

A Note on a Note in the Corpus Reformatorum Edition of Huldrych Zwingli's «Von göttlicher und menschlicher Gerechtigkeit»

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In the printed version of his 1523 sermon on Divine and Human Righteousness, the Swiss reformer Ulrich Zwingli stated:

«That someone should have to pay interest on land, a field or a vineyard which you lawyers call a purchase of fruit or custom [*ususfructus*], whether, God willing, there be fruit or no, is a bit too much. I am totally taken aback by the fact that those who attended the Council of Constance or Basel were so utterly unreasonable even by the standards of human righteousness in allowing such an unworthy thing to get by that it was indeed too much even for unbelieving princes to allow this among their people. Why did they not look to the word of Christ, <you ought to lend and not expect anything in return>?»¹

According to the corresponding note in the Corpus Reformatorum edition of this work, Zwingli's reference here to the councils of Constance and Basel apparently encompasses several conciliar sessions and decrees, most notably those dealing with the annates issue.² However, the case which Zwingli de-

¹ The original German text reads: «Aber das einer ab ein güet oder acker oder wingarten zins geben müß, den ir juristen ein frucht kouff oder bruch nennend, got geb, im werdind frucht oder nit, das ist doch gar ze vil. Und nimpt mich wunder, daß, die das concilium ze Constentz oder Basel besessen habend, joch nach menschlicher gerechtigkeit so unbesinnet sind xin, das sy so ein unbillich ding habend nachgelassen, das ungleubigen fürsten warlich ze vil wäre under irem volck nachzelassen. Warumb hand sy nit uff das wort Christi gsehen [Luc. 6:35]: <Ir söllend lyhen unnd nütts darvon hoffen>» Z II 516–517. The English translation given here is taken from: Huldrych Zwingli, *Writings*, transl. and ed. by H. Wayne Pipkin and Edward J. Furcha, vol. 2, Allison Park, PA 1984 (PThM NS 13), 34. This sermon was first preached in Zürich on 24 June 1523. The printed version dates from 30 July 1523. For more on the background to this work, see George Richard Potter, *Zwingli*, Cambridge 1984, 249–50 [hereafter Potter]. On this specific passage, see Heinrich Wiskemann, *Darstellung der in Deutschland zur Zeit der Reformation herrschenden Nationalökonomischen Ansichten*, Leipzig 1861 (Preisschriften gekrönt und hrsg. von der Fürstlich Jablonowski'schen Gesellschaft zu Leipzig 10), 71–74. On Zwingli's attitude toward usury and interest, see Heinrich Schmid, *Zwingli's Lehre von der göttlichen und menschlichen Gerechtigkeit*, Zürich 1959 (SDGStH 12), 179–85; Potter 164–65; and, above all, Ernst Ramp, *Das Zinsproblem. Eine historische Untersuchung*, Zürich 1949 (QAGSP 4), 59–81 [hereafter Ramp]. The «unbelieving princes» Zwingli mentions might well have been Muslims. For more on Islamic views regarding usury, see Marjorie Grice-Hutchison, *Early Economic Thought in Spain, 1177–1740*, London 1978, 24ff.; and Joseph Schacht, *Riba*, in: *EF* 8, 491–93.

² Z II 517, n. 6 reads: «In Betracht kommen: 1. Constanz: Sessio XL. III de annatis, communibus servitiis et minutis. XVI. de provisione papae et cardinalium (Mansi XXVII. p. 1164). Sessio XLIII. II. de provisionibus ecclesiarum, monasteriorum, prioratuum dignitatum et ali-

scribes seemingly does not pertain to the annates, which after all both councils sought to abolish;³ nor does it seem to pertain to any of the other possibilities offered by the Corpus Reformatorum editors. More accurate is the renowned economic historian R. H. Tawney's interpretation of this passage as a denunciation of the councils «for showing indulgence to the mortgaging of land on the security of crops.»⁴ Still, what I believe the reformer may actually have had in mind was the two councils' apparent approval of a widespread credit and investment practice known as *census* or *redditus annuus*.

