus fidei*» (Ph. D. dissertation, University of Chicago, 1993).

<sup>7</sup> On the Immaculate Conception at Basel, see Johannes HELMRATH, *Das Basler Konzil, 1431-1449; Forschungsstand und Probleme*, Kölner Historische Abhandlungen, 32 (Cologne: Böhlau, 1987), 383-94; and Remigius BÄUMER, «Die Entscheidung des Basler Konzils über die Unbefleckte Empfängnis Mariens und ihre Nachwirkungen in der Theologie des 15. und 16. Jahrhunderts», in *Studien zum 15. Jahrhundert, Festschrift für Erich Meuthen*, eds. Johannes HELMRATH, Heribert MÜLLER and Helmut WOLFF, 2 vols. (Munich: Oldenbourg, 1994), 1, pp. 193-206. On SEGOVIA'S views, see Jesse D. MANN, «Duns Scotus, Juan de Segovia and Tehir Common Devil», *Franciscan Studies* 52 (1992), pp. 136-37 and esp. note 6 (with bibliography). On LANGENSTEIN'S position, which apparently evolved over time, see Aquilin EMMEN, «Heinrich von Langenstein und die Diskussion über die Empfängnis Mariens», in *Theologie in Geschichte und Gegenwart: Michael Schmaus zum 60. Geburtstag*, eds. Johann Auer and Hermann VOLK (Munich: Zink, 1957), pp. 625-50. Cf. Heiko A. OBERMAN, *The Harvest of Medieval Theology: Gabriel Biel and Late Medieval Nominalism*, 3rd ed. (Durham, NC: Labyrinth 1983), pp. 282-86. According to EMMEN, p. 646: «Es scheint uns auch unzweifelhaft, dass die Epistola von Langenstein die Behandlung der Frage der Empfängnis Mariens auf dem Konzil von Basel mitveranlasst hat».

<sup>8</sup> JUAN DE SEGOVIA donated his large library to the University of Salamanca in 1456. On this donation see Benigno HERNÁNDEZ MONTES, *Biblioteca de Juan de Segovia: Edición y comentario de*

Segovia's collection were his *De discretionem spirituum*, and an unspecified *Tractatus Henrici de Hassia*<sup>9</sup>. Since this last item was found in a manuscript (now lost) which contained several works on the Trinity and the procession of the Holy Spirit, it might have been Langenstein's *De Trinitate* or *De spiritu sancto*; but perhaps it was the tract that interests us here, the *De contractibus*. There is simply no way to be certain<sup>10</sup>. Thus one cannot maintain—as would have been helpful to the present argument—that Juan de Segovia drew upon his personal copy of Langenstein's *Tractatus* when he composed his *Votum super materia contractuum de censibus annuis*<sup>11</sup>.

Segovia apparently wrote *votum* in 1441 during the debates at the Council of Basel (1431-1449) on the licitness of *census* or rent-contracts<sup>12</sup>. The *census*<sup>13</sup>—a common credit and investment instrument in the late Middle Ages—was a contract of sale in which, put simply, the *census* buyer (the creditor) provided the seller (the debtor) with a lump sum of money in return for the right to receive annual payments from the seller. Pioneered by monastic institutions as early as the twelfth century, this practice gained in popularity and complexity until, by the fifteenth century, the *census* had become an important and regular source of public as well as private credit<sup>14</sup>. However, because these contracts

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*su escritura de donación*, Bibliotheca Theologica Hispana, serie 2, textos 3 (Madrid: CSIC, 1984) (hereafter: *Biblioteca*).

<sup>9</sup> See *Biblioteca* pp. 92, 98, 243.

<sup>10</sup> HERNÁNDEZ'S suggestion (*Biblioteca* p. 243) that this tract was one of LANGENSTEIN'S schism-related works is of course pure conjecture and not especially compelling.

<sup>11</sup> This is especially unfortunate because we know that Segovia regularly drew upon his own book collection when writing many of his other works.

