Second Scholasticism and Black Slavery ‘(Continuation and End)

Roberto Hofmeister Pich*

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Abstract: In order to systematically explore the normative treatment of black slavery by Second Scholastic thinkers, who usually place the problem within the broad discussion of moral conscience and, more narrowly, the nature and justice of trade and contracts, I propose two stations of research that may be helpful for future studies, especially concerning the study of Scholastic ideas in colonial Latin America. Beginning with the analysis of just titles for slavery and slavery trade proposed by Luis de Molina S.J. (1535–1600), I show how his accounts were critically reviewed by Diego de Avendaño S.J. (1594–1688), revealing basic features of Second Scholasticism’s normative thinking in Europe and the Americas. The normative knowledge provided by these two Scholastic intellectuals would be profoundly tested during the last decades of the 17th century, especially by authors who sharpened the systemic analysis and a rigorist moral assessment of every title of slavery and slaveholding, as well as the requirements of an ethics of restitution.

Keywords: black slavery, Second Scholasticism, commutative justice, probabilism, Luis de Molina, Diego de Avendaño.

Resumo: No intuito de explorar sistematicamente o tratamento normativo sobre a escravidão negra por pensadores da Segunda Escolástica, que normalmente colocam o problema dentro da discussão ampla da consciência moral e, mais em específico, da natureza e da justiça do comércio e dos contratos, eu proponho duas estações de pesquisa que podem ser de ajuda para estudos futuros, em especial no que diz respeito ao estudo de ideias escolásticas na América Latina colonial. Começando com a análise dos títulos justos em favor da escravidão e do comércio de escravos propostos por Luis de Molina S. J. (1535–1600), eu procuro mostrar como os seus relatos foram recebidos criticamente por Diego de Avendaño S. J. (1594–1688), revelando traços básicos do pensamento normativo da Segunda Escolástica na Europa e nas Américas. O conhecimento normativo oportunizado por esses dois intelectuais escolásticos seria testado de forma profunda ao longo das últimas décadas do século 17, sobretudo por autores que aguçaram a análise sistêmica e a avaliação moral rigorista de todos os títulos de escravidão e de posse de escravos, bem como as exigências de uma ética da restituição.

Palavras-chave: escravidão negra, Segunda Escolástica, justiça comutativa, probabilismo, Luis de Molina, Diego de Avendaño.

Resumen: Con el objeto de examinar sistemáticamente el trato normativo sobre la esclavitud de los negros elaborado por pensadores de la Segunda Escolástica, que colocaron normalmente este problema dentro de la discusión amplia de la conciencia moral y más específicamente en la naturaleza y justicia del comercio y sus contratos, propongo para esto dos estaciones de investigación que pueden ser auxiliares para estudios futuros, especialmente los relacionados al estudio de las ideas escolásticas en la América Latina colonial. El análisis comienza con los títulos justos en favor de la esclavitud y del comercio de esclavos, propuestos por Luis de Molina S. J. (1535–1600). Busco mostrar en seguida como los relatos de este autor fueron recibidos de manera crítica por Diego de Avendaño (1594-1698),
revealing trazos básicos del pensamiento normativo de la Segunda Escolástica en Europa y en las Améri-cas. El conocimiento normativo propiciado por estos dos intelectuales escolásticos sería probado de forma profunda a lo largo de las últimas décadas del siglo XVII; sobre todo por autores que afinaron el análisis sistemático y la evaluación moral rigurosa de todos los títulos de la esclavitud y de la pose de esclavos, bien como las exigencias de una ética de la restitución. **Palabras clave:** esclavitud negra, Segunda Escolástica, justicia conmutativa, probabilismo, Luis de Molina, Diego de Avendaño.