The *census* was a type of contract of sale (*contractus emptio et venditionis*) in which the object sold was, as the Jesuit Leonhard Lessius (1554–1623) concisely put it, «the right of receiving an annual pension from the property [e.g., land, field or vineyard] or person of another.»⁵ That is, in return for a

orum beneficiorum. IV. de annatis rubrica. VIII. de fructibus medii temporis (Mansi XXVIII. p. 1178ff.) vgl. auch Mansi XXVII. p. 1185ff. und 1189ff. II. de provisione ecclesiarum etc. III. de annatis. 2. für Basel: Sessio XXI. I. de annatis (Mansi XXIX. p. 104) und Mansi XXIX. p. 454ff.: Collatio eximii decretorum doctoris magistri Iohannis de Bachenstein.» It is important that the English translators of Zwingli's tract repeat the references to sessions XL and XLIII of the Council of Constance and session XXI of the Council of Basel, since they claim to have checked each annotation in the Corpus Reformatorum edition thoroughly; see Huldrych Zwingli, Writings, transl. and ed. by H. Wayne Pipkin and Edward J. Furcha, vol. 1, Allison Park, PA 1984 (PThM NS 12), xvii.

³ On annates in general, see William E. Lunt, *Papal Revenues in the Middle Ages*, vol. 1, New York 1934, 93–99. For a recent discussion of the annates and related matters at Constance, see Phillip H. Stump, *The Reforms of the Council of Constance (1414–1418)*, Leiden 1994 (SHCT 53), chaps. 3–4 and 7. On the annates question at both councils, especially Basel, see Richard Zwölfer, *Die Reform der Kirchenverfassung auf dem Konzil zu Basel*, in: BZGAK 28, 1929, 198–247. See also Gerald Christianson, *Cesarini. The Conciliar Cardinal*, St. Ottilien 1979 (KGQS 10), 136–48, esp. 138, n. 132. The text of Basel's annates decree may be found in COD³ 488–89. A brief but informative overview of papal finances in the 15th century is available in John A. F. Thomson, *Popes and Princes, 1417–1517. Politics and Polity in the Late Medieval Church*, London 1980, 78–94.

⁴ Richard Henry Tawney, *Religion and the Rise of Capitalism. A Historical Study*, New York 1926 (Reprint 1954), 92. For more on loans on security in medieval canon law, see Terence P. McLaughlin, *The Teaching of the Canonists on Usury (XII, XIII and XIV Centuries)*, in: MS 1, 1939, 113–15 [hereafter McLaughlin].

⁵ «Ius percipiendi annuam pensionem ex re vel persona alterius.» Cited by L. Choupin, Calixte III. Le contrat du cens d'après la bulle Regimini (1455), in: DThC 2, 1352–53 [hereafter Choupin]. It should be noted that in the sources the terminology is far from uniform. See, e.g., Fabiano Veraja, *Le origini della controversia teologica sul contratto di censo nel XII secolo*, Rome 1960 (*Storia ed economia*, 7), 7ff. [hereafter Veraja]. For convenience I shall use the term *census* here. In English, *census* is often rendered as «rent» or «rent-charge» and sometimes as «annuity.» The literature on the *census* is abundant. Studies I have found useful include: O. Stobbe, *Zur Geschichte und Theorie des Rentenkaufs*, in: *Zeitschrift für deutsches Recht* 19, 1859, 178–217; Wilhelm Endemann, *Studien in der romanisch-kanonistischen Wirtschafts- und Rechtslehre bis gegen Ende des siebenzehnten Jahrhunderts*, Bd. 2, Berlin 1874–83, 103–57; McLaughlin; Ramp esp. 16–21; John T. Noonan, Jr., *The Scholastic Analysis of Usury*, Cambridge, MA 1957 [hereafter Noonan]; Paul Ourliac, *La théorie canonique des rentes au XV^e siècle*, in: *Etudes historiques à la mémoire de Noël Didier*, Paris 1960,

