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The Ideology of Black Slavery: Philosophical, Juridical, and Theological Accounts by Sixteenth- and Seventeenth-Century Scholastic and Catholic Thinkers on the Justification for Enslaving People and the Continuation of Slavery Systems

1 Introduction

Historical research on early modern (and modern) scholastic thinkers' philosophical, legal, and theological assessments of black slavery is an ongoing project. This is especially true in the context of the transatlantic slave trade and the construction of Latin American viceregal and colonial societies in the period stretching from the sixteenth to the nineteenth century. In general, there is still a notable lack of philosophical studies dealing with Iberian-Latin American "second-scholastic" authors and works,¹ as well as a

1 On the concept of "Second Scholasticism," see Roberto Hofmeister Pich, "An Index of 'Second Scholastic' Authors," in *Right and Nature in the First and Second Scholasticism*, ed. Alfredo Santiago Culleton and Roberto Hofmeister Pich (Turnhout: Brepols, 2014): ix–xiv. On Latin American Scholasticism, see Walter Bernard Redmond, *Bibliography of the Philosophy in the Iberian Colonies of America* (The Hague: Nijhoff, 1972); Walter Bernard Redmond, "Latin America, Colonial Thought," in *The Routledge Encyclopedia of Philosophy*, vol. 5, ed. Edward Craig (London: Routledge, 1998): 421–26; Roberto Hofmeister Pich and Alfredo Santiago Culleton, "SIEPM Project 'Second Scholasticism': *Scholastica colonialis*," *Bulletin de Philosophie Médiévale* 52 (2010): 25–45; Roberto Hofmeister Pich and Alfredo Santiago Culleton, "Introduction: The Challenge of Investigating Latin American Colonial Scholasticism," in *Scholastica colonialis*:

Note: This essay synthesizes recent previous research of mine and, thus, uses, with permission, parts of the following studies: Roberto Hofmeister Pich, "Second Scholasticism and Black Slavery," *Veritas – Revista de Filosofia* 64, n. 3 (2019): 1–24; Roberto Hofmeister Pich, "Second Scholasticism and Black Slavery (Continuation and End)," *Veritas – Revista de Filosofia* 65, n. 1 (2020): 1–13; Roberto Hofmeister Pich, "Francisco José de Jaca's (c. 1645–1689) and Epifanio de Moirans's (1644–1689) Plea for the Liberation of Enslaved Black People in Latin America," in *Civilization – Nature – Subjugation: Variations of (De-)Colonization*, ed. Christoph Haar, Matthias Kaufmann and Christian Müller (Berlin: Peter Lang/Internationaler Verlag der Wissenschaften, 2021): 69–110. All these studies, including the present essay, were originally prepared during my stay as guest professor at the Rheinische Friedrich-Wilhelms-Universität Bonn as first "CAPES/Universität Bonn Lehrstuhlinhaber" in different periods between July 2018 and February 2020. I hereby express my gratitude for the remarkable support of the Brazilian Agency Coordenação de Aperfeiçoamento de Pessoal de Nível Superior (Coordination for the Improvement of Higher Education Personnel) and the University of Bonn.

dearth of examinations of the main lines of their normative considerations on black slavery.²

On the theoretical level, at least, the arguments related to the claims of rulership (*dominium*) of the lands discovered by the Iberians after 1492, according to which aboriginal peoples of the New World had no clear political life or status and were arguably a sort of “natural slaves,” were invalidated in the fourth decade of the sixteenth century. If valid, such arguments would give support to the conclusion that the naturally-inferior aboriginal peoples of the Americas should, willingly or not, live in subjection (or at least in a kind of civilizational tutelage) to the Spaniards and Portuguese. After the issuing in 1537 of the Bull *Sublimis Deus* by Pope Paul III and the critical reception of Aristotle’s *Politics*³ by the masters of Francisco de Vitoria’s O.P. (1483–1546) generation,⁴ and after the Valladolid debates between Bartolomé de Las Casas O.P. (1474–1566) and Juan Ginés de Sepúlveda (1490–1573) on the juridical claim of just wars of conquest against the barbarians and infidels of the American continent, theories of natural slavery modeled after Aristotle and of enslavement/servitude justified on the basis of cultural practices offensive to natural law were rejected by Catholic intellectuals,⁵ as well as by early

Reception and Development of Baroque Scholasticism in Latin America, 16th–18th Centuries, ed. Roberto Hofmeister Pich and Alfredo Santiago Culleton (Barcelona: FIDEM-Brepols, 2016): 3–33.

2 See Roberto Hofmeister Pich, Alfredo Santiago Culleton, and Alfredo Carlos Storck, “Second Scholasticism and Black Slavery – Some Philosophical Assessments,” *Patristica et Mediaevalia* 36 (2015): 3–15. Some important references, though modest in scope, can be found in Luis Perdices de Blas and José Luis Ramos Gorostiza, “The Debate over the Enslavement of Indians and Africans in the Sixteenth – and Seventeenth-Century Spanish Empire,” in *A Companion to Early Modern Spanish Imperial Political and Social Thought*, ed. Jörg Alejandro Tellkamp (Leiden: Brill, 2020): 295–317.

3 There is no doubt that the ancient classical view on slavery that is most impactful on the history of philosophy – at least, until the sixteenth century – is the one advanced by Aristotle. The classical treatment appears in Aristotle, *Politics*, trans. B. Jowett (Oxford: Clarendon Press, 1920): I 4–13, 1131–46. See also Pierre Pellegrin, “Natural Slavery,” in *The Cambridge Companion to Aristotle’s Politics*, ed. Marguerite Deslauriers and Pierre Destrée (Cambridge: Cambridge University Press, 2013): 92–116. On this aspect of the reception of Aristotle in Latin America and second scholasticism, see Giuseppe Tosi, *La teoria della schiavitù naturale nel dibattito sul Nuovo Mondo (1510–1573): “Veri domini” o “servi a natura”?* (Bologna: Edizioni Studio Domenicano, 2002).

4 Joseph Höffner, *Kolonialismus und Evangelium: Spanische Kolonialethik im Goldenen Zeitalter*, 2nd ed. (Trier: Paulinus-Verlag, 1969): 189–422; Bernardo J. Canteñs, “The Rights of the American Indians,” in *A Companion to Latin American Philosophy*, ed. Susana Nuccetelli, Ofelia Schutte and Otávio Bueno (Chichester: Wiley-Blackwell, 2010): 23–35; Roberto Hofmeister Pich, “*Dominium e ius*: sobre a fundamentação dos direitos humanos segundo Francisco de Vitoria (1483–1546),” *Teocomunicação* 42, n. 2 (2012): 376–401.

5 See Matthias Kaufmann, “Slavery Between Law, Morality, and Economy,” in *A Companion to Luis de Molina*, ed. Matthias Kaufmann and Alexander Aichele (Leiden: Brill, 2014): 191–92. See also Lewis Hanke, *All Mankind Is One: A Study of the Disputation Between Bartolomé de Las Casas and Juan Ginés de Sepúlveda in 1550 on the Religious and Intellectual Capacity of the American Indians* (Carbondale: Northern Illinois University Press, 1994); Tosi, *La teoria della schiavitù naturale*.

modern thinkers in general.⁶ Clearly, such critical appraisals did not mean that indigenous peoples, both on the Spanish and Portuguese sides of Latin America,⁷ were no longer enslaved or did not remain enslaved for other (political, legal, and economic) reasons into the eighteenth century.⁸

Black slavery, in the broad space of transatlantic connections *between Africa and the Americas*, became an institution in the sixteenth century,⁹ formally ending only in the last quarter of the nineteenth century.¹⁰ With the slavery of black Africans, there was a new kind of system of slavery characterized by the following: the status of

6 Notes on views about slavery by authors such as Jean Bodin, Thomas Hobbes, and John Locke, as well as Enlightenment philosophers such as Montesquieu and Rousseau, can be found in Stephen L. Esquith and Nicholas D. Smith, "Slavery," in *The Routledge Encyclopedia of Philosophy*, vol. 8, ed. Edward Craig (London: Routledge, 1998): 804–5. See, for example, John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960) [1689/1690]: I, 1, i. On slavery in the history of philosophy, see also Egon Flaig, "Sklaverei," in *Historisches Wörterbuch der Philosophie*, vol. 9, ed. Joachim Ritter and Karlfried Gründer (Basel: Schwabe Verlag, 1995): 976–85.

7 Enriqueta Vila Vilar, "Introducción," in *Un tratado sobre la esclavitud* [De instauranda Aethiopum salute], by Alonso de Sandoval, trans. Enriqueta Vila Vilar (Madrid: Alianza Editorial, 1987): 17–18, reminds us that, by the end of the sixteenth century, "Indios" were basically no longer enslaved: they had rather to live, according to royal mandates, under different forms of institutions, such as "encomienda," "repartimiento," and "peonaje." Moreover, Philip II signed monopoly contracts of African slave trade with the Portuguese, who were also in need of labor forces in their South American colonies, where white or European owners had begun to successfully explore sugar cane plantations.

8 See José Oscar Beozzo, "As Américas Negras e a História da Igreja: questões metodológicas," in *Escravidão negra e História da Igreja na América Latina e no Caribe* (Petrópolis: Editora Vozes, 1987): 43–64. On the so-called "transition" from the slavery of indigenous people to the slavery of Africans in colonial Brazil, see Stuart B. Schwartz, "Escravidão indígena e o início da escravidão Africana," in *Dicionário da escravidão e liberdade*, ed. Lília Moritz Schwarcz and Flávio dos Santos Gomes (São Paulo: Companhia das Letras, 2018): 216–22.

9 See Enriqueta Vila Vilar, *Hispanoamérica y el comercio de esclavos* (Sevilla: Escuela de Estudios Hispanoamericanos, 1977); Herbert S. Klein, *Escravidão africana: América Latina e Caribe*, trans. José Eduardo de Mendonça (São Paulo: Editora Brasiliense, 1987): 33–104; Michael Zeuske, *Skaven und Sklaverei in den Welten des Atlantiks 1400–1940: Umrisse, Anfänge, Akteure, Vergleichsfelder und Bibliographien* (Berlin: LIT, 2006): 97–264 (on the beginnings of slavery in the Atlantic, 1415–1570); Michael Zeuske, *Skavlenhändler, Negereros und Atlantikkreolen: Eine Weltgeschichte des Skavlenhandels im atlantischen Raum* (Berlin: De Gruyter, 2015): 296–348.

10 Only in the second half of the nineteenth century were both the practice of the slave trade and the social institution of slavery finally abolished in the Western world (lastly in Cuba and Brazil). See the studies contained in Francisco de Solano and Agustín Guimerá Ravina, eds., *Escravidud y derechos humanos: La lucha por la libertad del negro en el siglo XIX* (Madrid: CSIC, 1990). See also Rebecca J. Scott, ed., *The Abolition of Slavery and the Aftermath of Emancipation in Brazil* (Durham, NC: Duke University Press, 1988); Mário Maestri, *A servidão negra* (Porto Alegre: Editora Mercado Aberto, 1988): esp. 7–39; Mário Maestri, *O escravismo no Brasil* (São Paulo: Atual, 2002); Marcel Dorigny, *As abolições da escravatura no Brasil e no mundo*, trans. Cristian Macedo and Patrícia Reuillard (São Paulo: Editora Contexto, 2019). An important reference work about black slavery and abolitionism in Brazil is Lília Moritz Schwarcz and Flávio dos Santos Gomes, eds., *Dicionário da escravidão e liberdade* (São Paulo: Companhia das Letras, 2018), containing fifty critical essays.

being someone else's property and merchandise, and thus being the property both of traders and holders for the purposes of massive economic production on a national, international, and transoceanic scale.¹¹ During this period, though, a striking paradox in thinking emerges that is difficult for us to grasp. In a sense, the same generations of thinkers who in theory rejected the usual arguments for enslavement or formal servitude towards indigenous peoples indulged the slave trade of Africans and black slavery in general. How was that possible? Can answers to this question be found by studying these thinkers' moral thought regarding black people's *servitus* in terms of its various situations and characteristics?

Among the first authors to systematically reflect on black slavery were Domingo de Soto O.P. (1494–1560),¹² Fernando Oliveira O.P. (1507–1581), Tomás de Mercado O.P. (1525–1575), the jurist, active in Mexico, Bartolomé de Frías y Albornoz O.P. (ca. 1519–1573), and Francisco García (1525–1585). But there is a consensus that the Jesuit Luis de Molina (1535–1600) was the first intellectual to consider the topic of black slavery extensively. During Molina's lifetime and afterwards, several other Jesuit thinkers also wrote on this subject, in many cases explicitly commenting on his *disputationes*, such as Fernando Rebello (1546–1608), Tomás Sánchez (1550–1610), Alonso de Sandoval (1576–1652), and Diego de Avendaño (1594–1688).¹³ In order to systematically characterize the normative treatment given by second and early modern scholastic thinkers to black slavery, I briefly explore three stations of research, the last being two late seventeenth-century polemical treatises by the Capuchin missionaries Francisco José de Jaca (ca. 1645–1689) and Epifanio de Moirans (1644–1689), writing against the slave trade in Africans and criticizing the final results of a number of normative

11 Of course, the discussion of the role of slavery in (trans)Atlantic and American colonial economic history is the object of a huge amount of research. See Hugh Thomas, *The Slave Trade: The History of the Atlantic Slave Trade, 1440–1870* (New York: Simon and Schuster, 1997); Joseph E. Inikori, *Africans and the Industrial Revolution in England: A Study in International Trade and Economic Development* (Cambridge: Cambridge University Press, 2002); David Eltis, *The Rise of African Slavery in the Americas* (Cambridge: Cambridge University Press, 2006); Francisco Vidal Luna and Herbert S. Klein, *Escravidão no Brasil* (São Paulo: Edusp, 2010); Dale W. Tomich, *Pelo prisma da escravidão: Trabalho, capital e economia mundial*, trans. Antonio de Pádua Danesi (São Paulo: Edusp, 2011); Michael Zeuske, *Sklaverei: Eine Menschheitsgeschichte von der Steinzeit bis heute* (Stuttgart: Reclam, 2018): 79–119, 187–211.