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

Diego de Avendaño S.J. (1594–1688) offered a lengthy exposition of black slavery or rather the trade of slaves from Africa to Latin America in Volume I of his *Auctarium indicum* – also called *Thesaurus indicus*. Avendaño’s account is quite comprehensive indeed, as he summarizes in it the main discussions of the topic as conducted by his contemporaries – above all within the Society of Jesus. His summary was influential and discussed by other authors. In spite of views according to which Avendaño strongly and unequivocally condemned the slave trade and even slavery *simpliciter* (that is, the institution of slavery), the details of his overall position, especially due to the role of his probabilism in practical philosophy, are more difficult to establish – although his defense of blacks and his criticism of the slave trade are most notorious. In fact, by examining Avendaño’s main text on the subject, that is, *Thesaurus indicus* I, tit. IX, c. xii, § 8, we see that his exposition contains (i) a description of views proposed by major Jesuit authors (Tomás Sánchez, Luis de Molina, Fernando Rebello, etc.) as well as (ii) his own views, including seven intriguing reasons for slave trade.

As Luis de Molina did before him, Diego de Avendaño essentially relates “the buying and selling of Ethiopian (African) slaves” to the inspection of conscience. He morally analyzes, thus, the various aspects of a *commutatio*. Since the buying and owning of slaves is a sort of contract, it must be a *just contract* – truly, the entire *titulus* Avendaño wrote, within which the discussion of slavery appeared, was directed to the Consulate of Commerce, that is, an institution in Latin America designed to regulate aspects of economic contracts and international trade. Avendaño was worried about the morality of contracts involving traders, and the issue

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3 On Avendaño’s life and works, see Á. Muñoz García, Introducción, in: Diego de Avendaño, in: *Thesaurus indicus*. p. 13-53. Á. Muñoz García, *Diego de Avendaño. Filosofía, moralidad, derecho y política en el Perú colonial*, p. 29-61. We should have in mind that Diego de Avendaño arrived in Peru in 1610, together with his tutor in the initial years, i.e., the jurist Juan de Solórzano y Pereyra (1575–1655), who had studied and taught law as a professor at the University of Salamanca. Solórzano y Pereyra’s enduring influence on Avendaño’s legal thought is quite perceptible by the frequent use made by Avendaño, in the volumes of his *Thesaurus indicus*, of the works of *Indorum iure et gubernatore* (269, 1639) and *Politica indiana* (1647).

4 Á. Muñoz García, Diego de Avendaño y la abolición de la esclavitud, in: Solar, p. 133-162. See also footnotes 48–51, below.

5 See, for example, Á. Losada, El Abate Grégoire, lector de los humanistas y juristas españoles de los siglos XV a XVII. Fuentes ideoló-gicas españolas de la revolución francesa, in: *Historia Mexicana*, 79, 81.

6 See A. Muñoz García, Diego de Avendaño y la abolición de la esclavitud, p. 135.


9 See also A. Muñoz García, Diego de Avendaño y la abolición de la esclavitud, p. 142; Á. Losada, El Abate Grégoire, lector de los humanistas y juristas españoles de los siglos XV a XVII. Fuentes ideológicas españolas de la revolución francesa, p. 81.


11 J. A. Telkamp, Esclavitud y ética comercial en el siglo XVI, in: *Anales del Seminario de Historia de la Filosofía*, p. 138, explains that the Latin term “Aethiopes” was used at that time to designate people from Africa, of course not only from Ethiopia.

12 *Didacus de Avendaño, Thesaurus indicus*, I, tit. IX, cap. XII, § 8, n. 180, p. 324: “Modo id tantum adiecerim, rem hanc adeo esse Christianis consentientes periculosam, ut si ad regulas iustitiae aptari debeat, vix aliquid occurrat, quo possit plena securitas in hiusmodi contractu reperiri.”
Regarding black slavery was the inspection of the moral conscience of traders, which depended on the fairness of slavery titles. Although Avendaño reviews positions by Tomás Sánchez, Luis de Molina, Fernando Rebeño, etc., I will focus, in order to avoid repetitions – and also because Fernando Rebeño and Ali clearly followed Molina –, on what the last Jesuit Master proposed.

Avendaño summarizes six main reasonings proposed by Molina – mainly in Molina’s De iustitia et iure I, trac. II, disp. 35-36 – regarding the lictiness of the slavery status and slave trade of Africans. He essentially depicts Molina as someone opposed to black slave trade – mainly because original enslavement titles are unjust, are never checked and enslavement titles cannot usually be ascertained. Since Molina’s main positions were expounded above, I will not describe again each one of them here. It is more important to emphasize the comments that Avendaño makes about some positions by Molina, especially those that show some flexibility both by Molina and by Avendaño regarding the moral assessment of the slavery system we are discussing. Avendaño endorses Molina’s four basic just titles of enslavement, emphasizing that the first three arguments state “conditional” conclusions and the fourth reason states an “absolute” conclusion.