<sup>12</sup> On the genesis of this *votum*, see MANN, «Juan de Segovia's» pp. 75-76. SEGOVIA'S *votum* survives in four manuscripts. It was also printed ca. 1472 in Cologne by JOHANNES KOELHOFF THE ELDER. For convenience, I will cite KOELHOFF'S edition (hereafter: Cologne ed.); but, where relevant, I will also cite the verinat readings from Cambrai, Bibliothèque de la Ville, MS 207, fols. 149-77, which seems to preserve a different branch of the manuscript tradition. On this point, see MANN, «Juan de Segovia's» p. 74, n. 14.

<sup>13</sup> For convenience, and to avoid confusion, I will use the term *census* here. The medieval sources display little uniformity (e.g., *census*, *pensio*, *redditus annuus*, etc.), and the terminology of modern English language scholarship also varies (e.g., rent-contracts, rentes, annuities, etc). For more on the question of nomenclature, see Fabiano VERAJA, *Le orogine della controversia teologica sul contratto di censo nel XIII secolo*, Storia ed economia 7 (Rome: Edizioni di storia e letteratura, 1960), pp. 7-10; and Winfried TRUSEN, «Zum Rentenkauf im Spätmittelalter», in Festschrift für Hermann Heimpel, ed. Mitarbeiter des Max-Planck-Instituts für Geschichte, 3 vols., Veröffentlichungen des Max-Planck-Instituts für Geschichte 36/II (Göttingen: Vandenhoeck & Ruprecht, 1972), 2, p. 142.

<sup>14</sup> See James D. TRACY, *A Financial Revolution in the Habsburg Netherlands: 'Renten' and Rentiers' in the County of Holland, 1515-1565* (Berkeley: University of California Press, 1985), chap. 1; and John H. MUNRO, «Patterns of Trade, Money and Credit», in *Handbook of European History, 1400-1600*, eds. Thomas A. BRADY, Jr. Heiko A. OBERMAN and James D. TRACY, 2 vols. (Leiden: Brill, 1994), 1, p. 174. According to TRACY, «Taxation and State Debt», in *ibid*, 1, p. 574: «Although

looked to some contemporaries like thinly disguised loans at interest, they came under repeated criticism from at least the time of Henry of Ghent (d. 1293) on the grounds that they were usurious<sup>15</sup>. Thus, the Council of Basel's investigation of the *census*, and consequently Segovia's *votum*, were part of a long discussion regarding the morality of this widespread practice—a discussion which of course also included the influential voice of Henry of Langenstein.

It is clear from the text that Segovia consulted the works of other authors, either directly or perhaps via epitomes, in preparing his *votum*. One finds there numerous references to unnamed authorities such as *nonnulli doctores*<sup>16</sup>. Of course, Segovia never once mentions Henry of Langenstein, nor any other contemporary writer on the *census* by name. Nonetheless, there are striking similarities between his treatment of *census* contracts and that of Langenstein. These similarities encompass both questions asked and, to some extent, the answers given by these theologians. They are sufficient to justify the conclusion that Segovia had more than a passing familiarity with Langenstein's tract.

First, both Langenstein and Segovia apparently fear that *census* contracts could contribute to the creation of a rentier class, a group of people able to live without working. This they both strongly oppose<sup>17</sup>. Consequently, they place

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the phenomenon is not yet fully understood, there was at least from the fourteenth century an extraordinary demand for annuities». Importantly, *census* contracts were especially common in SEGOVIA'S native Castile; on this point, see Bartolomé BENNASSAR, *Valladolid au siècle d'or: Une ville de Castille et sa campagne au XVIe siècle*, Civilisations et Sociétés IV (Paris: Mouton & Co, 1967), pp. 258-72, 557-67. For more on the *census*, see especially VERAJA, *Le origine*; TRUSEN, «Zum Rentenkauf», pp. 140-58; and Bernard SCHNAPPER, «Les rentes chez les théologiens et les canonistes du XIIIe au XVIe siècle», in *Etudes d'histoire du droit canonique dédiée à Gabirel Le Bras*, 2 vols. (Paris: Sirey, 1965), 2, pp. 965-95. Additional literature is cited in Mann, «Juan de Segovia's», p. 72, n. 7.