12 On the positions of Las Casas, who later changed his early favorable view on black slavery, coming to condemn the injustice of the slave trade, see the study by Manuel Méndez Alonzo, "From Slave Driver to Abolitionist: Bartolomé de Las Casas on African Slavery," *Patristica et Mediaevalia* 36 (2015): 17–28.

13 I refer to these authors' works in other studies of mine; see Pich, "Second Scholasticism and Black Slavery": 9–10 (nn. 39–40); Pich, "Second Scholasticism and Black Slavery (Continuation and End)": 9–10. Important references can also be found in Francisco Moreno Rejon, *Historia de la teología moral en América Latina: Ensayos y materiales* (Lima: Instituto Bartolomé de las Casas, 1994): 58–70. See also David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca, NY: Cornell University Press, 1966): 187–90; José Andrés-Gallego, *La esclavitud en la América española* (Madrid: Ediciones Encuentro, 2005): 32–42; Luis Fernando Restrepo, "Colonial Thought," in *A Companion to Latin American Philosophy*, ed. Susana Nuccetelli, Ofelia Schutte and Otávio Bueno (Chichester: Wiley-Blackwell, 2010): 39–42.

texts of Jesuit authors about black slavery, including the contributions by Molina and Avendaño. The two main theses to be defended are that (i) at a certain point Avendaño realized that an evaluation of the slavery status and trade of black people from Africa strictly in terms of commutative justice would only show that the commerce was illicit – and so reasons other than the traditional criteria of just commutations would be needed to support the continuity of the system – and that (ii) from Molina to Avendaño an important shift in the normative evaluation of the system of black slavery took place, and that was, as Jaca and Moirans realized, that the slave trade of Africans might be legitimated through probable reasons.

2 Justification of Enslavement and the (In)Justice of Slave Trade: Luis de Molina

Molina's influential – exclusively normative, not ethnically- or racially-grounded¹⁴ – assessment of the enslavement and trade of black Africans to Europe and the New World can be found in his expositions *De iustitia et iure* (whose six volumes appeared between 1593 and 1609), Book I, Treatise II, Disputations 32–40.¹⁵ Treatise II is about “commutative justice concerning external goods” or the justice that regulates over “exchanges” (*commutationes*),¹⁶ which, together with “distributive justice” (*iustitia distributiva*), offers the division of what Thomas Aquinas called “particular justice” in his *Summa theologiae*.¹⁷ The nine disputations on the slavery problem combine (a) an effort for describing the historical circumstances of the enslavement of Africans and the characteristics of the slave trade from the African coast to the Western world with (b) a moral-legal analysis of enslavement and the slave trade themselves, including an approach to the “subjective rights” of masters and slaves.¹⁸ The exposition belongs to a theory of *dominium proprietatis*, that is, a theory about the right of possessing things –

¹⁴ See Kaufmann, “Between Law, Morality, and Economy”: 189–90, 193, 201.

¹⁵ Luis de Molina, *De iustitia et iure* (Colonia Allobrogum [Cologne]: Ed. Marci Michaelis Bousquet, 1738 [1611]): 86–117. This is the edition I use in this study. Molina was a university professor of philosophy and theology in Coimbra and Évora (Portugal), and later taught in Cuenca (Spain). On the origins and the arrangement of the six volumes of the *De iustitia et iure*, see Alexander Aichele and Matthias Kaufmann, “Introduction,” in *A Companion to Luis de Molina*, ed. Matthias Kaufmann and Alexander Aichele (Leiden: Brill, 2014): xv–xvi, xxviii–xxx.

¹⁶ Kaufmann, “Between Law, Morality, and Economy”: 183. See also Annabel Brett, “Luis de Molina on Law and Power,” in *A Companion to Luis de Molina*, ed. Matthias Kaufmann and Alexander Aichele (Leiden: Brill, 2014): 159–64.

¹⁷ Thomas Aquinas, *Summa theologiae*, cura et studio Sac. Pietro Caramello (Torino: Marietti Editori, 1962): IIaIIae q. 57–122.

¹⁸ Kaufmann, “Between Law, Morality, and Economy”: 184. On the sources of Molina's account, see 190.

in distinction to a theory of *dominium iurisdictionis*, which is about political power.¹⁹ Slavery is, of course, a kind of property right, implying “an extreme form of dependence and submission,”²⁰ as well as a significant loss of freedom. Molina sees in the “freedom” at stake the idea of an internal good that essentially means the possession of one’s own body and the right of making use of it – usually presupposing that such a possession is claimed and valid within the context of a given human society and political organization. *Internal* goods are contrasted to *external* goods or things which are not oneself or in oneself. A human being can exert *dominium* both over internal and external things, and internal goods belong to a human being according to natural law – Molina affirms that a human being is the “lord of his freedom.”²¹

Regarding the ways how a human being can be rightfully deprived of *dominium* over himself in terms of the possession of his/her body for the sake of free use of it, becoming someone else’s property,²² Molina proposed a set of conditions that combine reasons to be found both in Roman law and medieval authorities,²³ which might on a normative level legitimate someone’s enslavement: enslavement might be (i) the result of corrective justice because of a *bellum iustum*, where the death penalty is converted into social death or perpetual enslavement;²⁴ (ii) it might be a form of alternative punishment for a

19 Molina, *De iustitia et iure*: I, tract. II, disp. XXXII, pp. 86–87. See Amândio Augusto Coxito, “Luis de Molina e a escravatura,” *Revista Filosófica de Coimbra* 15 (1999): 117–36; Jörg Alejandro Tellkamp, “Rights and *Dominium*,” in *A Companion to Luis de Molina*, ed. Matthias Kaufmann and Alexander Aichele (Leiden: Brill, 2014): 125–26, 142–52.

20 Kaufmann, “Between Law, Morality, and Economy”: 184.

21 Molina, *De iustitia et iure*: I, tract. II, disp. XXXIII, n. 14, p. 89: “Tertius titulus est. Emptio et venditio. Ponendumque in primis est, hominem, sicut non solum externorum suorum bonorum, sed etiam proprii honoris et famae est dominus, ut tractatu 4. ostendimus: sic etiam dominium esse suae libertatis, atque adeo stando in solo iure naturali, posse eam alienare, seque in servitutem redigere.” On freedom as a fundamental and natural good, as well as on the development of the idea of freedom as a civil and human right in medieval, early modern, modern, and contemporary thought, see Matthias Kaufmann and Joachim Renzikowski, “Einleitung – Freiheit als Rechtsbegriff,” in *Freiheit als Rechtsbegriff*, ed. Matthias Kaufmann and Joachim Renzikowski (Berlin: Duncker und Humblot, 2016): 9–14; Matthias Kaufmann, “Welches Eigentum gehört zum Menschenrecht auf Freiheit?” in *Freiheit als Rechtsbegriff*, ed. Matthias Kaufmann and Joachim Renzikowski (Berlin: Duncker und Humblot, 2016): 117–24. See also Danaë Simmermacher, “Natürliche Freiheit und Verantwortung – Dominium bei Luis de Molina,” in *Freiheit als Rechtsbegriff*, ed. Matthias Kaufmann and Joachim Renzikowski (Berlin: Duncker und Humblot, 2016): 158–60.

22 Molina, *De iustitia et iure*: I, tract. II, disp. XXXII, pp. 86–87. See Simmermacher, “Natürliche Freiheit und Verantwortung”: 163–64.

23 According to Kaufmann, “Between Law, Morality, and Economy”: 194, the four titles to be now mentioned “[. . .] have more or less belonged to the tradition since Roman times, [. . .].”

24 Molina, *De iustitia et iure*: I, tract. II, disp. XXXIII, nn. 1–3, pp. 87–88. On Molina’s views on *ius gentium* and differences of his account in comparison to Francisco de Vitoria’s, see António Manuel Hespanha, “Luis de Molina e a escravização dos Negros,” *Análise Social* 35 (2001): 937–60. See also João Manuel A.A. Fernandes, “Luis de Molina on War,” in *A Companion to Luis de Molina*, ed. Matthias Kaufmann and Alexander Aichele (Leiden: Brill, 2014): 227–55.

momentous “crime” that would otherwise be most severely punished;²⁵ (iii) a condition that would result from a male adult or a father selling – in a situation of most grave need – either his own freedom or the freedom of a member of his family (say, his child or children);²⁶ (iv) finally, enslavement might be a condition caused by simply being born from an enslaved woman, since “birth follows the condition of the womb.”²⁷

In the context of a trade system in humans, the relational notions of “being a property” and “being a possessor” need closer determination insofar as the nature of the possessed thing is concerned. Accordingly, being the owner of a human being through fair purchase does imply possessing his liberty, but it does not imply possessing his life. It allows the possession of someone’s body for a conditional use, that is, for forcefully working for or being at the service of his owner, as well as the possession of the fruits of the work and children born by enslaved women. But a slaveholder has no ownership over the “physical” health and “spiritual” wellness of someone’s body, what implies that the holder is not allowed to dispose *ad libitum* of a slave’s limbs and any further item the very life of the slave depends upon.²⁸ The explanation of the scope of the *dominium proprietatis* in question is important to help drawing the ethical principles for a master-slave relationship.²⁹ In a nutshell: there are many deeds a master is morally and legally not allowed to do against the slave: after all, the slave has rights *qua homo* – although not *qua persona*. Public authorities are entitled to protect the rights of the slaves (“insofar as they are human beings and our next”), and it might be the case that holders would have to compensate them.³⁰ Following the judgment by Kaufmann, Molina seems to be much more committed to the “protection of the slave against arbitrary treatment by his master” as it happened in the tradition of the Roman law.³¹

25 Molina, *De iustitia et iure*: I, tract. II, disp. XXXIII, nn. 4–13, pp. 88–89.

26 Molina, *De iustitia et iure*: I, tract. II, disp. XXXIII, nn. 14–31, pp. 89–91.

27 Molina, *De iustitia et iure*: I, tract. II, disp. XXXIII, n. 32, p. 91.

28 Molina, *De iustitia et iure*: I, tract. II, disp. XXXVIII, nn. 2–3, p. 110.

29 Molina, *De iustitia et iure*: I, tract. II, disp. XXXVII–XXXIX, pp. 107–13.

30 Even deprived of natural freedom (in the sense of living under rulership and being the property of other human being[s]), as well as of legal freedom, slaves keep their status as subjects of rights due to their natural *dominium* over themselves (their human status as beings capable of making use of reason and will); Simmermacher, “Natürliche Freiheit und Verantwortung”: 165–68. See also Danaë Simmermacher, “Slaves as Owners. *Dominium* of and over Humans in Molina’s *De Iustitia et Iure*,” in *Civilization – Nature – Subjugation: Variations of (De-)Colonization*, ed. Christoph Haar, Matthias Kaufmann and Christian Müller (Berlin: Peter Lang, 2021): 46–49. See Molina, *De iustitia et iure*: I, tract. II, disp. XXXVIII, nn. 1–4, pp. 110–11; here n. 4, p. 111: “Quamvis autem leges hae, quia si excusserit servo aut ancillae, similiter iudiciales erant, cessaverint, aequitate tamen nitebantur, tenenturque hodie naturae iure, qui similia crimina in servos suos commiserint, satisfactionem competentem servis ipsis efficere, qua homines ac proximi sunt, et quatenus damnum et iniuria in eos quoad ea, quae dominorum potestati minime subsunt, redundat.” See also Kaufmann, “Between Law, Morality, and Economy”: 218–21.

31 Kaufmann, “Between Law, Morality, and Economy”: 220. On the topic of the *dominium* the slave has over some things (the scope of his property rights) and the theme of the possibility of friendship and justice between slave and master, see 220–21, as well as Molina, *De iustitia et iure*: I, tract. II, disp.

At any rate, since any ethics of the ownership of humans for the purpose of forced labor depends on the justice of the slave trade, it is on the legitimacy of trade or the buying-and-purchasing contract that Molina's exposition focuses. What essentially concerned Molina was the analysis of the justice of the ownership of slaves in the context of – and from the beginning of the chain of – transatlantic slave trade and therefore the justice of the slave trade itself. Until the eighteenth century, this double approach of morally judging black slavery in terms of property rights and commutative justice remained paradigmatic for most Baroque scholastic authors. Clearly, for Molina these two areas of inquiry with regard to the licitness of slavery had to be carried within the context of Portuguese commercial activities on the African coast (thus, in the jurisdictional space of the Portuguese crown and for which it had responsibility). But more than on the moral responsibility of political authorities, Molina's disputes focused on the role played by the agents of slave the trade: firstly on the moral duty of merchants who were engaged in that multi-linked business chain, that is, the people who bought slaves from first-hand sellers on the African coast and transported them to the West³² and, secondly, on the moral duty of holders who bought and then possessed slaves in Europe and above all in the New World.³³ Putting it simply: any merchant who became the possessor of slaves had the moral duty of checking the existence and validity of alleged titles that justified the slavery status of Africans before buying and offering them on the market; any initially *bona fide* buyer and in principle *bona fide* owner of slaves who came to doubt their enslavement titles had the moral duty of checking the status of the purchased items and the purchase itself. To be sure about the justice of the slavery status of enslaved Africans was a moral obligation: everyone involved in any aspect in enslavements and the slave trade should pursue "safe conscience" and avoid "condemnable" or "capital guilt" (*culpa lethalis*) in the first place. This *moral* requirement of acting in justice, which goes far beyond the requirement of doing only what *positive laws* permit, characterizes all normative evaluations of black slavery from Luis de Molina onwards.³⁴ This obligation of conscience was directed to everybody – crown, administrators, councils, commerce chambers, etc. – but it is notable that, with respect to a practice such as the slave trade, surrounded by much uncertainty about its fairness, agents directly involved in any of its several chains should be able to see and judge about circumstances that were transparent to existing official trade regulations and licenses.