According to Diego de Avendaño, (i) it is clear that, even if Luis de Molina recognizes the reasons based on the ius gentium according to which slavery would be normatively acceptable, Molina would in general consider the selling and buying of enslaved Africans as illegitimate at the very beginning of the business, especially because those enslavements were not a result of corrective justice after a war justly waged: the bellic conflicts waged against Africans were motivated by greed, rather than by revenge for grave offenses. (ii) Moreover, although such a system might make the overcoming of barbarism and the successful propagation of faith possible, such goals must be pursued in sound conscience (salva conscientia) – above all, faith is not to be established through iniuriae. (iv) Molina seems to consider the possibility that, if the purchaser bought slaves from someone who initially owned in good faith a slave, but – i.e. the former owner afterwards had doubts regarding the status of the sold item, and the purchaser, having made a careful investigation, is still unable to fully see the truth of the matter, he then has no strict obligation of a full, but only of a partial restitution to the slave “according to the degree of doubt” (iuxta dubii quantitatem) – a case in which the “better condition of the possessor” lies on the side of the slaveholder. After all, the purchaser “assumes the right of another,” i.e., of the seller, who would have no obligation of restitution after such a “diligence,” since “the better condition of the possessor” would apply to him. In such a situation, we have, strictly speaking, a sale contract between an initial bona fide purchaser (and, then, a bona fide seller, who passes on his good or property) and a secondary purchaser. Avendaño describes some difficulties interpreters have had at this point with the account given by Molina, for if the new owner had doubts in the situation described, he would...

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12 See L. D. 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?, p. 6-21.
16 Didacus de Avendaño, Thesaurus indicus I, lit. IX, cap. XII, § 8, nn. 193-194, p. 327; her n. 193, p. 327: “Denique quod in sexto dictur non videtur Primo prontuato conformari, pro quo praecedentia verba ex eodem adducta videntur apertissime militare. Si enim Mercatores tales vendere non possunt: ergo neque ab eisdem emi, eadem pro emptore stante ratione, que stat pro venditore; quia scilicet eorum, qui venduntur, non est verosimilis titulus servitutis. Et quidem ut circa Tertium pronuntiatum vidimus, citatus Auctor ad servitutem admitterat tendam titulum luce clariorum exigit; cum tamen nihil tale in venditione appareat, quam propterac acerbe condemnat: non ergo emptio licet, ubi ad illam titulum minime fundatus occurrit”.
18 Didacus de Avendaño, Thesaurus indicus I, lit. IX, cap. XII, § 8, n. 187, p. 326.
20 Didacus de Avendaño, Thesaurus indicus I, lit. IX, cap. XII, § 8, n. 191, p. 326; here n. 191, p. 326: “...sed cum addita praecautione, quantum scietur salva conscientia fieri possit. Non vult Christus fidem iniuris stabiliri, [...]”.
simply be on the same footing as the seller in terms of legal rights and obligations – and the seller was apparently under no obligation of any restitution at all. Truly, Avendaño insists that, although Molina did not demand restitution of freedom in that case – i.e., the case of the new purchaser –, he did prescribe some restitution, although, again, it is correct to say that Molina does not unequivocally specify which “part” should be restituted. A “partial” restitution of freedom possibly lost in an unfair way might be the reduction of the time and intensity of work, a better payment, a better treatment, the permission for the slave to buy back his freedom, etc. – perhaps, as the best possible solution, the owner should be even summoned by a judge in order to be compelled to, somehow, free the enslaved person from captivity. At any rate, Molina does not see a strict obligation to restitute freedom in that case. Avendaño, however, clearly favors the restitution of freedom in such a situation.21