<sup>15</sup> On the controversy regarding *census* contracts, see VERAJA, *Le origini*. For an insightful discussion of usury in the Middle Ages, see Jacques Legoff, *Your Money or Your Life: Economy and Religion in the Middle Ages*, trans. Patricia Ranum (New York: Zone, 1988). See also John T. NOONAN, *The Scholastic Analysis of Usury* (Cambridge, MA: Harvard University Press, 1957). According to John H. MUNRO, «Parterns of Trade», pp. 151-52: «From the end of the thirteenth century the Church revived and intensified its anti-usury campaign which gained enough secular support during the next two centuries to become a significant impediment to financial capitalism».

<sup>16</sup> See, e.g., SEGOVIA, *Votum* (Cologne ed., fol. 2v, fol. 5r).

<sup>17</sup> Underlying this opposition to a rentier class is a particular medieval attitude work, an attitude much indebted to Genesis 3:19 («In the sweat of your face shall you eat your bread») and 2 Thess. 3:10 («If any would not work, neither should he eat»). As JEAN GERSON concisely put it (*De contractibus* 1.13 [ed. Palomen GLORIEUX, *Jean Gerson, Oeuvres complètes*, 10 vols. Paris: Desclée & Cie, 1960-73, 9, p. 392]: «Est ergo contra naturam hominis ut sine labore velit vivere, quod fit in usuris...») For more on LANGENSTEIN'S views on work, see TRUSEN, *Jurisprudenz* 47f.; Bruder, *Studien* 92; and ROCHA, *Travail et salaire* 25f. For some illuminating and suggestive comments on medieval attitudes towards labor, see Jacques LEGOFF, *Time, work and Culture in the Middle Ages*, trans. Arthur Goldhammer (Chicago: University of Chicago Press, 1980), esp. pp. 71-86 (with bibliography pp. 303-305).

restrictions on those who may rightfully live off *census* income. As Example 1 in the appendix indicates, the types or classes of persons whom Segovia and Langenstein permit to draw such income are nearly identical. These include the leaders of the ecclesiastical and secular spheres, the elderly or infirm, and the religious or those devoted to continual prayer. Additionally, both Langenstein and Segovia maintain that, although such persons might live from *census* earnings, it would actually be harmful to society if those who could and should work for a living were allowed to live from this source<sup>18</sup>.

A second area in which Segovia appears to owe something to Langenstein involves the object of the *census*. Like Langenstein, Segovia considers both *mobilis* (such as cows or horses) and *immobilis* (such as fields, vineyards or houses) acceptable objects upon which a *census* could be founded. Like the German, the Spaniard also affirms that a *census* could be established on the person of a serf or on the serf's labor. Moreover, both are reluctant to endorse a *census* founded upon a free person<sup>19</sup>. While acknowledging that many others permit such a *census*, Segovia states that it is so fraught with danger and potential for fraud that it is unsafe. In addition, these two theologians argue that when the object of the *census* is destroyed or dies or otherwise ceases to exist, then the seller's obligation also ceases; because, as they put it, the obligation of the *census* inheres in its object (*res*) rather than in the person (*persona*) of its seller<sup>20</sup>. In part for this reason, presumably, Segovia and Langenstein disallow any *census* in which the use or usefulness of the *census* object is also its consumption<sup>21</sup>. Consequently, both rule out *census* founded on money or wine or bread. Example 2 in the appendix provides the textual evidence for these parallels.

Third, while Langenstein and Segovia obviously approve of *census* contracts, at least under certain circumstances and with certain restrictions, they sha-

<sup>18</sup> See TRUSEN, *Jurisprudenz* pp. 119-20; SOMMERFELD, p. 197. The relevant chapters in LANGENSTEIN'S *Tractatus* are entitled, respectively, «De his quos censibus vivere expediebat» (chap. 2) and «De his qui non sunt permittendi censibus vivere et quare non sint census multiplicandi» (chap. 3).

<sup>19</sup> LANGENSTEIN, *Tractatus* 2.31 (fol. CCXVIIIv), notes that «certain doctors of law» also proscribed *census* founded on a freeman. LANGENSTEIN'S position on this point differed somewhat from that of his important colleague, HENRY TOTTING OF OYTA. See TRUSEN, *Jurisprudenz* pp. 121-22. Still, as SOMMERFELD 198 rightly notes, LANGENSTEIN does not completely rule out a personal *census* on a freeman.