XXXVIII, n. 5, pp. 111–12. In fact, as long as master and slave are compared according to these two opposite legal status, there is neither friendship nor justice between them; however, as they are compared to each other as human beings, there is both friendship and justice between them indeed (in their contract). See Molina, *De iustitia et iure*: I, tract. II, disp. XXXVIII, n. 5, p. 111.

32 Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, pp. 97–106.

33 Molina, *De iustitia et iure*: I, tract. II, disp. XXXVI, pp. 106–7.

34 Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, nn. 1–2, 8, pp. 98–100. See also Kaufmann, "Between Law, Morality, and Economy": 207–8.

Although Molina's *first three verdicts* about the business with enslaved Africans seem to be concessive about its origin and continuation, we should stress that, as his *fourth conclusion* shows, he thought, in fact, that it was much more likely the entire slave trade was illicit from the beginning; as a result, those engaged in it are in mortal sin and deserve eternal damnation.³⁵ In particular, the merchant as a purchaser of external goods had to be certain of the fairness regarding the slave *as sold item* (the person had to be justly enslaved, thus a person enslaved due to really legitimate reasons, not an apparent slave but rather an actually free person on the level of rights and justice) and regarding *the selling* (it had to be a just action by a *legitimate owner* who properly acquired a proper merchandise): if justice did not exist in any of those situations, then the merchant-purchaser could not possibly be a legitimate new owner either. Molina expressed the influential opinion that, although "invincible ignorance" – and, thus, the existence of *bona fide* traders and holders – might be theoretically conceded, on the practical level, regarding the expected knowledge of the condition of enslaved Africans traders either knew that the original enslavement and the first selling-and-buying were illegal or did not make any significant effort to verify the real original status of the "products." So, for example, everyone knew that those enslaved persons were not put into that condition as a consequence of just wars according to *ius gentium*, but rather were just stolen or captured.³⁶ Since rumors about the unfairness of the trade were widespread, the need of previous certification of the status of slavery was an obligation³⁷ to everyone. As a consequence, *either* in one case *or* the other, traders acted in bad faith:

35 Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, n. 16, p. 103: "Mihi longe verisimilius est, negotiationem hanc ementium eiusmodi mancipia ab infidelibus illis in locis, eaque inde asportantium, iniustam, iniquamque esse, omnesque qui illam exercent, lethaliter peccare, esseque in statu damnationis aeternae, nisi quem invincibilis ignorantia excuset, in qua neminem eorum esse affirmare audere."

36 Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, nn. 16–18, pp. 103–5; here n. 18, p. 104: "Quod de Aethyopum bellis, quibus ordinarie capiunt mancipia, quae Lusitanis vendunt, praesumendum esse arbitror (iuxta ea, quae mercatores ipsi, nulla tormentorum vi coacti, dum interrogantur, respondent) est, potius illa esse latrocinia, quam bella." See also Kaufmann, "Between Law, Morality, and Economy": 213–24; Leslie B. Rout, Jr., *The African Experience in Spanish America: 1502 to the Present Day* (Cambridge: Cambridge University Press, 1976): 404; Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492–1800* (London: Verso, 1997): 602; Alastair Saunders, *A Social History of Black Slaves and Freedmen in Portugal, 1441–1555* (Cambridge: Cambridge University Press, 2010): 283.

37 In fact, whenever Molina talks of "obligatio" in such texts (or uses expressions connected to "obligation," such as the verb "tenere") there is a double perspective: on the one hand, the perspective of law, where there are legal *obligationes* regarding trading and contracts (between trader and customer, for example) – and their observance is prescribed and enforced by law and authorities. On the other hand, *obligationes* also belong to the sphere of conscience, such as the practical knowledge – on the level of certainty – that traders and holders must have about the justice of enslavements in order to act in good faith when they seal a property contract. Although in many cases these perspectives conflate, Molina many times appeals to the agents' conscience of moral obligation, as, for example, when it is about solving doubts with regard to enslavement titles within a system of slave trade and ownership of slaves that already exists and is legally permitted and about the obligation of restituting freedom and its fruits.

either they had knowledge that what they did was wrong or they acted in doubt or vincible ignorance.³⁸

Under these presuppositions, it must be stressed that Molina, just like others after him (though with different emphases and interpretations), affirmed that merchants and purchasers, having properly confirmed, after a morally mandatory investigation, that the status of the product they acquired was illicit or doubtful, were morally obliged to restitution (*restitutio*). Restitution as corrective justice in the face of miscarried commutations of external goods and of offences against or damages caused to a person's goods and reputation (*fama*) was already present in medieval canon law and had become a well-established doctrine ever since medieval authors such as Thomas Aquinas³⁹ and John Duns Scotus⁴⁰ discussed it both in the context of a doctrine of justice and a doctrine of satisfaction (as the last formal part of the sacrament of penance). Its application to the problem of slavery (and freedom) from the sixteenth century onwards was as such something new and, if one considers that its aim was to reach practical (prudential) judgments, it turned out to be a quite complex challenge, particularly because of the requirement for certainty and the different cases (and degrees) of doubt: (a) in principle, traders and customers had to investigate and be certain of the slavery status before buying enslaved Africans (otherwise the commerce was illicit);⁴¹ (b) if doubts later arose, and through investigation someone came to know about the illicitness of enslavement, he was obliged to immediate restitution of freedom – this is valid for any kind of slaveholder, irrespective of his distant position in the chain of trade and ownership, the time passed since he became an owner, and even the price of the human product. In most cases, restitution would also imply compensation for services rendered and according to the measure of benefit and enrichment by the holders, as well as compensation for bad treatment, offenses, and damages suffered – to enslaved people directly or to their heirs, descendants or relatives.⁴² (c) If doubts later arose, and through mandatory investigation – in the original situation of property acquisition *bona fide* – an owner was unable to have certainty about the licitness of enslavement or not, he was obliged to provide some sort of restitution “according to the degree [quantity] of doubt” (*pro quantitate dubii*).⁴³ Luis de Molina's account characterizes, thus, a long tradition of scholastic moralists who carefully discriminate and relate, more or less based on Thomas Aquinas and the rich commentary tradition on his question on restitution in *Summa theologiae*,⁴⁴ the several headings under which acts of restitution should take place to the very topic of

38 Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, nn. 16–18, pp. 103–5.

39 Thomas Aquinas, *Summa theologiae*: IIaIIae q. 62, aa. 1–8, pp. 302–8.

40 Ioannes Duns Scotus, *Opera Omnia XIII – Ordinatio IV* (Vatican City: Typis Vaticanis, 2011): *Ordinatio IV* d. 15, qq. 2–4, nn. 65–272, pp. 75–130.

41 Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, nn. 16–21, pp. 103–6.

42 Molina, *De iustitia et iure*: I, tract. II, disp. XXXVI, n. 2, p. 107.

43 Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, nn. 16–18, 20–21, pp. 103–6.

44 Thomas Aquinas, *Summa theologiae*: IIaIIae q. 62, aa. 1–8.

giving unjustly enslaved Africans proper restitution (and punishing those who *mala fide* traded with them).⁴⁵

One problematic point in Molina's account, however, is his use of the principle of property rights – also a reflexive principle that should be of help in order to decide what is the right thing to do in dubious cases of commutative justice – according to which “in doubt, the condition of the possessor is the better one” (*in dubio melior sit conditio possidentis*).⁴⁶ Despite everything he said about the widespread opinion that original enslavements of black people in Africa and, thus, the trade of black slaves were unjust, Molina maintains the view that in several situations of established contracts, the existence of doubt can favor the slaveholder and not the freedom of the enslaved person. He pays special attention to this topic by evaluating the moral stance of owners in the system of the slave trade, particularly those who in Europe or in the Americas supposedly bought them *bona fide*.⁴⁷ If someone bought a slave – from a merchant or another possessor who apparently at least saw no reasons for doubting the status of the sold items – in the honest belief that the enslavement was fair, that possessor is allowed to keep the slave.⁴⁸ In fact, once he was, thus, in possession of a slave, a holder would have to be persuaded by strong evidences that he possessed an illicit item. As a simple citizen, in most cases a slaveholder cannot collect all – not even much of – the evidence needed, not to mention that he cannot have overall control over the system of trafficking slaves. Molina seems to indulge in the view that princes or ministers should do the verification of possible illegality in the slave traffic, for the sake of their citizens,⁴⁹ that is, in their jurisdiction they should “control whether the goods that are imported and sold in the kingdom are of trustworthy origin,” which is, as Kaufmann affirms, “a very macabre kind of customer protection” indeed.⁵⁰ But there are situations in which the condition of the possessor of freedom is the better one. If the holder recognizes that the slave was victimized, he “has to set him free immediately, no matter how much he paid for him”⁵¹ and no matter how

45 Molina, *De iustitia et iure*: I, tract. II, disp. XXXVI, nn. 1–5, pp. 106–7.

46 The principle is derived from a rule of Roman and medieval canon law for deciding cases involving doubtful ownership of goods: “In pari delicto vel causa potior est conditio possidentis” (*Corpus iuris canonici, Liber Sextus Decretalium* lib. V, tit. 12, *De regulis iuris*, reg. 65 [*Liber Sextus Bonifacii Octavi pluries editus* VI (5. 13) 65 (ed. E. Friedberg)]). According to the principle, a possessor of a thing cannot be deprived of it as long as the unlawfulness of his possession has not been sufficiently established. See also Rudolf Schüssler, “On the Anatomy of Probabilism,” in *Moral Philosophy on the Threshold of Modernity*, ed. Jill Kraye and Risto Saarinen (Dordrecht: Springer, 2005): 98–100.

47 This is discussed in Molina, *De iustitia et iure*: I, tract. II, disp. XXXVI.

48 Molina, *De iustitia et iure*: I, tract. II, disp. XXXVI, n. 3, p. 107.

49 Molina, *De iustitia et iure*: I, tract. II, disp. XXXVI, n. 1, pp. 106–7.

50 Kaufmann, “Between Law, Morality, and Economy”: 215. See Molina, *De iustitia et iure*: I, tract. II, disp. XXXVI, n. 1, p. 106.

51 Kaufmann, “Between Law, Morality, and Economy”: 215. See Molina, *De iustitia et iure*: I, tract. II, disp. XXXVI, n. 2, p. 107.

much time passed since the slave was bought⁵² – after all, as stressed by thinkers such as John Duns Scotus, freedom does not expire because of time.⁵³ At any rate, if the owner begins to have doubts, he must investigate; if relevant evidence does not come up, he does not need to keep investigating. At least the holder would be, then, in case unjust enslavements really apply, in a moral situation of justifiable invincible ignorance. Notwithstanding all this, remaining doubts might still motivate a degree of restitution.⁵⁴

Due (a) to the overall widespread opinion of illegality and widespread doubt regarding the licitness of enslavements, first purchase, and ownership and (b) the moral obligation of verifying the licitness of any slave titles, which were in practice impossible to prove licit, it is fair to affirm that Molina condemns the concrete system of slave trade he was historically evaluating (he is, to this extent *and only to this extent*, an abolitionist), although this is not a stance against slavery or the trade of slaves *as such*, i.e., an endorsement of the principle according to which it is always and everywhere wrong that a human being is the property of another human being. The practice was both against Christian charity and against natural and human justice (civil law and the law of peoples): it was, simply put, an error or a sin.⁵⁵ It is also interesting that Luis de Molina understood that such an error was “systemic” and demanded a systemic correction. After all, although he emphasized the role played by traders in the chain of slavery, every link of it shared some responsibility (was causally related to an injustice), such as enslavers in Africa and first purchasers and sellers on the African coast, as well as priests, bishops, and rulers who might have issued official prohibitions and restrictions but did not.⁵⁶ Molina did not explore much the reasons for such a leniency. Although some would say that the system offered black people the possibility of catechesis, baptism, salvation, and even some “material benefits” and a civilized life in contrast to barbarism, it was obvious for Molina that, as he says in his *fifth* conclusion, traders were only interested in profit. Here he works with a deontological principle according to which “one should not commit misdeeds in order to make good things [or ends] to happen” (*facienda non sunt mala, ut eveniant bona*).⁵⁷

After 1609, when they were posthumously edited and published, the six volumes of Molina’s *De iustitia et iure* were read throughout the Iberian world, from the Philippines

52 Molina, *De iustitia et iure*: I, tract. II, disp. XXXVI, nn. 2–3, 5, p. 107.

53 On this point about the non-expiration of natural freedom, see Duns Scotus, *Opera Omnia XIII – Ordinatio IV: Ordinatio IV d. 36*, q. 1, n. 25, pp. 469–70.

54 Molina, *De iustitia et iure*: I, tract. II, disp. XXXVI, n. 5, p. 107. See Kaufmann, “Between Law, Morality, and Economy”: 215.