single lump sum, the *census* purchaser was entitled to receive annual payments from the seller for a period specified by the terms of the *census* contract. Thus, in such contracts, the seller was the debtor (since he bound himself to make the annual payments), while the buyer was the creditor (since he provided the initial sum of money).⁶ By the 13th century, the *census* was a common way to obtain ready cash, and it soon became a regular instrument of state or municipal credit. In the 15th century, for example, Phillip the Good of Burgundy used the sale of such *census* as a steady source of income.⁷ From at least the time of Henry of Ghent (d. 1293), however, *census* contracts had been attacked on the ground that they were really loans at interest and thus usurious.

By the early 1400s, the *census*, particularly the redeemable *census* which allowed one party (usually the seller) to redeem or buy back the *census*, had become so widespread and, at the same time, so morally troubling that the two major reform councils of the fifteenth century, Constance and Basel, were both asked to address this issue. At Constance, a fourteen-member committee discussed and apparently approved the redeemable *census*, although the council never issued a formal decree on the matter.⁸ Following the council's lead, in 1425 Pope Martin V officially endorsed the redeemable *census* in his bull *Regimini*, which entered into the *Corpus iuris canonici*.⁹ But, despite Martin's bull, the issue came up again at Basel at least twice, first in 1433 and again in 1441.¹⁰

231–43; Veraja; Winfried Trusen, Spätmittelalterliche Jurisprudenz und Wirtschaftsethik, dargestellt an Wiener Gutachten des 14. Jahrhunderts, Wiesbaden 1961 (VSWG 43); Clemens Bauer, Diskussionen um die Zins- und Wucherfrage auf dem Konstanzer Konzil, in: Das Konzil von Konstanz, edited by August Franzen and Wolfgang Müller, Freiburg 1964, 174–86 [hereafter Bauer]; Bernard Schnapper, Les rentes chez les théologiens et les canonistes du XIII^e au XVI^e siècle, in: Etudes d'histoire du droit canonique dédiée à Gabriel Le Bras, Bd. 2, Paris 1965, 965–95; Winfried Trusen, Zum Rentenkauf im Mittelalter, in: Festschrift für Hermann Heimpel, ed. by Mitarbeiter des Max-Planck-Instituts für Geschichte, Göttingen 1972, Bd. 2 (VMPiG 36/2), 140–58; Hans-Jörg Gilomen, Die städtische Schuld Berns und der Basler Rentenmarkt im 15. Jahrhundert, in: BZGAK 82, 1982, 5–64; Hans-Jörg Gilomen, Kirchliche Theorie und Wirtschaftspraxis. Der Streit um die Basler Wucherpredigt des Johannes Mulberg, in: Kirchengeschichte und allgemeine Geschichte in der Schweiz. Die Aufgabe der Helvetia Sacra, Itinera 4, Bern 1986, 34–62 [hereafter Gilomen, Kirchliche Theorie]; and The Cambridge Economic History of Europe, vol. 3, ed. by Michael M. Postan, E. E. Rich and Edward Miller, Cambridge 1963 (Reprint 1979), 528–33.

⁶ Noonan 155. See also Ramp 17.

⁷ Cambridge Economic History of Europe, vol. 3, 504. Phillip usually sold these rents through the intermediary of the municipal governments.

⁸ See especially Bauer. The relevant primary sources have been published in: ACCon, Bd. 4, 708–10.

⁹ For the text of this bull, see Extravag. Comm. 3.5.1 in: CIC(L)², Bd. 2, 1269–71. For more on its background and genesis, see Choupin 1359; Bauer 184–86; and Gilomen, Kirchliche Theorie 44–45.

¹⁰ See 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, ed. by Thomas M. Izbicki and Gerald Christianson, Leiden 1996 (SHCT 71), 71–85.