<sup>20</sup> Admittedly, they advance this argument in somewhat different contexts. Unlike LANGENSTEIN, SEGOVIA does so in order to distinguish a *census* from a *mutuum* or loan; in the later, he says, the obligation *is* personal. For more on this important distinction, see Mann, «Juan de Segovia's», pp. 77-78, *whit* n. 26. On LANGENSTEIN'S position, see TRUSEN, *Jurisprudenz*, pp. 114.

<sup>21</sup> Here, one is reminded of the common distinction between goods which can be used without being destroyed (*res non fungibles*) and goods which cannot be used without being destroyed (*res fungibles*). For a brief, but clear presentation of this distinction in THOMAS AQUINAS, see W. STARK, *The Contained Economy: An Interpretation of Medieval Economic Thought*, The Aquinas Society of London, Aquinas Paper 26 (London: Blackfriars, 1956), 13-16.

re the perhaps more significant conviction that the multiplication or proliferation of such contracts was alarming and dangerous and needed to be curtailed<sup>22</sup>. Thus, in light of contemporary practice, and even contemporary theory, they both may rightly be considered conservatives as regards the *census*<sup>23</sup>. Their reasons for wanting to have the number of *census* contracts restricted are similar but not identical. Langenstein objects to the multiplication of these contracts on the grounds that this is harmful to the commonweal<sup>24</sup>. Specifically, he states that, as *census* contracts multiply, work suffers, fields are left uncultivated and houses uncared for, *immobilia* are dangerously overburdened with rents; and the poor, whom indigence often forces to enter into such contracts, are exploited by affluent *census* buyers. Segovia, for his part, outlines four reasons why *census* should be restricted<sup>25</sup>. First, he too suggests that *census* income encourages negligence rather than meritorious labor and that work is preferable to the leisure afforded by such income. Second, he maintains that almsgiving decreases because *census* owners become both more miserly and ever more avaricious. Third, saying that the multiplication of *census* leads to a «manifold detriment» Segovia enumerates four examples thereof, including reduced tithe payments and neglect of agriculture. Finally, he implies that wealth breeds impiety.

It is certainly noteworthy that both Langenstein and Segovia buttress their opposition to the multiplication of *census* contracts by citing the same well-known Pauline distinction (1 Cor. 6:12, 10:23) between what is licit or permissible and what is expedient or beneficial<sup>26</sup>. That is, they both conclude that while these contracts might in themselves be licit, their proliferation is undesirable. Even in a culture suffused with the language of the Vulgate, that both authors should employ this same citation in an identical context seems more than mere coincidence.

<sup>22</sup> Cf. O'BRIEN, *An Essay on Medieval Economic Teaching* (London: Longmans, Green & Co., 1920; reprint ed. New York: Augustus M. Kelley, 1967), p. 204: «It is obvious that Langenstein did not regard rent charges as wrongful in themselves, but simply as being the possible occasions of wrong».

<sup>23</sup> SCHREIBER, pp. 200, 202, has called LANGENSTEIN a «conservative» and even «scharply anti-capitalistic». TRUSEN, *Jurisprudenz*, p. 123 and Sommerfeld, p. 196 apparently concur with this assessment.

<sup>24</sup> LANGENSTEIN, *Tractatus* 2.3 (fol. CCVIIr). TRUSEN, *Jurisprudenz* 124, has rightly noted that LANGENSTEIN'S objection here may have been based on more than just moral principle: «Die weitere tatsächliche Entwicklung in den Städten zeigt, dass diese Worte Heinrichs von Langenstein nicht als nur moralistische Äusserung zu verstehen sind, sondern die Verschuldung durch Rentenbelastung so erheblich anstieg, dass sie an vielen Orten nur durch radikale Ablösungsgesetze... beseitigt werden konnte».

<sup>25</sup> SEGOVIA, *Votum* (Cologne ed., fols. 12rv).

<sup>26</sup> LANGENSTEIN, *Tractatus* 2.7 (fols. CVIIIrv); and SEGOVIA, *Votum* (Cologne ed., fols. 11v-12r). For more on this distinction, see MANN, «Juan de Segovia's» p. 81, n. 45.