55 Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, nn. 16–19, pp. 103–5.

56 Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, nn. 16, 19, pp. 103–5. Clearly, this “systemic” analysis has as its background Aquinas’s discussion of who has the obligation of making restitution, as essential form of corrective justice in commutations; see Thomas Aquinas, *Summa theologiae*: IIaIIae q. 62, a. 7 (“Utrum illi qui non acceperunt teneantur restituere”), pp. 307–8.

57 Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, n. 19, p. 105. See also Kaufmann, “Between Law, Morality, and Economy”: 214.

to the Viceroyalty of Peru. On a strictly normative level, Molina condemned the transatlantic slave trade from Africa to the Americas. Slave trade went on – slavery was abolished only 1886 in Cuba and 1888 in Brazil. What happened on the level of ideas?

3 Criticism of the Black Slavery System and Probabilism: Diego de Avendaño

Our next research station is located in the New World, in Lima, “Ciudad de los Reyes,” the capital of the most successful viceroyalty of the Spanish Empire in the sixteenth-eighteenth centuries, the Viceroyalty of Peru. In the largest College of Jesuits in Latin America, the “Colegio Máximo San Pablo,” its famous professor Diego de Avendaño was in the last phase of his brilliant career.⁵⁸ The summation of his theological and philosophical thought is to be found in the six monumental volumes of the *Thesaurus indicus* and the *Auctarium indicum*, which were published in Antwerp in 1668–1686.⁵⁹ Avendaño offered an important – carefully reflected – exposition on the trade of slaves from Africa to Latin America in volume I of his *Thesaurus indicus* (1668).⁶⁰ His account was influential and discussed by other authors, which would not prevent his readers from saying that the details of his overall position on the slave trade, especially relating to

58 On Avendaño's life and works, see Ángel Muñoz García, “Introducción,” in *Derecho, Consejo y Virreyes de Indias: Thesaurus Indicus, Vol. I, Tít. I–III (1668)*, by Diego de Avendaño, trans. Ángel Muñoz García (Pamplona: EUNSA, 2001): 13–53; Ángel Muñoz García, *Diego de Avendaño: Filosofía, moralidad, derecho y política en el Perú colonial* (Lima: Fondo Editorial Universidad Nacional Mayor de San Marcos, 2003): 29–61.

59 See Diego de Avendaño, *Derecho, Consejo y Virreyes de Indias: Thesaurus Indicus, Vol. I, Tít. I–III (1668)*, trans. Ángel Muñoz García (Pamplona: EUNSA, 2001), *Oidores y Oficiales de Hacienda: Thesaurus Indicus, Vol. I, Tít. IV–V (1668)* (Pamplona: EUNSA, 2003), *Corregidores, encomenderos, cabildos y mercados: Thesaurus Indicus, Vol. I, Tít. VI–IX (1668)* (Pamplona: EUNSA, 2007), *Mineros de Indias y protectores de indios: Thesaurus Indicus, Vol. I, Tít. X–XI y Complementos* (Pamplona: EUNSA, 2009). See also (concerning vol. 2 of the *Thesaurus*) Diego de Avendaño, *Privilegios de los indios: Thesaurus indicus, Vol. II, Tít. XII, c. I–X*, trans. Ángel Muñoz García (Pamplona: EUNSA, 2010), *Clero indígena y obispos de Indias: Thesaurus indicus, Vol. II, Tít. XII, caps. XIII–XXIII, y Tít. XIII* (Pamplona: EUNSA, 2012).

60 See Didacus de Avendaño, *Thesaurus indicus, seu Generalis Instructor pro regimine conscientiae* (Antwerp: Apud Iacobum Meursium, 1668): Tomus Primus, tit. IX, cap. XII, § 8 (“De contractu Aethiopicorum mancipiorum”), nn. 180–205, pp. 324–30.

the role of his probabilism in practical philosophy,⁶¹ are not so easy to interpret.⁶² Avendaño's exposition contains (i) a description of views proposed by important Jesuit authors, as well as (ii) his own views, including seven interesting reasons *in favour* of the slave trade. For the purposes of this study, it will suffice to describe briefly Avendaño's analysis of some of Molina's⁶³ determinations on the subject. It is important to note that Avendaño detects a repeated inconsistency in Molina's and other Jesuit authors' general stances regarding the topics under discussion.

As Molina did before him, Avendaño essentially relates "the buying and selling of Ethiopian [African] slaves" to the examination of conscience. Since the buying and owning of slaves is a sort of contract, it must be *a just contract*.⁶⁴ The issue surrounding black slavery was the assessment of the consciences of traders and owners, which depended on the fairness of enslavement titles. Avendaño summarizes six main reasonings proposed by Molina regarding the legitimacy of the slave trade of Africans. He depicts Molina as someone *opposed* to it. After all, although he endorses Molina's list of just titles of enslavement based on *ius gentium*, which, *under the condition* of really being obtained, might justify enslavement and the slave trade, he understands that Molina's fourth argument offers a conclusion that was given "in an unconditional sense" and was

61 On probabilism in Latin American scholasticism and on Avendaño's probabilism, see Luis Bacigalupo, "Probabilismo y modernidad: Un capítulo de la filosofía moral del siglo XVIII y su repercusión en el Perú," in *La construcción de la iglesia en los Andes (siglos XVI-XX)*, ed. Fernando Armas Asín (Lima: Ed. PUCP, 1999): 257–300; Luis Bacigalupo, "The Reasonable Ways of Probabilism – A Briefing on Its Essentials," in *Scholastica colonialis: Reception and Development of Baroque Scholasticism in Latin America, 16th–18th Centuries*, ed. Roberto Hofmeister Pich and Alfredo Santiago Culleton (Barcelona: FIDEM-Brepols, 2016): 75–85; José Carlos Ballón Vargas, "El *Thesaurus indicus* [1668] de Diego de Avendaño y los orígenes coloniales de la filosofía en el Perú," in *La complicada historia del pensamiento filosófico peruano, siglos XVII y XVIII (Selección de textos, notas y estudios)*, vol. 2, ed. José Carlos Ballón Vargas (Lima: Universidad Científica del Sur – Universidad Nacional Mayor de San Marcos/Ediciones del Vicerrectorado Académico, 2011): 281–98; José Carlos Ballón Vargas, "Entre la extirpación de la idolatría y la reconciliación intercultural. Lugar histórico del probabilismo en el pensamiento peruano," in *La complicada historia del pensamiento filosófico peruano, siglos XVII y XVIII (Selección de textos, notas y estudios)*, vol. 2, ed. José Carlos Ballón Vargas (Lima: Universidad Científica del Sur – Universidad Nacional Mayor de San Marcos/Ediciones del Vicerrectorado Académico, 2011): 377–98; Roberto Hofmeister Pich, "The Aristotelian Background of Diego de Avendaño's Moral and Legal Thought," *Patristica et Mediaevalia* 38 (2017): 53–88.

62 See Ángel Muñoz García, "Aristóteles; una sociedad imposible sin esclavitud," in *Corregidores, encomenderos, cabildos y mercaderes: Thesaurus Indicus, Vol. I, Tít. VI–IX (1668)*, by Diego de Avendaño, trans. Ángel Muñoz García (Pamplona: EUNSA, 2007): 123–68; Lucas Duarte Silva, "A Study of Black Slavery in the First Tome of the *Thesaurus indicus* by Diego de Avendaño S.J. (1594–1688): Is He a Theorist Contrary to Trade or Slavery?" *Intuitio* 12.1 (2019): 1–28.

63 Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, nn. 187–94, pp. 326–27.

64 Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 180, p. 324: "Modo id tantum adiecerim, rem hanc adeo esse Christianis conscientiis periculosam, ut si ad regulas iustitiae aptari debeat, vix aliquid occurrat, quo possit plena securitas in huiusmodi contractu reperiri."

to be taken as a condemnation of the slavery system.⁶⁵ For Avendaño, thus, (i)⁶⁶ Molina considered illegitimate, *from the beginning*, the selling and buying of enslaved Africans. So, with regard to a central issue in the debate on the legitimization of the transatlantic slave trade, to the best of the knowledge agents had of the transactions, first enslavements were not a result of corrective justice after a war justly waged: wars against Africans were motivated by greed rather than revenge for serious offenses.⁶⁷

However, beginning with his fourth description of Molina's discernments, Avendaño emphasizes that (iv) Molina actually considered the possibility of commutations *bona fide* or with invincible ignorance of any wrongdoing and in which doubt about the licitness of the status of the enslaved person would favor the merchant or owner. It is implicit that the agents in question are more distant links – third, fourth links, etc. – in the long chain of slave trafficking from Africa to the Americas, for whom an inquiry about the licit status of the products and the verification of facts about merchants and their goods would be practically pointless.⁶⁸ In this sense, if the purchaser bought slaves from someone who initially owned a slave in good faith, but the former owner afterwards had doubts regarding the status of the sold slave, and the purchaser, having made a careful investigation, was still unable to fully see the truth of the matter, he then has no strict obligation to a full restitution of freedom and other things, but only a partial restitution to the slave “according to the degree of doubt” – a case in which the “better condition of the possessor” refers to the slaveholder. After all, the purchaser “assumes the right of another,” i.e., of the seller or former owner, who did not have any obligation to make restitution after such a “diligence,” since “the better condition of the possessor” applied to him. Leaving aside the debate on some difficult points within Molina's position here, it should be stressed that Avendaño takes that interpretation as inconsistent and affirms that the best possible solution to such a case would include the release of the enslaved person from captivity: the restitution of the person's freedom.⁶⁹

(v) Besides, Molina also claimed that a purchaser who initially negotiates in “invincible ignorance” and later has doubts about the just title of enslavement, who examines the issue without, however, dispelling his doubts, *would not be*, due to his “better condition” as the owner, obliged to make any restitution. The difference between the case described in (iv) and the one described now in (v) seems to lie in the moment of doubt within the chain of purchasing: a doubt that is transferred to someone else – and, thus,

⁶⁵ Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 187, p. 326.

⁶⁶ I use (i) to (vi) to refer to Avendaño's description of six points of view by Molina with regard to the trade and ownership of enslaved black people. I will not mention point of view (ii).

⁶⁷ Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, nn. 187, 190, p. 326.

⁶⁸ A similar focus on the condition of agents somehow more distant from the initial links of the chain of the slave trade in the Atlantic was also described by Avendaño in the report by Tomás Sánchez. See Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, nn. 181–85, p. 325.

⁶⁹ Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, nn. 189, 192, pp. 326–27. See also Molina, *De iustitia et iure*: I, tract. II, disp. XXXV, n. 8, p. 100; disp. XXXVI, n. 1, pp. 106–7.

shared by more people – and persists long after the original purchase (or at least after the previous purchase or ownership) seems to be taken as a more lasting and resilient doubt. The principle of property and the “reflex principle,” according to which in the case of doubt “the condition of the possessor is the better one,” holds, but in the latter situation it is weakened. Avendaño contrasts what was described in (v) with Molina’s own view that the bad faith of merchants everywhere in the system of the transatlantic slave trade was well-known, and thus any initial and subsequent *bona fide* attitude was taken as highly unlikely by Molina himself.⁷⁰ Finally, Avendaño reproduces a further view by Molina according to which, (vi) since the verification and assessment of the legitimacy of enslavement titles and the slave trade in those regions of the world (that is, the African Atlantic coast) was in principle the duty of princes and their ministers, this meant that purchasers and holders were allowed to pursue their interests in selling and buying such market goods. But Avendaño, finding here once again a contradiction in Molina’s statements (see Molina’s discernment (i) above and (iii) below), could affirm that, if authorities allowed the commerce, it was because they were not acquainted with the injustices committed, whereas the traders and owners obviously knew about them. So, the vassals of the Portuguese crown, playing the role of traders and purchasers, could not have *permissionis ius* in those cases.⁷¹

This is a summing up of Avendaño’s reading of Molina’s famous account: it is as a whole characterized by the inconsistency between the idea that (a) there is generally insurmountable relevant doubt about the legitimacy of enslavements and the trade of enslaved black people – where, moreover, the hypothesis of the legitimacy of enslavements was usually not checked and actually could not be checked – and (b) the consideration of cases in which the condition of slaveholders might be arguably preferred in comparison to the freedom of black people.⁷² The inconsistency can also be characterized as one between the idea that (a’) there is a “moral certainty” that the enslavement and trade of Africans were illicit and the idea expressed in (b).⁷³ Such an argumentative flaw – in one or the other form – characterizes the expositions of virtually all other Jesuit thinkers Avendaño describes. It is important to emphasize that Avendaño, in his

70 Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, nn. 189, 193, pp. 326–27.

71 Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, nn. 189, 193–94, pp. 326–27. In fact, Avendaño considers the situation – taken apparently as an exceptional case – in which, if authorities knew about the injustices and nonetheless gave their permission to the slave trade, they might have (good) reasons for that (for example, the goal of avoiding “greater damage” or “evils”).