(v) Besides, Molina also claimed that an initial purchaser who negotiates in “invincible ignorance” and who afterwards has doubts about the just enslavement title, and does make an examination that, however, does not dispel his hesitations, would not be, due to his “better condition of owner,” obliged to 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 purchase chain of slaves: a doubt that is transferred and remains beyond the moment of the original purchase seems to be taken as a more lasting and resilient doubt; the principle of property 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 somehow weakened. Avendaño contrasts what was described in (v) with Molina’s own view that the bad faith of merchants everywhere in the system of transatlantic slave trade – apparently with no exception – was well-known, and thus such initial, as well as any subsequent, bona fide attitude was obviously taken by Molina himself quite as highly unlikely.22 Finally, Avendaño reproduces a further view by Molina according to which, (vi) since the inspection regarding the licitness of enslavement titles and slave trade in those regions of the world (that is, the African Atlantic coast) was in principle the duty of princes and governors, for Molina purchasers and holders were allowed to pursue their interests in selling and buying such market goods. Avendaño, however, seeing here a contradiction in Molina’s statements as a whole – since they seem to condemn the moral position of merchants already at the beginning of the long chain of trade, on the African coast –, could basically say that, if authorities allowed the trade, it was because they were not acquainted with the injustices that had been done, whereas the traders obviously knew about them. So, vassals of the Portuguese crown, playing the role of traders and purchasers, could not have the permissionis ius in those cases.23

But in fact it is initially in Avendaño’s comment on a (iii) third reasoning by Molina, according to which slavery should be allowed only in case it was just or justified in a way “brighter than light” itself,24 that some surprises in his normative appraisal appear. After all, Avendaño both endorsed the principle of “safe conscience” (tuta conscientia) in allowing slavery and, thus, in trading slaves and affirmed that in order to reach such a “sound” or “saved conscience” (salva conscientia) a just title “brighter than light” is not necessary, but only a title based on a “probable sentence” (probabilis sententia) – according to Avendaño, the general opinion that some wars against Africans (Angolans)

21 Didacus de Avendaño, Thesaurus indicus I, tit. IX, cap. XII, § 8, n. 189, n. 192, pp. 326-327; here n. 192, p. 327: “In quarto autem est difficultas, [...] Sed cum probabilis videatur sententia P. Molinae, iuxta illam igitur dubium: quomodo circa libertatem sit partialis facienda restitution, [...] In casu enim dubbiosa sunt dominum compete a iudice, ut redemtionem admissat, quia est ius illius imperfectum, et est maxime libertatis favendum”. See also Luis de Molina, De iustitia et iure I, tract. II, disp. XXXV, n. 8, p. 100; disp. XXXVI, n. 1, p. 106-107.

22 Didacus de Avendaño, Thesaurus indicus I, tit. IX, cap. XII, § 8, n. 189, n. 193, p. 326-327.

23 Didacus de Avendaño, Thesaurus indicus I, tit. IX, cap. XII, § 8, n. 189, nn. 193-194, p. 326-327. 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 slave trade, they might have (good) reasons for that (for example, the goal of avoiding “greater damage” or “evils”).

24 Didacus de Avendaño, Thesaurus indicus I, tit. IX, cap. XII, § 8, n. 188, p. 326: “Tertium, non aliter servitutem iustum, et cuiusque illorum permittendum, quam si luce clarius eam iustam esse constet, tum quod libertatis causiam, quippe quae praeissima est, per se sit suffragandum.”
were justly waged and, consequently, the enslavement of prisoners could be taken indeed, by the offended side, as a just punishment was a probable title. How does Avendaño interpret the principle that, in order to justly bring people into the condition of slaves and, as a consequence, to trade slaves – who, thus, lose their freedom, a most precious good –, an enslavement title had to be ‘brighter than light’? A clear answer to this question becomes even more complicated as one realizes that, in the passages under analysis, he seems to adopt a “tutorist” language when he considers reasons for allowing slavery, but he clearly wants to convince his readers that those safe reasons are not necessarily found through the principle “brighter than light” – which would apparently endow any given reasons for slavery with the safest certainty or evidence –, but already through probable reasons. How does the latter probabilist stance affect Diego de Avendaño’s overall position regarding both the enslavement and slave trade of Africans?