Their solution to the problem of the ever-increasing number of census is again similar but not identical. Segovia and Langenstein both emphasize the role of secular and religious authorities in controlling, even eliminating future *census*. The German seems to suggest that since these authorities prohibit other contracts which are harmful if not actually illicit, they should also prohibit *census* contracts. Segovia's recommendation to the Council of Basel is that *census* should, like other types of contracts and donations, be subject to appropriate approbation, and that the council should require the relevant authorities (secular or ecclesiastical, depending on the status of the contracting parties) to review all *census* contracts as a means of reducing the number of new *census* and of preventing fraudulent ones<sup>27</sup>. His suggestion thus differs in degree but not kind from Langenstein's.

Fourth, we have not yet considered the type of *census* contracts that most troubled both Langenstein and Segovia, namely those containing a redeemability clause<sup>28</sup>. Such a clause permitted one of the contracting parties, usually the seller, to redeem or buy back the *census*, and by the fourteenth century these clauses were increasingly common in *census* contracts<sup>29</sup>. Langenstein and Segovia object to redeemability clauses for identical reasons. As Example 3 in the appendix illustrates, they both argue that such clauses raise doubts about the certainty and validity of the sale and that such uncertainty is harmful to society as well as contrary to the nature of a real *contractus venditionis et emptiois*. Specifically, they maintain that the redeemability clause casts doubt on the transfer of ownership from seller to buyer which is the essential element in any valid contract of sale<sup>30</sup>. If ownership never truly changes hands, their argument goes, then the *census* transaction looks more like a loan at interest than a sale; and loans at interest were of course prohibited, in theory if not always in practice<sup>31</sup>.

<sup>27</sup> LANGENSTEIN, *Tractatus* 2.7 (fol. CCVIIIv); and SEGOVIA, *Votum* (Cologne ed., fols. 12v-13r).

<sup>28</sup> The redeemability clause (sometimes included in the *census* contract itself, sometimes contained in a separate contract) obviously added to the legal complexity of this practice. For more on these clauses, see MANN, «Juan de Segovia's» 82, n. 48 (with bibliography).

<sup>29</sup> *Ibid.*, 84.

<sup>30</sup> Cf. TRUSEN, *Jurisprudenz* 82-83.

<sup>31</sup> Medieval canon law was quite clear in defining usury as «whatsoever is taken for a loan beyond the principal». *Decretum Gratiani*, ed. Aemilius Friedberg (Leipzig: Tauchnitz, 1879; reprint ed. Graz, 1955), dictum post C. 14 q.3c.4: «Ecce evidenter ostenditur, quod quicquid ultra sortem exigitur usura est». However, medieval legal practice apparently recognized a distinction between moderate interest, which was condoned, and excessive interest, which was not. See R. H. Hermholz, «Usury and the Medieval English Church Courts», in *idem*, *Canon Law and the Law of England* (London: Hambledon, 1987), pp. 333-34 (Orig. publ. in *Speculum* 61 [1986], pp. 362-80).



Moreover, both Langenstein and Segovia refute the principal Scriptural «prooftext» in favor of redeemability clauses, Lev. 25:24 (Vulgate: *Unde cuncta regio possessionis vestrae sub redemptionis conditione a vobis vendetur*), with a very similar counter-argument. Both suggest that to apply this passage to the *census* issue is to take it out of context and to distort its meaning. Likewise, they suggest that, in any event, the Christian dispensation requires a different, more charitable attitude than did the Mosaic law<sup>32</sup>.

Finally, and perhaps most significantly, Henry of Langenstein and Juan de Segovia agree that, contrary to what must have been common practice no *census* should be sold for less than its true value just because the contract included a redeemability clause<sup>33</sup>. Although their specific reasons for objecting to this practice differ somewhat, they both base their argument fundamentally on the notion of the «just price»<sup>34</sup>. As Segovia puts it:

«What is less than just is not just or fair. However, here it is assumed that a price lower than the just price will be paid due to the redeemability clause. Consequently, by its very nature, such a contract fails to meet the standards of justice and fairness»<sup>35</sup>.

At the same time, Langenstein and Segovia also explicitly reject the argument that the very right of redeeming has itself a value that justifies a lower than «just» price for the *census*<sup>36</sup>.