72 See also Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 194, p. 327.

73 This double approach of condemning the enslavement and trade of black people because of the “moral certainty” that it is illicit and because the certainty that the uncertainty about the legitimacy of slavery titles is unsurmountable seems to characterize Avendaño’s view on the matter of black slavery as a problematic case for commutative justice. This is also an approach that Avendaño finds in the Jesuit thinkers he analyzes, in spite of the inconsistencies in their opinions as a whole. See, for example (in the analysis of Tomás Sánchez’s report), Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, nn. 184–85, pp. 324–25.

analyses, explicitly indicates this inconsistency. He argues that if we grant the significance of freedom as a good and right, and if we accept the truth of the aforementioned premises (a) and/or (a'), there are then two defensible conclusions in an applied ethics of commutative justice. The first conclusion is that there should be a condemnation (and thus abolition) of slavery, of the historical system of slavery he was normatively assessing, and the second is that there should be some form of restitution made for what has been taken from enslaved black people. It is not surprising that in Avendaño's first reasoning in support of his fifth conclusion (see below) – which expresses the probable opinion that both enslavement and the trade of Africans are legal – he mentions the inconsistent views of Jesuit thinkers. Following these Jesuit thinkers, in spite of insurmountable uncertainty about the matter under discussion – and even moral certainty that trade and ownership were illegitimate – there exist cases of doubt that favor the agents (especially the owners) within the slavery system. However, Avendaño's first four conclusions at the end of his report show what would be the logically consistent conclusion about slavery, if one takes into account the safest premises also shared by authorities who wrote on the problem of the slavery of black people. I take them as Avendaño's final résumé of what can be determined on our subject from the exclusive perspective of an applied ethics of commutative justice. Perhaps this can be put in more precise terms: they are Avendaño's final résumé of what can be determined on the ownership and trade of humans from the perspective of an applied ethics of commutative justice that works with the premise of not relativizing both the significance and the right of external freedom for any human being and with the notion that the guiding premises for practical judgments of justice to be met in rightful or sound moral conscience must have the degree of strong certainty or safety (*securitas*) – of what is safer (*tutior*), where there is, in the realm of human acts, a margin for doubt.

In his first four conclusions, Avendaño condemns the *contractus* of African slaves. After all, (I) most *negotiationes* in the transatlantic slave trade from Africa to the Americas were illicit, and forms of restitution were a moral obligation.⁷⁴ (II) The purchase of “a [large] group of slaves” (*mancipiorum copia*), inhumanly transported from African regions, was not licit in Europe and the Indies.⁷⁵ The illegitimacy of those purchases, thus, applied also to links in the chain of trade that were located far from the initial contexts of selling and buying and in which people could claim to act *bona fide* or in invincible ignorance of any previous injustice. (III) It was not licit to buy one or another single slave in the market – who, theoretically at least, could have been legitimately enslaved and negotiated – out of a group of slaves transported by merchants, since if there was suspicion or lack of certitude regarding the titles of the group of slaves, the same would hold for any single slave too.⁷⁶ (IV) In general, it was not licit

⁷⁴ Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 203, pp. 329–30.

⁷⁵ Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 203, p. 330.

⁷⁶ Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 203, p. 330.

to buy enslaved black people brought by merchants to the market in the Americas, no matter how many *domini* they had had before, since their status of servitude – and, thus, the just “title of servitude” (*titulus servitutis*) – was decided at the very beginning. If they were (presumed to be) free at the very beginning, freedom should remain their true status, which, as Avendaño could read in the *Codex Iustiniani*, morally and legally – in clear distinction from the status of *servitus* – does not expire. Here Avendaño combines a strong thesis about the meaning of freedom as a human good and right, i.e., “regarding freedom there is no expiration,” with a principle about connected commutations, that is, “healthy water cannot flow from an infected spring.”⁷⁷

There is no doubt, thus, that, by reviewing positions advanced by Molina, Avendaño initially endorses and even sharpens the condemnation of the transatlantic slave trade. But writing and publishing the first volume of his *Thesaurus indicus* about seventy years after the beginning of the publication of Molina’s commentaries on the *De iustitia et iure*, the Jesuit master from Peru works with a new apparatus of ideas. His different theory of normativity, i.e., his *moral probabilism*, will offer some clues to realize the morality of convention and the subtle ideology that was invoked to give black slavery a vindication. I use “ideology” in this study with the meaning of a complex set of philosophical, theological, legal, and cultural ideas, views, values, and narratives – not necessarily objective, and in fact possibly deviating from reality – that is constructed and shared by a group, class, or nation – even by groups, classes, or nations in the plural – in history because of various interests and processes of political life, and both determines and provides comprehension to given historical and social-political situations and processes.

Before describing what kinds of reasonable probable grounds Avendaño mentions as support to his fifth conclusion, attention should be paid to Avendaño’s comment on (iii) the third view by Molina, according to which slavery should be allowed only in the case that it was just or justified in a manner “brighter than light.”⁷⁸ At that point, Avendaño unmistakably reveals his appraisal of the role of probable opinion in supporting right conscience. Actually, he both endorses the observance of the principle of “safe conscience” (*tuta conscientia*) for allowing the trade and ownership of slaves and affirms that, in order to reach such a “sound conscience” (*salva conscientia*), a just claim (*titulus*) “brighter than light” is not necessary. A claim based only on a “probable opinion” (*probabilis sententia*) suffices. According to Avendaño, the general opinion that some wars against African peoples (such as the wars of the Portuguese against the Angolans) were justly waged and, consequently, the enslavement of prisoners could be taken, by the

⁷⁷ The status of slavery can, however, expire after a period of time; see Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 203, p. 330.

⁷⁸ Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 188, p. 326: “Tertium, non aliter servitutem istorum, et cuiusque illorum permittendam, quam si luce clarius eam iustam esse constet, tum quod libertatis caussae; quippe quae piissima est, per se sit suffragandum.”

offended side, as a just punishment was a *probable claim* only.⁷⁹ In spite of the peculiar use of tutorist language in the context,⁸⁰ it becomes clear that Avendaño supports the thesis that safe reasons are not necessarily found through the principle of “brighter than light,” which would apparently endow any given reasons for slavery with the *safest* certainty. He rather thinks that *probable* reasons suffice to reach that standard.

Having briefly singled out how much Avendaño's moral evaluations are committed to an account of probable opinions, now it's time to highlight and propose an interpretation, as *fifth and final conclusion* regarding the justice of ownership and trade of enslaved black people, of the following famous sentence: “the mentioned purchase in the Indias and Europe can be in some way [*aliqua*liter] justified.”⁸¹ Avendaño describes then seven reasons for this conclusion, which should be taken as acceptable reasons to support the view that the moral opinion according to which the enslavement and trade of black people are licit is probable. They represent the steps taken by Avendaño to introduce probabilism into a complex and concrete moral problem of his times that touched upon both commutative justice and right conscience. His central purpose was, after all, to guide the individual's conscience to right action with regard to the “contractus Aethiopicorum mancipiorum.” (1) There are “doctors” who do not think that such a trade is “openly condemnable” and are even in favor of such purchases – even if it would seem that this does not follow on from their own doctrines – and among them are Molina *et alii*. (2) Enslavement, or the slave trade, is such “a common practice” that “all states” (*omnes status*) accept it without hesitation, even bishops and religious men. (3) The Spanish king allows the trade; he “buys and sells” slaves himself, and his vassals are blameless if they follow him as an example of justice. (4) There are bishops who excommunicate people who “steal slaves,” and by so doing they endorse the “correct right” (*ius certum*) of slave owners, as well as the purchase and ownership of slaves. (5) Many people think that enslaved African were really born for servitude – or: “to be slaves,” “to be in the status of slaves” (*ad serviendum*) – and therefore, regarding the justification of their condition of slavery, there is not “a most exact right” (*exactissimo iure*) as compared to others. In fact, there is just a “minor title” (*minore titulo*) to law and right in the case of enslaved Africans; if nobody or nothing totally “inverosimilis” is involved, purchasers have nothing to worry about. (6)

79 See Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 191, pp. 326–27: “Quod autem in Tertio habetur, est quidem pie, et sapienter dictum; sed certe non esse necessarium pro servitute permitenda, ut luce clarior illius titulus sit, ex priori est pronuntiatio deducendum. Cum enim negotiationi favendum sit, quantum salva conscientia fieri possit, non est certe necessarius titulus luce clarior, cum sufficiat esse probabilem; tuta enim conscientia potest probabilis sententia teneri circa titulum huiusmodi, sicut circa alia, et de bello est satis communis sententia inter Recentiores. Et vero si titulus luce clarior ad servitutem permittendam requiritur, bello capti Angolani non poterunt in servitutem redigi, quia iustitia illius belli non est luce clarior. Ut numero praecedenti dicebamus. Videndus P. Rebellus num. 13. ex quo P. Fragosus num. 26.”

80 Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 188, p. 326; n. 191, p. 327.

81 Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 204, p. 330: “Emptio dicta in Indiis, et Europa iustificari potest aliqua liter.”

African slaves are most needed in the *Indias*, the *conservatio* of which is in the interest of the *res Christiana*. Without slaves the *Respublica* “cannot stand.” Besides, those Africans are “the vilest among men” (*vilissimi isti inter homines*), so that certain demands “of the law of peoples” (*iuris gentium*) may be set aside. (7) Finally, their transportation to the *Indias* cannot be impeded, since kings have “urgent reasons” to allow and authorize it. The dangerous *asportatio* can only be implemented if Africans are deprived of their freedom and “conveniently” handed over to servitude. Besides, although black people are indeed destined for hard work, it does not seem to be the case that they bear it with utmost difficulty. They even perform (ritual) dances while working and, thus, seem to do it with contentment, as long as they are well-nourished and granted holidays.⁸²

These are possible or rather “probable” reasons in favor of the slave trade of Africans. They are supposed to be probable because they can receive, and apparently do receive, some rational support by reasonable people. Are they really probable in that sense? At any rate, those reasons bring new aspects to our understanding of the emergence of the ideology of black slavery in the seventeenth century, and it is not immediately clear how they should be interpreted in relation to Avendaño’s views as a whole. In particular, it is not immediately clear how to reconcile both sides of Avendaño’s report (i.e., his condemnation of the business concerning enslaved Africans and his offer of probable reasons that could justify enslavement and the slave trade).⁸³ I believe this is a

⁸² Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 204, p. 330: “*Primo*: quia Doctores aliqui, licet eorum quidam in consequenter ad suam ipsorum doctrinam, eam non esse aperte damnabilem affirmant, immo et illi favent, ut P. Molina, P. Rebellus [. . .] P. Palaus, P. Fragosus, P. Fagundez. Et alii. *Secundo*: quia ita est communi praxi receptum, quae omnes status complectitur: Episcopos, Religiosos, sine ullo in hac parte scrupulo procedentes. *Tertio*: quia Rex non solum permittit, sed et ipse emit, et vendit, cuius exemplum sequi integrum est vasallis, cum in eo debeant iustitiae exemplaria praelucere. *Quarto*: quia Episcopi contra furantes mancipia excommunicationes fulminant ad dominorum instantiam; eorum ius certum reputantes. *Quinto*, quia cum mancipia ista videantur ad serviendum nata, ut multi expendunt, non videtur circa illa eodem, quo circa alios, exactissimo iure agendum, sed minore titulo, dummodo aliquis non penitus inverosimilis appareat, emptores debere esse contentos. *Sexto*: quia pro Indiis adeo sunt necessarii, ut sine illis stare Respublica ista nequeat. Cum ergo vilissimi isti inter homines sint, dispensari cum aliquo requisito iuris gentium potest, ne Indicae regiones, quarum conservatione res Christiana agitur, ab eo cadant statu, qui adeo necessarius comprobatur. *Tandem*: quia asportatio eorum in Indias nequit impediri, quia ad eam permittendam, immo et auctorizandam, Reges nostri urgentes habent rationes. Cum ergo asportandi sint, nequeunt sine magno periculo in sua libertate relinqui, et ita convenienter servituti addicuntur. Quam quidem illi, licet in assiduo labore sint, non aegre patiuntur, sed inter laborandum tripudiare solent, dummodo de alimentis provideatur, et dies habeant a laboribus feriatos.”

⁸³ For a discussion of these difficulties in the interpretation of Avendaño, see Roberto Hofmeister Pich, “Diego de Avendaño S.J. (1594–1688) e um de seus críticos: um estudo sobre a escravidão negra,” *Intuitio* 12.2 (2019): 13–17, 22–41; Roberto Hofmeister Pich, “Probabilismo, escravidão negra e crítica: Francisco José de Jaca O.F.M. Cap. (c. 1645–1689) interpreta Diego de Avendaño S.J. (1594–1688),” *Thaumazein* 12.24 (2019): 9–12, 27–34; Pich, “Second Scholasticism and Black Slavery (Continuation and End)”: 6–9.

very important – perhaps even a decisive! – discussion topic in order to understand the history of the normative problem about black slavery in pre-modern and modern times.

With regard to the two – apparently irreconcilable – parts of Avendaño's own position, we can propose the interpretation that our Jesuit thinker realizes in the end that, on any normative level (law, conscience, etc.), successful support for the continuity of the system of slavery in its radical dependency on the trade of enslaved Africans would not be found in the premises that were currently available in disputes by theologians and philosophers on the subject. Nor would that support be found in contemporary discussions of the topic as a problem of commutative justice, whose solution had to meet the requirement of showing what is morally safe in a strong sense. If attention should be paid to their own most certain premises and if they were coherently presented, any explanation offered in current legal and philosophical reports could only condemn the enslavement and trade of black people, and could only lead to calls for restitution.