While we know that at least one important council father, the Spanish theologian Juan de Segovia, objected to the redeemable *census*, it seems probable that Basel, like Constance, also endorsed both types of *census*. But, again like Constance, Basel never issued a formal decrees on the *census*, and, so far as I know, there is no evidence to indicate an official conciliar stance on this question.

For the councils of Constance and Basel the problematic *census* contract was the redeemable *census*, which looked to many contemporaries like a thinly disguised loan at interest. For Zwingli, however, the troubling point was apparently the seller's obligation to make an annual payment to the buyer on property which bore no fruit. *Census* contracts including such an obligation were certainly not unknown,¹¹ but neither Constance nor Basel seems to have been especially concerned about that specific point. Interestingly, Zwingli's objection seems to reflect a long-standing mistrust of any commercial or financial transaction in which an investor or lender's potential gain involved neither risk nor uncertainty.¹² For example, in the 13th century, the renowned canonist William of Rennes objected to *census* contracts «because the buyer took none of the risks of a barren soil or of bad weather.»¹³ That Zwingli's indictment focuses on a point which apparently neither Constance nor Basel discussed directly need not imply that the reformer had some other allegedly usurious practice in mind when criticizing those councils. Much depends on how, and how much, Zwingli knew about the proceedings of these synods – a point which seems to require further investigation.¹⁴ It is possible that Zwingli's denunciation of Constance and Basel referred to their general approval of *census* contracts without intending any reference to this specific point.

¹¹ Noonan 159, discusses the *census* with a fixed annual charge in contrast to the *census* where the return varied with the yield of the *census* base.

¹² On the importance of risk and uncertainty as factors in the medieval discussion of usury and commerce, see Noonan 159; McLaughlin 95ff.; R. Roehl, Patterns and Structure of Demand, 1000–1500, in: The Fontana Economic History of Europe, vol. 3, ed. by Carlo M. Cipolla, London 1972, 137; Jacques LeGoff, Your Money or Your Life. Economy and Religion in the Middle Ages, transl. by Patricia Ranum, New York 1988, 73–74; and Odd Langholm, Economics in the Medieval Schools. Wealth, Value, Money and Usury according to the Paris Theological Tradition 1200–1350, Leiden 1992 (STGMA 29), passim.

¹³ Cited by Langholm 115. See also Veraja 33.

¹⁴ Understandably, Zwingli's attitude toward the authority of councils seems so far to have attracted more attention than his knowledge of conciliar history. See, e.g., Fritz Schmidt-Clawnsing, Zwingli's Stellung zum Konzil, in: Zwa 11, 1962, 479–98; and Fritz Büsser, Ein ungedrucktes Vorwort zu Joh. Stumpfs Geschichte des Konzils von Konstanz, in: F. Büsser, Wurzeln der Reformation in Zürich. Zum 500. Geburtstag des Reformators Huldrych Zwingli, Leiden 1985 (SMRT 31), 36–37. Importantly, as Ramp 63, n. 81 has noted, Zwingli studied the works of Gabriel Biel and Conrad Summenhart – both of whom wrote on *census* contracts – as part of his investigation of the tithe question. A careful examination of their economic writings, especially Summenhart's massive *De contractibus licitis, atque illicitis, tractatus*, might reveal that the reformer learned about the councils' treatment of the census from one or both of these influential authors.

Unfortunately, Zwingli's own terminology does not really resolve this matter. In the original German text, the reformer calls the practice he condemns a «früchtkouff» or «bruch».¹⁵ The Corpus Reformationum editors annotate only the second term, suggesting that «bruch» is equivalent to *ususfructus* – an important concept in Roman law.¹⁶ In the legal language of Zwingli's time, «bruch» actually had several meanings.¹⁷ Most pertinently in the present context, «bruch» could mean «abgabe» (= «duty» or «fees»), which is suggestive but still rather general. There seems no compelling reason to associate «bruch» exclusively with annates. «Früchtkouff», on the other hand, appears to be an almost literal translation of the term *venditio fructus* employed by medieval canonists.¹⁸ As Terence McLaughlin has noted, for the canonists the *venditio fructus*, and thus perhaps the «früchtkouff» as well, was identical to the rent charge or *census* contract.¹⁹ If Zwingli's «früchtkouff» was indeed synonymous with the lawyers' *venditio fructus*, then the reformer certainly could have been discussing the *census* question.