As noted, Juan de Segovia is silent about his sources. Nonetheless, the similarities outlined above strongly suggest that Segovia did in fact borrow from Henry of Langenstein's *Tractatus de contractibus* when composing his own

<sup>32</sup> LANGENSTEIN, *Tractatus* 2.11 (fol. CCXr); SEGOVIA, *Votum* (Cologne ed., fols. 20v-21r). According to TRUSEN, *Jurisprudenz* 84, Langenstein rejected Lev. 25:24 «denn nach seiner Ansicht waren die Gegebenheiten der HI. Schrift und die jener Zeit doch völlig verschiedene».

<sup>33</sup> LANGENSTEIN *Tractatus* 2.19 (fol. CCXIIIr): «In quo invehitur contra emptionem censuum pro minori quam valent retione redemptionis». Segovia, *Votum* (Cologne ed., fols. 16r ff.). Cf. TRUSEN, *Jurisprudenz* 134ff.; and Hans-Jörg GILOMEN, «Kirchliche Theorie und Wirtschaftspraxis: Der Streit um die Basler Wucherpredigt des Johannes Mulberg», *Kirchengeschichte und allgemeine Geschichte in der Schweiz*, Die Aufgabe der Helvetia Sacra, Itinera 4 (Bern, 1986), p. 39, n. 21. In contrast, no less an authority than JEAN GERSON records an opinion approving of a lower price for redeemable *census*; see GERSON, *De contractibus* (GLORIEUX ed. 9, p. 413); and SCHREIBER, pp. 205-6.

<sup>34</sup> On LANGENSTEIN'S position, see SOMMERFIELD, pp. 211-12. Cf LANGENSTEIN, *Tractatus* 2.12 (Fol. CCXv).

<sup>35</sup> SEGOVIA, *Votum* (Cologne ed., fol. 16r): «Quod namque minus est iusto non est iustum et equum. Hic autem presupponitur quod propter huiusmodi appositionem (Cologned ed.: appositioni) clause datur minus iusto precio. Ergo ex sua conditione nature contractus deficit a iusticia et equitate».

<sup>36</sup> LANGENSTEIN, *Tractus* 2.19 (Fol CCXIIIr): «Nec valet dicere si pro minori vendant in recompensam habent quod possunt pro eodem precio redimere bona sua...» SEGOVIA *Votum* (Cologne ed., fol. 17r): «Similiter non excusat responsio secunda retione libertatis quam allegant alii dicentes quod illa libertas que datur venditori ut possit reemere quando velit est precio comparabilis...»

*Votum super materia contractuum de censibus annuis*. Admittedly, these similarities remain only suggestive, they are not conclusive. One cannot completely rule out the possibility of some intermediary or even of an increasingly common vocabulary regarding the *census* issue. However, as Winfried Trusen and others have argued, Langenstein's tract did exercise wide influence both within and beyond German-speaking lands<sup>37</sup>. Importantly, Trusen's list of authors whose discussion of the *census* owes something to Langenstein also Johannes Nider. This brief study will hopefully have shown that Juan de Segovia's name should be added to that list.

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<sup>37</sup> TRUSEN, *Jurisprudenz* 212ff., esp. 218-19. Cf. ENDEMANN, *Studien*, 2, p. 109; and O'BRIEN, *Essay*, pp. 203-4.

## APPENDIX

### EXAMPLE 1

Segovia, *Votum* (Cologne ed., fol. 9rv)

Ex premissis iam manifestum est quartum requisitum, videlicet que sunt persone pro quibus emi iuste possunt annui census... Hec autem sunt in quadruplici genere: Primo ecclesie administrantes ut episcopi, curati, predicatorum et doctores... Secundum genus personarum est rempublicam administrantes sicut reges, principes, consules et rectores sive iudices... Tertium genus est pauperes, orphani, vidue et senes... Quatum genus est religiosi orationibus insistentes et divine contemplationi vacantes...

Id etiam dicendum est quod sicut iustum est et utile pro [Cologne ed.: per] vel ab huiusmodi personis annui census, ita inutile et non sine dampno reipublice passim et indifferenter permitti ab illis qui non habent [Cologne ed.: om. illis-habunt] huiusmodi qualitates sed per se possunt laborare.