But perhaps moral probabilism could be assumed as a reasonable option for addressing such a problem. Perhaps, as the seven reasons in favor of the *aliquoliter* showed, the scope of opinions able to receive reasonable defense could be significantly (and sufficiently) enlarged with regard to the slavery of black people. Such views could perhaps even be taken as the best attitudes that were morally possible to the concrete historical agents involved in the slavery chain. If so, Avendaño is ready to indicate that path. This does not have to represent his own view about the justice of the trade and ownership of African slaves, but it touches upon the general structure of his moral arguments applied to human affairs generally speaking: probable alternative points of view have to be considered and may prevail. After all, merely probable opinions, even if they are not considered to be *more* probable or *safer* opinions, are taken to suffice to meet basic standards of rationality and correctness, in order to grant someone a good conscience in their actions. These opinions should, then, help agents to see original enslavement titles, the trade, and the ownership of black slaves as probably just things at least, though not with a certainty “brighter than light” itself. This is only so as long as a probable practical opinion (i) is internally rational and in accordance with the laws of logic, and, thus, (ii) does not imply any absurdity, as well as (iii) is externally not contrary to natural law principles, Scripture, the Church Fathers, and the Church's explicit dogmatic determinations, and (iv) usually does receive some, though not major, external support by other thinkers and experts.⁸⁴ Being loyal to a probabilistic view of right conscience and to probabilism as a form of argumentation in determinations of particular justice, Avendaño was able

⁸⁴ At any rate, a probable opinion only contains, because of the nature of its object, room for uncertainty or “fear” concerning its truth up to the point that its opposite can be taken as even more probable than itself. See Pich, “The Aristotelian Background”: 60–74. See also Didacus de Avendaño, *Auctarium Indicum seu Tomus Tertius ad Indici Thesauri ornati complementum, multa ac varia complectens extra rem Indicam sacrarum Professoribus profutura* (Antwerp: Apud Iacobum Meursium, 1675): Pars I, Sectio I, § I, nn. 35–36, pp. 8–9; Pars I, Sectio I, § III, nn. 55–61, pp. 14–15; § VI, nn. 125–29,

to offer opposite probable views – held by others – to what seemed to him the really probable opinion on the slavery of black people: the judgment against slavery that he summarizes in the conclusions (i) to (iv). We have more reasons to think that for Avendaño, and for anybody who could compare the arguments described and proposed by him, condemnation of the slave trade would be the most reasonable position or actually the acceptable probable opinion. Avendaño even says, at the end, that he wanted to show the injustice of that business and thought that, in the face of everything that was said and in spite of the reasons offered in his fifth conclusion, few people would dare to embrace the continuity of those practices. Having fought for the truth and entered into a battle for justice, Avendaño expected at least that the owners, becoming aware of those debates and reasoning on just contracts, would treat their captives “more humanely” (*humanius*). Slaveholders should know that their “right of property” (*ius dominii*) was quite doubtful indeed, to the point that, regarding the unjust *contractus*, to resist the “light of truth” was analogous to the case of someone who walks in daylight with his eyes “almost shut.”⁸⁵

Before moving to a third station of research in this characterization of the legal and moral treatment of black slavery by second and early modern scholastic theologians and philosophers, it should not go unnoticed that, in distinction from the strictly normative treatment of slavery and slave trade offered by Molina,⁸⁶ Avendaño’s account, precisely because of his acceptance of probable opinion as a sufficient ground for giving support to right conscience and for giving a legal rule the status of legitimacy, is connected to new aspects of the debate that arose in the previous decades of the seventeenth century. These aspects help explain the changes in the assessment of enslavement and the slave trade of black people summarized in Avendaño’s fifth conclusion. Connected to moral probabilism as a minimal morality for everyday people, these same aspects would contribute to the creation of a kind of space of possible normativity in history in which black slavery could be seen as a suitable, acceptable convention, a kind of admissible socio-political project that included black Africans who were as such quite unfortunate

pp. 31–32. An up-to-date work on probabilism (including moral probabilism) is Rudolf Schuessler, *The Debate on Probable Opinions in the Scholastic Tradition* (Leiden: Brill, 2019).

⁸⁵ See Avendaño, *Thesaurus indicus*: I, tit. IX, cap. XII, § 8, n. 205, p. 330: “Quae ergo a nobis pro iniustitia negotiationis huius ostendenda non leviter disputata, et stabilita sunt, erunt pauci qui practice complectantur, ultimae huic Assertioni libentius inhaerentes; unde et videri possunt illa supervacue constituta. Sed certe pro veritate pugnasse, et agonizasse pro iustitia, ut Scriptura loquitur, non poterit, ut credo, recte sentientibus non probari. Sic enim et in scriptorum multis est cernere, quos pro eiusdem causae defensione militantes allegavimus. Quin etiam, qui a nobis dicta deservire praeterea poterunt, ut mancipiorum istorum domini humanius cum ipsis agant, scientes ius dominii, quod in ipsos se habere existimant, esse adeo dubium, ut opus sit in re ista, ne lumen veritatis obsistat, clausis fere oculis ambulare.”

⁸⁶ On Molina’s reception by other second scholastic thinkers and (early) modern authors, see Kaufmann, “Between Law, Morality, and Economy”: 222–25.

and had lived so far as miserable people, the suppression of which was beyond normal people's powers and, in a broader perspective, was also not desirable.

After all, reasons (5), (6), and (7) by Avendaño indicate that ideologies of *quasi* natural slavery and of natural inferiority – at least, a natural disposition to labor and subjection – with some ethnic and racial traits, were being taken into consideration. An effect of this seems to be the relativization of the value of freedom for black people. In the first half of the seventeenth century, this narrative is exemplarily conceived by the Jesuit Alonso de Sandoval in his work on mission and catechetical theology titled *De instauranda Aethiopum salute* (the background of which was Sandoval's ministry in Cartagena de Indias,⁸⁷ Colombia, and was first published in 1627).⁸⁸ Alonso de Sandoval combines a sort of factual-empirical description of the natural and civilizational defective status of the Africans with a mystical-eschatological view that the condition of slavery is a historically appropriate occasion – provided by God – to make possible that, through catechesis and baptism, the unsurpassable good of the salvation of the soul should reach the Africans, a good much higher than living in freedom on the African continent and which can be brought to black people from Africa, according to Sandoval, only through the true religion of the whites. In Alonso de Sandoval's theological treatise, religious discourse and justification of religious practices played a clear role in the “manipulation of race” and ideology of slavery. This narrative both gives support to and is part of a convention, i.e., of a *conventional* normativity in which moral experience and moral conscience – on the individual and collective levels – historically grow and develop. Several early modern scholastic thinkers, including Alonso de Sandoval and perhaps Diego de Avendaño, attempted – through arguments with which we do not necessarily have to agree! – to show that conventional spaces of normativity such as the one sketched above were historically *possible* and, as a whole, arguably *preferable* to other spaces of normativity which might be much more rigorous in the criticism of the system and the institution of black slavery. In seventeenth-century Portugal and colonial Brazil, such a narrative in favor of the condition of slavery of black people was exemplarily represented by the master of Christian rhetoric

87 The Caribbean city of Cartagena de Indias, in today's Colombia, was in Sandoval's times the main port for the trade of black slaves in the Hispanic colonies. For a Jesuit priest, it was an appropriate context to reflect upon the Catholic mission with the Africans, since from 1595 to 1640 about 135,000 slaves were dropped into Cartagena de Indias. See Vila Vilar, “Introducción”: 18. See also Vila Vilar, *Hispanoamérica y el comercio de esclavos*: 127–238, 239–83.

88 See Roberto Hofmeister Pich, “Alonso de Sandoval S.J. (1576/1577–1652) and the Ideology of Black Slavery: Some Theological and Philosophical Arguments,” *Patristica et Mediaevalia* 36 (2015): 51–74; Roberto Hofmeister Pich, “Religious Language and the Ideology of Black Slavery: Notes on Alonso de Sandoval's *De instauranda Aethiopum salute*,” *Filosofia Unisinos, Unisinos Journal of Philosophy* 18, n. 3 (2017): 213–26; Márcio Paulo Cenci, “African Slavery and Salvation in the *De instauranda Aethiopum salute* of Alonso de Sandoval S.J. (1577–1652),” *Patristica et Mediaevalia* 36 (2015): 75–89.

Antonio Vieira S.J. (1608–1697),⁸⁹ and this took place in the context of a highly effective and influential way of fixing moral beliefs: *the sermon*.

Moreover, reasons (6) and (7) put forward by Avendaño clearly point out to a primacy of the political over the moral in establishing the normativity of practices that affect not only the well-being of individuals or groups, but, strictly speaking, the common good – perhaps even more simply: concrete interests for the sake of sovereignty – of Christian political entities (republic, state, empire, etc.). This early modern tendency of giving the political a priority of its own over normative concerns, which brings the question of how strategies and discourses in terms of *raison d'État*⁹⁰ affect normativity, may be of some help to grasp why Avendaño proposes probable reasons for defending the slave trade. Traditionally, in a political argument in terms of “*raison d'État*” it is implied that the moral-legal is subjected to the political or to a reason of higher order in the context of state interests and concerns represented by its highest authority – the moral-legal can even *be explicitly violated* by the political. But seventeenth-century Catholic thinkers, such as the Spanish jurist Juan de Solórzano y Pereira (1575–1655), author of the *Política indiana* (first published 1648) and Avendaño’s preceptor, were also conceiving, in opposition to a “bad” “razón de estado,” the notion of a “good” reason of state. This should be one that did not work with the real possibility of making the “tragic choice” between what is good for the “state” and what is good for the “soul.”⁹¹

4 A New Seventeenth-Century Criticism of Black Slavery and Probabilism

A new revision – still quite unknown or even underrated by scholars – of Molina’s views on the slave trade and a critical analysis of Avendaño’s synthesis was conducted by Francisco José de Jaca O.F.M. Cap. (c. 1645–1689) and Epifanio de Moirans O.F.M. Cap. (1644–1689). Actually, these two missionaries did more than this: compared to other moral thinkers of their times, they provided the most explicit and radical criticism of the system of African slave trade until the end of the seventeenth century. In particular, Jaca and Moirans realized the peculiar new combination that Avendaño had made of (a)

⁸⁹ See Amarílio Ferreira Jr. and Marisa Bittar, “A pedagogia da escravidão nos Sermões do Padre Antonio Vieira,” *Revista Brasileira de Estudos Pedagógicos* 84, 206–208 (2003): 43–53; Ronaldo Vainfas, *Antônio Vieira: Jesuíta do Rei* (São Paulo: Companhia das Letras, 2011): 291–92; Felipe Lima da Silva, “A doutrina do Império da Eloquência: Antônio Vieira e os escravos etíopes,” *Caderno de Letras* 25 (2015): 57–70.

⁹⁰ In a political argument in terms of *raison d'État*, it is implied that the moral-legal is subjected to the political or to a reason of higher order in the context of state interests and concerns represented by its highest authority – the moral-legal can even *be explicitly violated* by the political.

⁹¹ See Norbert Campagna, “Reason of State and the Question of the Forced Labor of Indians in Solórzano y Pereira’s *Política Indiana*,” in *Civilization – Nature – Subjugation: Variations of (De-)Colonization*, ed. Christoph Haar, Matthias Kaufmann and Christian Müller (Berlin: Peter Lang, 2021): 115–16.

a clear condemnation of the slavery of black people according to general legal presuppositions of natural law, the law of peoples, and the terms of commutative justice, and (b) the residual acceptability of probable opinion for the legitimacy of the enslavement and trade of black Africans. They saw in this combination a new inconsistency and a new challenge. They set out to disprove probabilism for moral determinations on black slavery and to argue against any hint of reasonable probable force in the seven grounds offered by Avendaño in support of his fifth conclusion. Both authors saw in Avendaño an author who directly or indirectly favored the slavery of black people, and they found in the pages of his *Thesaurus* I a text that accurately provides the *status quaestionis* on the matter, both in American and Iberian contexts. It should be highlighted that Avendaño's report plays a major role in the way Jaca and Moirans organize the arguments in their own treatises.⁹² The literature on slavery which Jaca and Moirans happened to produce was a direct result of their denouncing the injustices of the entire slave market, and all this was based on their local missionary experience of about five years in Nueva Granada and on the Caribbean islands. Francisco José de Jaca was the author of a *Resolución sobre la libertad de los negros y sus originarios, en estado de paganos y después ya cristianos* (finished in 1681),⁹³ and Epifanio de Moirans wrote the treatise *Servi liberi seu naturalis mancipiorum libertatis iusta defensio* (completed in 1682).⁹⁴ Moirans's treatise

92 On Jaca's and Moirans's critique of Diego de Avendaño's report and evaluation of the slavery of black people, see Pich, "Diego de Avendaño S.J. (1594–1688)"; Pich, "Probabilismo, escravidão negra e crítica."

93 On Jaca's life and the characteristics of the *Resolución*, see Miguel Anxo Pena González, "Un autor desconocido y singular en el pensamiento hispano," in *Resolución sobre la libertad de los negros y sus originarios, en estado de paganos y después ya cristianos: La primera condena de la esclavitud en el pensamiento hispano*, by Francisco José de Jaca, ed. Miguel Anxo Pena González (Madrid: CSIC, 2002): XXIII–XLVI, LXI–XCVIII; Miguel Anxo Pena González, "Francisco José de Jaca: una vida a favor de la liberación de los esclavos negros," *Collectanea Franciscana* 72 (2002): 599–671; Miguel Anxo Pena González, "Aportación antiesclavista en tierras de Indias, a fines del siglo XVII," in *El pensamiento hispánico en América: Siglos XVI–XX*, ed. Ildefonso Murillo (Salamanca: Publicaciones Universidad Pontificia, 2007): 506–18. In 1678, Francisco José de Jaca arrived in Caracas (Venezuela) in order to work as missionary. About three years later, he was living in La Habana (Cuba), where he preached against the slavery of black people and met Epifanio de Moirans, who was also engaged in the cause of the freedom of slaves. Their preaching and practice as confessors led them to undesirable outcomes: after conflicts with slave holders and church authorities, both Capuchins were arrested and sent back to Spain, in 1682, to suffer disciplinary measures on the civil and ecclesiastical levels.