In order to provide an interpretation, it is important to highlight that, later in the text, after revising and criticizing other positions, especially by other Fathers of the Society of Jesus, Avendaño offers five short conclusions, the first four of which show his clear condemnation of the trade of black slaves. Avendaño, thus, confirms that (i) most negotiationes in the transatlantic slave trade from Africa to the Americas were illicit, and forms of restitution should be viewed as a moral obligation; (ii) the purchase of “a bunch of slaves” (mancipiorum copia), inhumanly transported by merchants from African regions, was not licit in Europe and the Indies; (iii) it was not licit to buy one or another single slave – who, theoretically at least, could have been legitimately enslaved and negotiated – in the market out of a bunch of slaves transported by merchants, since if there was suspicion or lack of knowledge regarding the titles of the bunch of slaves, the same would hold for any single slave too; (iv) in general, it was not licit to buy such enslaved people brought by merchants to the market in the Americas, no matter how “holders” (domini) they had already had before, since their status of servitude – and, thus, the just “title of servitude” (titulus servitutis) – is decided at the very beginning, and if they were (presumed to be) free at the very beginning, that should remain as their true status, which – morally and legally – does not expire. Avendaño combines, in this fourth reason, a strong thesis about the meaning of freedom as a human good, i.e., “regarding freedom there is no expiration”, with a principle about connected actions or commutations, i.e., “healthy water cannot flow from an infected spring”.

But Avendaño’s final stance regarding this theme of applied ethics cannot be reconstructed without taking into consideration the following famous sentence: “the mentioned purchase in the Indies and Europe can be somehow (aliqualiter) justified”. Avendaño describes seven reasons for his (v) fifth view on the trade of African slaves: (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 from their doctrines –, and among them are Molina et alii; (2) enslavement...
or slave trade is such “a common practice” that “all states” (omnes status) accept it without any hesitation, even bishops and religious men; (3) the Spanish King allows the trade, he “buys and sells” slaves himself, and it is something blameless that his vassals 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; (5) many people think that the enslaved Africans were really born for servitude – or: “to be slaves”, “to be in the status of slaves” (ad serviendum; the Latin verb is “servire”) –, and therefore, regarding them and 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); in that case, if nobody or nothing totally “inverseremilis” is involved, purchasers have nothing to worry about. (6) African slaves are most needed in the Indias, whose conservatio 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 the kings have “urgent reasons” to allow and authorize it. The dangerous “transportation” or “deportation” (asportatio) can only take place if they are properly deprived of their freedom and led into servitude; moreover, although blacks are destined to hard work indeed, it does not seem to be the case that they bear it with utmost difficulty. They even perform (ritual) dances while working and do it with contentment, as long as they are well-nourished and are granted holidays. These are possible reasons in favor of the slave trade of Africans. But was this Diego de Avendaño’s own ethical view?

How can both sides of Avendaño’s report – i.e., his condemnation of slavery titles and his support of probable titles that should suffice to justify enslavement and slave trade – be reconciled? Can he simply maintain such a moral dilemma? Some interpreters claim that such a set of quite contrary views is consistent with Avendaño’s moral probabilism. 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 regarding actions. Those opinions should, then, help agents to minimally see original enslavement titles, trade and ownership of African slaves as probably just titles – though not with a certainty “brighter than light” itself –, 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, the Scripture, the Church Fathers, and the Church’s explicit dogmatic determinations, and (iv) usually does receive some, though not major external support by others. Authors such as Muñoz García would stress that Avendaño’s commitment to probabilism in moral philosophy is a key to interpret his final stance, but his “rhetorical strategy” should not distract us from the somehow “encrypted,” but obvious, conclusion that he was against the trade

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34 On Avendaño’s probabilism, see, again, the references in footnote 7, above.