### EXAMPLE 2

Segovia, *Votum* (Cologne ed., fol. 5 v)

Potest autem constitui super agris, vineis, molendinis, domibus, castris et aliis rebus immobilibus. Potest etiam super mobilibus ad vitam eorum ut super

Langenstein, *Tractatus* 2.2-3 (fol. CCIV-CCVIIr)

Bonam vero originem habuerunt vel habere potuerunt census si non potentes amplius laborare ratione senii vel infirmitatis constituerunt sibi redditus... Item si communitas politica constituit super bonis singulorum pro sustentatione eorum quos ipsis in civilibus et spiritualibus preesse oportebat et expediebat ut sunt principes, iudices, milites, episcopi, sacerdotes, doctores vel verbi predicatorum... Et maxime expediebat ut hi qui ceteris omnibus in his que ad deum pertinent preesse debuerant ac cultui divino vacare redditibus dotarentur...

Set sunt adhuc qui rationabiliter non permittuntur vivere de redditibus utpote plebei fortes laboribus apti... Ex hoc simitur ratio una quare non expediat communitatibus hominum census et redditus multiplicare et indifferenter permitti quemlibet vivere ex eis.

Langenstein, *Tractatus* 2.4 (fol. CVIIrv)

Pro quo advertendum quod res ab hominibus possesse dividuntur in res mobiles et immobiles quibus... census constitui possunt, ut in agris, vineis, domibus et ceteris immobilibus.

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equo vel camelo. Similiter super servo... Utrum autem super persona libera... a multis tenetur quod id possit fieri, sed propter multiplex periculum aut quia [om. Cologne ed.] fraus facile huic contractui imiscere se posset super libera [Cologne ed.: libere] persona non est tutum fieri.

(fol. 3v) In hoc autem contractu emptionis nisi super personam census vendatur [Cologne ed.: om. nisi-vendatur], quomodo recte fit obligatio potius rem quam personam respicit quia destructa re, super qua constituitur annuus redditus, cessat ius percipiendi illum

(fol. 5v) Non enim licitum est... si sit [i.r., the object of the census] res usu consumptibilis sic bladum, vinum, pecunia et alia... que ipso usu consumuntur.

### EXAMPLE 3

Segovia, *Votum* (Cologne ed. fol. 14r)

Cum ergo emptor annui redditus, si [Cologne ed.: sibi] obligatur reddere quando venditor reemere voluerit, interim ipse ius percipiendi annum censum, quod emit, non possit donare, vendere aut distrahere, evidens signum est quod numquam fuit dominus illius iuris...

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Similiter in rebus mobilibus ut in vacca, ove, equo et similibus... Si queratur an census possunt constitui in persona hominis vel communitate hominum, respondetur quod si servitus est iusta... ut videtur utique dominus potest constituere alicui censum in seruo... An vero homini libero qui est iuris vel libere communitati hominum liceat se censualem constituere alteri homini vel communitate dubium habet.

Itaque quod si res sine negligentia possidentis vel ipso prohibere non potente desinat etc. aut inutilis fiat vel auferatur, census non poterit amplius exigi iuste ab illo qui ipsum dare consuevit, Ratio est quia obligatio ad census cadit primarie in rem in qua constituitur et non in personam rem possidentis.

(cap. 5, fol. CCVIIv) ...occurrit quod census dupliciter redditus iniustus... Vel si constituatur in re non habente usum utilem preter rei consumptionem ut si constituatur in nuda pecunia aut in vino seu pane vel in aliquo huiusmodi.

Langenstein, *Tractatus* 2.10 (fol. CCIXv)

Item propter obligationem huiusmodi emptor non est certus de possessione rei empte per quodcumque tempus et ita non semper potest ea pro arbitrio suo secure uti, ne tempora pro utilitate sua plene disponere commutando vel locando vel alius cum ipsa quod placet faciendo et per consequens non est dominium rei illius translatum in ipsum...

(fol. 15v) Unde hec apposicio clausule videtur simulus quidam ut facile ac frequenter dominia rerum immobilium in alios transferantur. Hoc autem, sicut dictum est, repugnat bono statui rei publice...

Unde apparet quod iniusta et irrationabilis esset lex quod obligaret omnem emptorem ad revedendum... quia obviaret iustitie...turbaret pacem communitatis, auferret certitudinem possessionis, impediret ementium et vendentium utilitatem.