94 See Miguel Anxo Pena González, "Epifanio de Moirans: Exponente singular de la práctica antiesclavista," in *Siervos libres: Una propuesta antiesclavista a finales del siglo XVII*, by Epifanio de Moirans, ed. Miguel Anxo Pena González (Madrid: CSIC, 2007): XVII–LXXV. See also Miguel Anxo Pena González, "Epifanio de Moirans (1644–1689): misionero capuchino y antiesclavista," *Collectanea Franciscana* 74 (2004): 111–45; Miguel Anxo Pena González, "Doctrina antiesclavista de Epifanio de Moirans en su 'Servi Liberi,'" *Naturaleza y Gracia* 52.2 (2005): 279–327; Miguel Anxo Pena González, "Aportación antiesclavista en tierras de Indias": 519–30. Epifanio de Moirans landed in Cayenne (French Antilles) in 1677 to act in a missionary capacity as well. In 1680, he illegally entered into Spanish territory (in Cumaná, today's Venezuela), was arrested, and brought to La Habana. There, in 1681, together with Jaca, Moirans gave continuity to anti-slavery preaching. Thereafter, the destiny of both missionaries is

is particularly impressive. He summarized what the most important texts Iberian-American scholastic thinkers wrote on black slavery from the sixteenth century to his own day. However, Jaca and Moirans's works never circulated. They were confiscated and kept for centuries in the "Archivo General de Indias," in Seville. They were finally made public in the 1980s,⁹⁵ and received critical editions in 2002 and 2007.

Both Jaca and Moirans observe the inconsistencies that specialized casuistic literature on commutative justice contained with respect to the analysis of the slavery of black people (due to the aforementioned areas of indulgence). Neither of them sees any other consistent option in terms of practical arguments at the level of those scholarly reports besides the suppression of the traffic from Africa to the Americas and the abolition of the institution of slavery in their time and place. These ideas are summarized in the following conviction of theirs: the system of the buying and selling of Africans slaves in the Atlantic was vitiated by an incorrigible error, namely, the fact that the original enslavements were illicit. The market goods that formed the basis of the whole system were black Africans as slaves or as property of others for sale and use as a labor force. But this was in itself corrupt: African slaves were an "unjust received thing." As a rule, regarding enslaved black people on the market, the right of oneself to possess oneself (i.e., the freedom of each person) had never legitimately passed on to become another person's right (the possession of a human being by another as negation and alienation of his freedom).⁹⁶ If in a few exceptional cases Africans were legitimate slaves in the transatlantic slave trade, such cases were nonetheless unverifiable or simply incapable of being confirmed. Moreover, the widespread rumors of illegal enslavements in general were strong enough to condemn and completely stop the buying-and-selling of slaves. There was no option but to conclude that *any* transaction and possession of slaves was either more probably or certainly an "unjust reception."⁹⁷ We should stress, moreover, Jaca's and Moirans's perception that the illicit *contractus* should be strictly understood as *a chain or a system of unavoidably connected links*.⁹⁸ Thus, due to the lack of knowledge about the real condition of the

similar until the beginning of 1685, when, after being formally absolved in Rome by the *Sacra Congregatio de Propaganda Fide*, their paths diverged. See also Pena González, "Un autor desconocido y singular": XXVIII–XXXVI; Epifanio de Moirans, *Siervos libres: Una propuesta antiesclavista a finales del siglo XVII* [Servi liberi seu naturalis mancipiorum libertatis iusta defensio], ed. Miguel Anxo Pena González (Madrid: CSIC, 2007): Prologus, pp. 6–17.

⁹⁵ See José Tomás López García, *Dos Defensores de los Esclavos Negros en el Siglo XVII: (Francisco José de Jaca y Epifanio de Moirans)* (Caracas: Universidad Católica Andrés Bello/Visión Libros, 1982/2008).

⁹⁶ Moirans, *Iusta defensio*: IV–V, nn. 48–67, pp. 68–97; Jaca, *Resolución*: I, nn. 6–14, pp. 6–17.

⁹⁷ Moirans, *Iusta defensio*: VI, n. 69, pp. 98–103; Jaca, *Resolución*: I, nn. 13–16, pp. 15–18; II, nn. 30–31, pp. 43–45.

⁹⁸ See Moirans, *Iusta defensio*: III, nn. 47, 54, pp. 66–67, 76–77, here n. 54, p. 76: "Unde si ius gentium intendat bonum reipublicae et si bellum moveatur ad bonum spirituale et temporale nationis, per se patet non esse bellum iustum quod est in destructionem nationis, in perniciem et perditionem. Ideo nigri seipsos destruentes, vendentes aliis nationibus, nec rectam intentionem nec iustam causam

enslaved people as *legitimate slaves*, at least a degree of uncertainty was the rule, and there was no possible way for that uncertainty to be turned into sufficient certainty by means of examination.⁹⁹

In the face of all this, Jaca and Moirans offer an important interpretation of the – above mentioned – canon law principle that works in these debates as a reflex judgment to be a hermeneutical support in normative reasoning regarding the justice of commutations and property attribution, i.e., “in dubiis melior est conditio possidentis.”¹⁰⁰ From the beginning of the enslavements and from the subsequent slave trafficking on the African Atlantic coast to the last transaction in the American colonies and viceroyalties by someone who bought slaves to work in his house or lands, “in dubiis melior est conditio possidentis” could only favor the true original owner of freedom: the enslaved African. Jaca and Moirans, together with the moral and legal traditions of Roman and canon law and the medieval and early modern scholastic views on the value of freedom, emphasize that with regard to the right of freedom there is no prescription.¹⁰¹ In a nutshell, there are two safe premises: the crucial value of freedom as a human good and right,¹⁰² and the general uncertainty about the slave status of Africans put on the slave market – recognized by everyone and, in practice,

habere possunt, sed contra ius naturae committunt, et in ius gentium faciunt, igitur, omnes cooperantes, consentientes, mandantes, iuvantes, incitantes, dantes causam et occasionem. [. . .]. Sed inter nigros nullum est bellum iustum; ergo nec servitus licita de iure gentium. Igitur fiunt servi contra ius gentium, in perniciem et destructionem suae nationis; contra ius naturale privantur sua libertate, et omnia sunt latrocinia, furta, rapinae. Inter nigros haec est origo infecta, a qua non potest procedere aqua sana, uti dicit Mercadus de contractu nigrorum.” See Fernando Rodrigues Montes D’Oca, “Two Capuchins Friars in Defense of African Slaves’ Liberty: Francisco José de Jaca and Epifanio de Moirans,” *Patristica et Mediaevalia* 36 (2015): 100–102.

⁹⁹ Jaca, *Resolución*: I, nn. 7–8, pp. 9–11.

¹⁰⁰ Jaca, *Resolución*: I, n. 8, pp. 10–11.

¹⁰¹ Jaca, *Resolución*: II, n. 50, p. 59; Moirans, *Iusta defensio*: VI, n. 70, pp. 104–5.

¹⁰² Jaca and Moirans exalt freedom as a human good and an intrinsic, innate, and natural right of possession and use of the body. As the condition itself of not being the property of someone else – thus, as a “natural permission” and not as a natural command, precept, or duty, Jaca would say – freedom is simply principal and priceless. It is second only to physical life (and it is commutable only for physical life). See Jaca, *Resolución*: I, nn. 1–4, pp. 4–7; Moirans, *Iusta defensio*: II, nn. 25–28, pp. 38–41; VI, nn. 71–72, pp. 104–7; here II, nn. 25–26, pp. 38–39: “25. Omnes homines natura esse liberos lumen rationis signatum super nos ostendit omnibus; unde dicunt omnes iure naturae liberos esse homines universos. [. . .]. 26. Ex hac autem libertate essentiali formaliter posita in voluntate hominis, de lege aeterna immutabili, immobili, sequitur libertas naturalis hominis; nempe quod sit sui iuris, quae est de lege naturae de iure naturali. Cum igitur omnes homines de lege aeterna habeant libertatem in voluntate sua, de lege naturali persona cuiuscumque hominis libera est et sui iuris. Haec autem lex naturalis, quae una est in omnibus unitate ordinis, quoad omnes homines et quoad omnia tempora, una et eadem est, nec magis obligat tempore hoc quam alio, quantum ad praecepta communissima

immutable.¹⁰³ Together, these premises force the outright defense and preservation of freedom. They make transparent the better condition of the possessor (again: the African).¹⁰⁴ First Jaca and then Moirans explore that interpretation in depth, disputing with arguments and uses in the literature that, with regard to some kinds of *casus*, would rather interpret the *conditio possidentis* principle as favoring supposedly *bona fide* buyers and owners. We should stress that for both authors the emphasis in the moral evaluation of cases of the slave trade should not fall upon those agents in the slavery chain who were buyers and owners, but upon the status of the product: as the status of the enslaved person was (unjust received thing) illicit or clearly uncertain, all contracts and ownerships would as a consequence be unjust and illicit, too (unjust reception).¹⁰⁵ If the moral and legal status of enslaved Africans was actually non-prescribable freedom, then one can understand that a radical discourse on restitution should play such a pivotal role in Moirans's *Iusta defensio*.¹⁰⁶

We should highlight here the discussion of good faith regarding the status of enslaved black people *as slaves* and the possibility of invincible ignorance concerning errors in transactions involving black slaves from the first buying or capturing (in Africa) to more recent ownerships (in the Indies). In answer to the question of acceptable moral excuses that might be invoked by agents of trade, whether to simply excuse their actions or to protect their material interests, Jaca and Moirans stress the view that within the context of such commerce, there was no room for good faith and invincible ignorance by any of those who took part. After all, the commerce of slaves was characterized by numerous and unequivocal widespread *rumors* – and often even by *well-known* reports by “theologians” and “doctors,” also based on direct testimonies of agents involved in the traffic – of irregularities with regard to its legitimacy. So in fact these transactions were full of relevant doubts about their legitimacy – the legitimacy of the issue was unlikely, uncertain, and non-certifiable – and there may even have been moral certainty about their injustice. If *per impossibile* there had been no initial doubts in a given

praesertim; sicut illud concludit Parra [Antonio de la Parra y Arteaga] ex Divo Thoma. Unde libertas quae de iure naturali est, non potest tolli homini, aut fieri aliquid in praeiudicium illius.”

103 Following Jaca and Moirans's treatises, we could actually propose three premises: the invaluable value of freedom as a human good and right, the general uncertainty – recognized by everyone and, in practice, irresolvable – about the slave status of the Africans put on the slave market, and even the moral certainty – backed by strong widespread rumors and perhaps direct and indirect information (testimony by ship captains, for example) – that the original enslavement titles were altogether unjust. See also Jaca, *Resolución*: I, nn. 6–9, pp. 8–11.

104 Several other auxiliary normative principles contribute to clarify the very meaning of the “*conditio possidentis*” principle, which I highlight in the body of the text, as well as its application in concrete determinations regarding commutations. See Jaca, *Resolución*: I, n. 10, p. 12; II, n. 44, pp. 55–56; II, n. 50, p. 59; Moirans, *Iusta defensio*: VI, nn. 69–70, pp. 100–105; VI, n. 73, pp. 110–11; VIII, n. 88, pp. 134–35.

105 Moirans, *Iusta defensio*: II, nn. 34–35, pp. 48–51.

106 Moirans, *Iusta defensio*: XII–XIV, nn. 121–37, pp. 182–221.

transaction and relevant doubts arose only later and remained unsolved, the *conditio possidentis* should all the same favor the enslaved persons.¹⁰⁷ Francisco José de Jaca proposed an important reflection in this regard. He presupposed that having certainty of the truth of the just titles of enslavement had to be a part, in those situations, of the analysis of the moral quality of the acts of trading, buying, and owning slaves. In this sense, he wanted to make sure that there were limits to the excuse of acting in good faith. The central idea is that when someone acts in opposition to something that is granted by natural law, such as freedom – something intrinsic to the human being – then real, significant certainty is required. About first practical principles – such as “the good is to be done” or the “golden rule” – and even about derived principles, as would be the case with the principle of not usurping someone else’s freedom except in full certainty of the legitimate loss of that right, invincible ignorance was not possible. It was impossible to reasonably admit that a moral actor could claim good faith and invincible ignorance about such a serious matter as loss of natural freedom. However, the permissibility of the trade and of the original enslavements demanded “ciencia cierta.”¹⁰⁸

Avendaño, Jaca, and Moirans are close to each other regarding the view explained above of on how to interpret the *conditio possidentis* principle in the matter of black slavery as a problem of applied ethics of commutative justice, and so they are too on the condemnation of that *contractus* because of the uncertainty of the just titles of enslavement – and, thus, of the status of the “thing received.” But one central difference is already quite apparent: in order to morally decide about matters as important as a human being’s legitimate loss of freedom, Avendaño considers a probable opinion to be enough, while Jaca and Moirans demand significant certainty about every possible just title of enslavement. In their treatises, Jaca and Moirans unmistakably denounce the influence of the probable opinion *ad mentem Avendañi* as an option for the moral defense of the enslavement and trade in black people. Apparently, civil and ecclesiastical authorities had no interest at all in interpreting the largely more obvious conclusion of Avendaño, in his ambiguous report, that this *contractus* was rather unjust. We can suspect that they rather comfortably referred to it in order to assuage criticism of the system of slavery found in theological and legal literature. We should not forget that in 1685 the Council of the Indias responded to a request by King Charles II *via* his State Council to be informed about the origin of the slave trade from Africa to the American territories, the necessity or convenience of that trade, and moreover whether theologians and jurists had pronounced opinions about the legitimacy of the business. This request echoed Jaca and Moirans’s appeals to the king, which were mediated by ecclesiastical authorities. The Council’s answer textually invoked the probable opinion *ad*

¹⁰⁷ Moirans, *Iusta defensio*: VI, nn. 68–69, pp. 98–103; Jaca, *Resolución*: I, nn. 10–12, pp. 12–14; II, nn. 27–31, pp. 41–45; II, nn. 48–49, pp. 57–59. See Montes D’Oca, “Two Capuchins Friars”: 101–8; Fernando Rodrigues Montes D’Oca, “Tráfico de escravos e consciência moral: o pensamento antiescravista de Epifânio de Moirans,” *Dissertatio* 46 (2017): 149–59.