The subsequent Latin version of his sermon (apparently translated and edited by Zwingli's son-in-law, Rudolf Gwalther) sheds little light here.²⁰ In the Latin text, «früchtkouff» and «bruch» are rendered simply as *ususfructus*.²¹ However, the larger issue under consideration in this section of the sermon is translated at least twice as *redditus annuus*,²² which was of course another name for the *census*.

¹⁵ Additional information on these two words will perhaps become available when the relevant volumes of the Frühneuhochdeutsches Wörterbuch, ed. by Robert R. Anderson, Ulrich Goebel and Oskar Reichmann, Berlin 1986ff., are published.

¹⁶ Z II 517, n. 1. On *ususfructus* in Roman law, see Adolf Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953 (TAPhS 43/2) 755 (with additional bibliography).

¹⁷ DRW Bd. 2, 523–27. See also Schweizerisches Idiotikon. Wörterbuch der schweizerdeutschen Sprache, Frauenfeld 1881ff., Bd. 5, Sp. 347 [hereafter SI].

¹⁸ This precise term does not appear in DRW, nor in HDRG, nor in SI.

¹⁹ McLaughlin 136.

²⁰ S I (lat.) 471–475. It must be noted here that I have used an edition of Schuler/Schulthess (= S) in which vol. 1 contains Latin works. This seemingly less common volume, published in 1829 (not mentioned by Georg Finsler, *Zwingli-Bibliographie. Verzeichnis der gedruckten Schriften von und über Ulrich Zwingli*, Zürich 1897), has thirteen works reprinted nearly identically to those first published by Gwalther 1544/45; in contrast to this, the more commonly consulted vol. 1, published in 1828, contains twelve German works (partially different from the Latin works!) (I am grateful to Dr. Heinzpeter Stucki for information regarding this edition.) The recent modern German translation of Zwingli's sermon likewise sheds little additional light here. The translator, Ernst Saxer, renders «früchtkouff» and «bruch» as «Früchtekauf» and «Fruchtnutzen» respectively, and offers no commentary on these terms or on the passage in question; see Huldrych Zwingli, *Schriften*, Bd. 1, ed. by Thomas Brunnschweiler, Samuel Lutz et al., Zürich 1995, 205.

²¹ S I (lat.) 474.

²² S I (lat.) 471, 473.

The evidence presented here, while admittedly inconclusive, points to the real possibility, if not plausibility, that in criticizing the councils of Constance and Basel, Zwingli was actually referring not to the annates or related matters, but to the failure of these councils to prohibit *census* contracts. That he might have done so certainly comes as no surprise. After all, the *census* question, particularly the licitness of the *census*, was still the cause of much uncertainty and debate in the 16th century, and the Protestant reformers (especially Luther) were known for their opposition to this practice.²³

What, then, of the note in the Corpus Reformatorum edition of Zwingli's sermon? At the least, that note should be expanded to include some reference to the *census* debates at Constance and Basel. At the most, such a reference should completely replace the current note which is, in fact, too broad and, to some degree, misleading. Ultimately, of course, the effect of such an emendation would be to underscore the contribution of the 15th century reform councils to the discussion of the *census* question – a discussion which continued well into the 17th century.

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²³ See Bernard *Schnapper*, *Les rentes au XVI^e siècle. Histoire d'un instrument de crédit*, Paris 1957 (*Affaires et gens d'affaires*, 12), 79: «Les attaques violentes des Reformateurs allemands (celles de Luther surtout, jusqu'à la Guerre des Paysans de 1525–26) contre les cens et les rentes montrent combien l'opinion est sensible à tout abus.»