35 At any rate, a (just) probable sentence contains, because of the nature of its object, a room for uncertainty or “fear” concerning its truth, up to the point that its opposite can even be taken as more probable than itself. See R. H. Pich. The Aristotelian Background of Diego de Avendaño’s Moral and Legal Thought. p. 60–74.
of African slaves\textsuperscript{36} – although it is unquestionably an overstatement to claim that he was against slavery simpliciter\textsuperscript{37}. Avendaño seems to be in line with the “positivist morality” of his times – asserting, for example, that it should be morally acceptable to just act according to the king’s will and example. But the reasons given for the fifth consideration above mentioned just hide Avendaño’s personal, real thought\textsuperscript{38}. In general lines, Silva agrees with the interpretation of Avendaño’s fifth reason given by Muñoz Garcia, and he also emphasizes that Avendaño was most likely against the trade, due to the weight of his own arguments against it and his criticism on Sánchez’s and Molina’s concessions about that negotiatio. He is loyal to a probabilist view of righteous conscience, but we have more reasons to think that for him, and for anybody who could compare those arguments, the condemnation of slave trade would be the most reasonable position. Avendaño even says, at the end, that he wanted to show the injustice of that business, having fought for the truth and gotten into a battle for justice – expecting at least that the owners shall treat their captives “more humanely” (humanius). Slaveholders should know, moreover, that their “ius domini” is quite doubtful, to the point that, regarding that matter, to resist the “light of truth” would be comparable to the situation in which someone walks (in daylight) with his eyes shut\textsuperscript{39}.

At any rate, Silva also emphasizes that, in case we accept Muñoz Garcia’s line of interpretation, we would nonetheless have to conclude that Diego de Avendaño, at the end, did not reveal his personal conviction about slavery and slave trade of blacks in a clear enough way, and was not fully determined to expound and defend his own position\textsuperscript{40}. And how are we to explain passages in which Avendaño said that African slaves could be bought by and have men religious as owners\textsuperscript{41}, as well as passages in which he explicitly confirms that slaves (in general and based on human law) do not have any legal status\textsuperscript{42} and devalues Africans as human beings to whom no honor is due and who are contemptible\textsuperscript{43} – and are, moreover, economically and industriously important, particularly to clerics, men religious and the Catholic Church as an institution\textsuperscript{44}?

Concluding Remarks

Above all, it should be said that, although Molina is obviously not an abolitionist, he is seriously concerned about submitting any opinion regarding slavery and slave trade to criteria of a normative analysis, which is partially focused on juridical claims and partially focused on the formation of the good conscience of those engaged in every link of the chain of the salve trade from Africa to the Americas. Of course, especially regarding the moral demand to act in accordance with justice, both aspects of normative analysis are complementary. A basic idea is that every enslavement title has to be legitimate, and another basic idea is that every trader, purchaser, and owner must be sure – according to reasons which Molina considers to be sufficient – of such legitimate titles. There are, moreover, legal and moral rules to be followed regarding the master-slave relationship. Molina’s exposition was very influential on accounts by Second Scholastic

\textsuperscript{36} Á. Muñoz García, Diego de Avendaño y la abolición de la esclavitud, p. 32.
\textsuperscript{37} Á. Muñoz García, Diego de Avendaño y la abolición de la esclavitud, p. 24-25.
\textsuperscript{38} Á. Muñoz García, Diego de Avendaño y la abolición de la esclavitud, p. 25.
\textsuperscript{39} Á. Muñoz García, Diego de Avendaño y la abolición de la esclavitud, p. 25.
\textsuperscript{40} L. D. 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?, p. 16-25 (especially p. 22-25). See Didacus de 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 complec-caruntur, ultimae huic Assertioni libentius inhaerentes; unde et videri possunt illa supervacue constituta. Sed certe pro veritate pugnasse, non poterit, ut credo, recte sentientibus non probari. Sic enim et in scriptorum multis est opinio regarding slavery and slave trade to
authors after him, particularly on accounts by thinkers who lived in and experienced the institution of slavery in colonial Latin America. In particular, the role played by doubt in any agent engaged in the system of slavery is object of casuistic accounts which would be criticized after Molina – that is, Molina would be criticized for conceiving the possibility that bona fide purchasers and owners, precisely in that questionable system, full of substantial rumors against its licitness, would not be able to dispel doubts regarding the justice of enslavements and also of keeping their holdings.