¹⁰⁸ Jaca, *Resolución*: I, nn. 10–13, pp. 12–15.

mentem Avendañi: Avendaño's *aliqua*liter is reproduced, and he is taken as the main representative of the view that the enslavement and trade of Africans was morally allowable on the level of probable opinion, which could grant a sound conscience.¹⁰⁹

Jaca and Moirans's reaction to this scenario has two directions: on the one hand, they discuss whether, on the theoretical level and generally speaking, a just probable opinion might be used to solve practical doubts and guide a conscience to rectitude – particularly with regard to important matters like freedom and the loss of it. On the other hand, they react to Avendaño's ambiguous report as a whole and in particular to his *aliqua*liter, i.e., to the seven reasonings offered in support of the provability of the opinion according to which the trade of black slaves and the ownership of them was morally acceptable.¹¹⁰ I cannot expound in detail here Jaca's¹¹¹ or Moirans's¹¹² appraisal of Avendaño's exposition, but only refer to general characteristics. Avendaño's account assumes the form of a probabilistic argument. According to this account, what some agents take as a probable opinion only can play the role of an opinion worthy of being defended and invoked in order to solve practical doubts. This is despite the fact that another (opposite) opinion is explicitly recognized as more probable or simply safer. Jaca connects Avendaño's probabilistic argument to contradiction, leniency, and moral dissimulation. Regarding moral duties such as right conscience on the slavery issue, Avendaño's general account, according to Jaca, both stimulates and is stimulated by leniency and dissimulation. Jaca's text allows the interpretation that Avendaño himself, with his criticism of the traffic of black slaves, only dissimulates what he in fact intended within his probabilistic argument: to ratify black slavery and offer several agents of slavery in the Indias almost every possible legitimization they wanted.

In his turn, Moirans connects what he takes as a rhetorical probabilistic argument in Avendaño's report (perhaps used by Avendaño to show *a contrario* his rejection of slavery) to contradiction and leniency, too. Avendaño's report causes confusion, because it is contradictory – four of his conclusions are contrary to the slavery system and demand forms of restitution, whereas his fifth conclusion favors slavery and does not suggest any obligatory restitution.¹¹³ As a strategy, the supposed rhetorical character in

¹⁰⁹ Jaca, *Resolución*, “Apéndice – II. Testigos y Fuentes,” “146. Resumen del origen que ha tenido la introducción de esclavos negros en las Indias y la necesidad que hay de ellos en aquellas provincias” and especially “147. Oficio del Consejo de Indias a Carlos II” (Madrid 1685, AGI, by the Council of the Indias): 345–54.

¹¹⁰ I referred in detail to these reactions of the two Capuchin friars in Pich, “Diego de Avendaño S.J. (1594–1688)”: 22–41; Pich, “Probabilismo, escravidão negra e crítica”: 27–34.

¹¹¹ Jaca, *Resolución*: II, nn. 54–61, pp. 62–68.

¹¹² Moirans, *Iusta defensio*: X–XI, nn. 108–20, pp. 162–81.

¹¹³ Moirans, *Iusta defensio*: X, n. 110, pp. 164–67: “Sed quantum ad quintum Avendañi dictum quaero ab ipso: Vel dicta emptio iustificatur in conscientia, vel non. Si iustificatur, quare ergo dicis in secundo, tertio et quarto dicto illicitam esse? Sibi ergo contradicit declinando, sicut et caeteri, quia omnes declinaverunt. [. . .]. Deinde quaero ab Avendaño an propter rationes quas offert, possint emi in conscientia et possideri mancipia, an non. [. . .]. Tandem, vel intendit excusare eos a peccatis, vel non. [. . .].”

Avendaño's construction can only be a slip, for in the slavery problem just a few people are willing to embrace justice. Avendaño, with his opposite conclusions, should be aware of the fact that he was giving reasons for everyone: a self-destructive strategy.¹¹⁴ Above all, Moirans's criticism of Avendaño's account had the purpose of disabling any legitimating link between moral probabilism and black slavery. Probabilism is depicted as a reason for self-indulgence and even collective indulgence regarding the doubtful room for justice in enslavements and the slave trade. Probabilism as minimal morality and the relativization of possible paths to achieve sound conscience above all opened the door for discourses that strong agents of the colonization project would be willing to embrace. Because of his fine perception of the consequences of moral leniency, and based on the contents of the seven reasons for the *aliquoliter*, Moirans connects the argument by Avendaño to forms of arbitrary thought in normative matters, and thus to what can be taken as the genesis of ideology. We find here a further hypothesis that explains the historical possibility of black slavery on the level of ideas: relativized narratives about importance and fairness in the recognition of freedom towards enslaved Africans ideologically confirmed black slavery as a possible convention in history or a quite natural state in the context of the hierarchies of the colonial world.¹¹⁵

To the question of whether a just probable opinion might be used to solve practical doubts and guide consciences to rectitude, particularly with regard to important matters such as freedom and slavery, Jaca and Moirans answer with a clear "no." Jaca's *Resolución* and Moirans's *Iusta defensio* do not allow us to reach a conclusion about the moral system they embrace regarding the problem of right conscience. However, they provide enough information for us to affirm that they move in the direction of favoring the "more probable" and/or the "safer" opinion in order to provide conscience with rectitude.¹¹⁶ Their analyses of the legitimacy of slavery in their times help us understand

114 Moirans, *Iusta defensio*: X, n. 111, pp. 166–67: "[. . .]. Nonne debebat rationes solvere post stabilitam doctrinam suam, non ita destruere doctrinam suam per aliqualem excusationem, sciens paucos esse qui practice complectantur veritatem traditam? Pugnavit ergo pro veritate et iustitia, sed non usque ad finem, nec certavit legitime. Quapropter, sicut et alii Societatis Patres, declinavit, [. . .]. Enimvero, recte sentiens, probaveram doctrinam, sed videns declinationem in quinto dicto, miratus sum virum doctorem destruere et eradicare quae bene plantaverat, [. . .]. Unde rationes omnes solvam et refellam a fundamentis eradicando, ne remaneat aliqualis iustificatio, sed omnium pateat oculis veritas doctrinae et iniquitas christianorum et malitia, sicut et caecitas et obstinatio, [. . .]."

115 See also Roberto Hofmeister Pich, "Probabilismo e escravidão negra," *Humanidades: Revista de la Universidad de Montevideo* 8 (2020): 46–62, sections 3 and 4, and Concluding Remarks.

116 Granted as a principle that it is wrong to act upon a doubtful conscience and conscious that *practical* certainty is of a special kind, that is, *ut in pluribus*, it is easy to realize that moral philosophy faces a challenge related to practical knowledge and the possibility of effectively helping agents to act with responsibility. For that purpose, as is well known, different systems were in dispute in seventeenth-century scholastic practical philosophy. "Tutorism" "demanded the election of the "safer" course of action, that is, the choice which would most surely guarantee that the agent would avoid sin," and "probabiliorism" would allow for "the agent to adopt a position in favor of liberty," that is, in favor of a non-safe opinion, only if it were objectively "more probable (i.e., supported by stronger

why those views were theoretically preferable for practical judgments. Like other issues of conscience comparable in importance, with regard to the possibility of (through enslavement) losing freedom, which is as such an invaluable good, only a moral system that embraces rigor and safety can guide agents to rectitude.¹¹⁷ A moral point of view in terms of probabilism was simply not proportional or internally adequate to provide judgments about issues as important as freedom and slavery.¹¹⁸ It is evident that Jaca and Moirans realized that slaveholders in the Indies had sympathy for the idea that it would suffice that their opinion about the legitimacy of the trade and possession of slaves should be probable only – simply coinciding with existing laws of trade and ownership of humans, and perhaps with customs and conventions about black people accepted within their society.¹¹⁹ Jaca and Moirans's discussion of Avendaño's *aliqua*liter is a thoughtful analysis, existing within a well-defined historical context, of how the adoption of a merely probable opinion about such an important matter could amount to arbitrariness in practical judgments and leniency in the pursuit of practical truth. As such, Jaca and Moirans, having people living in Catholic societies as their target, also fight against the probabilistic thesis applied to the problem of slavery by means of the guidance given by Innocence XI against probabilistic moral theses.¹²⁰ This was found in the context of the pope's formal condemnations of laxist and probabilistic views. Innocence XI himself advised following, in practical matters, at least that which was "more probable." To give one example of the Capuchin missionaries' acquaintance with the determinations of Innocence XI, Jaca is happy to quote the kind of maxim of normative deliberation that was under papal condemnation: "one should not judge according to the multitude of authors what is better and more equitable, since the opinion [*sententia*] of a single [author], even of the worst [of the authors in question], can perhaps surpass [*superare*] in some part both the many and the better ones."¹²¹

arguments, stronger authorities, or both) than the judgment" which constrained someone "by a [given] moral obligation." See Julia A. Fleming, *Defending Probabilism: The Moral Theology of Juan Caramuel* (Washington, DC: Georgetown University Press, 2006): 4–5.

117 Jaca, *Resolución*: II, n. 55, pp. 63–64; Moirans, *Iusta defensio*: V, n. 63, pp. 90–93; VI, n. 69, pp. 100–103; VII, n. 80, pp. 120–21; VIII, nn. 82–89, pp. 124–37.

118 See Montes D'Oca, "Tráfico de escravos e consciência moral": 159–66. See also Moirans, *Iusta defensio*: XI, n. 113, pp. 170–73.

119 Jaca explicitly denounces this in several contexts; see, for example, Jaca, *Resolución*: II, nn. 40–52, pp. 52–62.

120 See Montes D'Oca, "Two Capuchins Friars": 107–8; Montes D'Oca, "Tráfico de escravos e consciência moral": 162–63. See also Moirans, *Iusta defensio*: XI, nn. 113, 115, 117, pp. 170–77.

121 Jaca, *Resolución*: II, n. 46, p. 57. See also Moirans, *Iusta defensio*: XI, n. 113, pp. 172–73. The pontificate of Innocence XI extended from 1676 to 1689. On March 2, 1679, Innocence XI condemned 65 propositions laxist and probabilistic in content. Generally, regarding practical deliberation and right conscience, Innocence's XI stance was in favor of the so-called "opinio magis probabilis." See Franz Xaver Seppelt, *Das Papsttum in der Neueren Zeit – Geschichte der Päpste vom Regierungsantritt Pauls III. bis zur Französischen Revolution (1534–1798)* (Leipzig: Verlag von Jakob Hegner, 1936): 352–53;

5 Concluding Remarks

Philosophical studies about normative debates on black slavery in the transatlantic space from the sixteenth to the nineteenth century have to take into consideration several aspects that together can explain – particularly from the third decade of the seventeenth century onwards – the emergence of the ideology that gave support to the permanence of that system. Early in the seventeenth century, as the assessment grounded on criteria of commutative justice by Luis de Molina reveals, scholastic thinkers were convinced that the system of the slave trade was illicit and should not receive any legal protection. In his ambiguous report, Diego de Avendaño both confirms this illegitimacy and indicates the structure and nature of probable reasons, characterized by the primacy of political, legal positivism, the relativization of rights, a view of colonization as a historical process that brings benefits to the oppressed, and the construction of an image of black people from Africa as inferior or miserable, that contributed to make the enslavement of black people and the trade of enslaved Africans an acceptable historical convention. Francisco José de Jaca and Epifanio de Moirans arguably realized that the system of black slavery in the Americas needed an ideology for its *longue durée*. Jaca and Moirans wrote against the normative evaluation of the institution of black slavery provided above all by Jesuit thinkers. They attempted a reaction against the formal moral literature on black slavery, where there was room for interpreting situations of doubt in favor of traders and owners that were in some way distant from the original enslavement and trade situations. Moreover, Jaca and Moirans reacted against the role played by moral probabilism in justifying the system of slavery. Here, in particular, one of the directions of probable reasons mentioned in support of Avendaño's fifth conclusion, namely the proto-racial and demeaning ethnological representation of black Africans that was being consolidated in the seventeenth century, will lead researchers back to an investigation of Alonso de Sandoval's revealing work *De instauranda Aethiopum salute* 1627/1647).¹²²

Jean Delumeau, *Le catholicisme entre Luther et Voltaire* (Paris: Presses Universitaires de France, 1971): 166–67. See also Schuessler, *The Debate on Probable Opinions*: 156–60.

¹²² Alonso de Sandoval, *Un tratado sobre la esclavitud* [De instauranda Aethiopum salute], trans. Enriqueta Vila Vilar (Madrid: Alianza Editorial, 1987); Alonso de Sandoval, *De instauranda Aethiopum salute: Historia de Aethiopia, naturaleza, Policia Sagrada y profana, Costumbres, ritos, y Cathecismo Evangelico, de todos los Aethiopes con que se restaura la salud de sus almas, dividida en dos Tomos* (Madrid: Alonso de Paredes, 1647).

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