The contribution of Avendaño, due to its final probabilist emphasis, is more difficult to interpret. Initially, his account seems to be even more committed to freedom and, thus, to restricting the room for doubt about enslavement by those involved in trading and holding. But his acceptance of probable practical opinion as a sufficient ground for achieving a sound conscience seems to be connected to new aspects of the debate on black slavery. These aspects changed, in the following decades, the very normative assessment of the status, the institution, and the commercial practice of black slavery. After all, reasons (vi), (vii), and (vii) by Avendaño indicate that ideologies of quasi natural slavery and of a 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 blacks. In the first half of the 17th century this narrative is exemplarily conceived by the Jesuit Alonso de Sandoval in his work De instauranda Aethiopum saluté (the background of which was Sandoval’s ministry in Cartagena de Indias, Colombia, and was first published in 1627). Sandoval combines a sort of factual-empirical description of the natural andcivilizational defective status of 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 Africans, a good which can be brought to them, according to Sandoval, only through the true religion of the whites. 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, have 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 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 17th century Portugal and Brazil, such a narrative in favor of the status of slavery of blacks would be exemplarily represented by the master of Christian rhetoric, namely Antônio Vieira (1608-1697) – and this took place in the context of a highly effective and influential way of fixing beliefs: the sermon.

Moreover, reasons (vi) and (vii) 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 of political entities (republic, state, empire, etc.). These two tendencies may be of some help to grasp why Avendaño proposes probable reasons for defending slave trade.

A new revision of Molina’s views on slave trade and a critical analysis of Avendaño’s synthesis –

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65 On Molina’s reception by other Second Scholastic thinkers and early-modern authors, see M. Kaufmann, Slavery between Law, Morality, and Economy, p. 222-225.
very much in line with some of the weaknesses of their overall accounts that I have just highlighted, particularly regarding the role of doubt in the "conditio possidentis" principle and of probable arguments in judging about the freedom of human beings – would be done 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 that: compared to other moral thinkers of their times, they – especially Epifanio de Moirans – provided the most explicit and radical criticism of the system of African slave trade until the end of the 17th century. Besides a consistent normative condemnation, they conceived a theory of rules according to which freedom (liberty) appears as a priceless second highest good (after physical life as such), and also articulated a project of restitution. By so doing, these "militant" thinkers are those who most clearly put the discussion of slave trade into the structure of the logic of contracts and the logic of commutative justice, and more specifically of corrective and punishing justice.

The literature on black slavery which Jaca and Moirans happened to produce was a direct result of their denouncing the profound 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 (written in 1681), and Epifanio de Moirans wrote the treatise Servi liberi seu naturalis mancipiorum libertatis iusta defensio (finished in 1682).

Francisco José de Jaca and Epifanio de Moirans sharpened the analysis of slave trade as a system and a rigorist moral assessment of every title of slavery and slaveholding, as well as the several requirements of an ethics of restitution. Much of their rigorist analysis seems to be protected by a principle of commutative justice, to be found in Aquinas and Aquinas’ tradition, according to which in the commutation of goods called “purchase” one must be certain about the goods a seller owns, about the seller as a legitimate owner of goods, and about him as a person backed by good reputation. But these are subjects of future research on the topic of black slavery and the new characteristics of the 17th-18th century works on it.

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46 As it has been noted, their passionate engagement for the liberty of black slaves is comparable to the engagement of Las Casas for the Amerindians. The analogy is suggested by J. T. López García, Dos Defensores de los Esclavos Negros en el Siglo XVII: Francisco José de Jaca y Epifanio de Moirans, p. 28.


48 In 1678, Francisco José de Jaca arrived in America to be a missionary, in Caracas. Three years later, he was living in La Habana, where he preached against black slavery and met Epifanio de Moirans, who also defended the African slaves’ liberty. Their preaching had unwanted consequences. They were arrested and sent back to Spain in 1682, to be submitted to disciplinary processes. See M. A. Pena González, Un autor desconocido, p. 599-671. On the characteristics and structure of the Resolución (1681), see M. A. Pena González, Un autor desconocido, p. 599-671.


50 See Epifanio de Moirans, Servi liberi seu naturalis mancipiorum libertatis iusta defensio VI, nn. 68-69, p. 98-103. This account was also a guiding view Jaca and Moirans could have found in Tomás de Mercado’s Suma de tratados y contratos.
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