



SEÇÃO: MORAL & POLITICAL PHILOSOPHY

Second Scholasticism and Black Slavery¹ (Continuation and End)

Segunda Escolástica e escravidão negra (Continuação e fim)

Segunda Escolástica y esclavitud negra (Continuación y fin)

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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 da 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),



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revelando trazos básicos del pensamiento normativo de la Segunda Escolástica en Europa y en las Américas. 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 sistémico 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*³. 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 authors⁴. In spite of views according to which Avendaño strongly and unequivocally condemned the slave trade⁵ and even slavery *simpliciter* (that is, the institution of slavery)⁶, the

details of his overall position, especially due to the role of his probabilism in practical philosophy⁷, are more difficult to establish – although his defense of blacks and his criticism of the slave trade are most notorious⁸. In fact, by examining Avendaño's main text on the subject, that is, *Thesaurus indicus* I, tit. IX, c. xii, § 8⁹, 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 trade¹⁰.

As Luis de Molina did before him, Diego de Avendaño essentially relates "the buying and selling of Ethiopian [African] slaves" to the inspection of conscience¹¹. 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*¹² – truly, the entire *titulus* Avendaño wrote, within which the discussion of slavery appears, 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

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 Pereira'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 *De Indiarum iure et gubernatore* (1629, 1639) and *Política 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 ideológicas españolas de la revolución francesa, in: *Historia Mexicana*, 78, 81.

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

⁷ The text by Avendaño under analysis can be found in Spanish; see Diego de Avendaño, *Corregidores, encomenderos, cabildos y mercaderes. Thesaurus Indicus, vol. I, Tit. VI-IX*, traducción Á. Muñoz García, 2007. On probabilism in Latin American scholasticism and on Avendaño's probabilism, see L. Bacigalupo, Las razones del probabilismo. Una exposición sucinta de sus fundamentos, in: *Silex*, p. 43-57; L. Bacigalupo, The Reasonable Ways of Probabilism – A Briefing on Its Essentials, in: R. H. Pich and A. S. Culleton (eds.), *Scholastica colonialis: Reception and Development of Baroque Scholasticism in Latin America in the Sixteenth to Eighteenth Centuries*, p. 75-85; L. Bacigalupo, Probabilismo y modernidad, in: F. Armas Asin (ed.), *La construcción de la iglesia en los Andes*, p. 257-300; J. C. Ballón Vargas, El *Thesaurus indicus* (1668) de Diego de Avendaño y los orígenes coloniales de la filosofía en el Perú, in: J. C. Ballón Vargas (ed. y coord.), *La complicada historia del pensamiento filosófico peruano, siglos XVII y XVIII (Selección de textos, notas y estudios)*, Vol. 2, p. 281-298; J. C. Ballón Vargas, Entre la extirpación de la idolatría y la reconciliación intercultural. Lugar histórico del probabilismo en el pensamiento peruano, in: J. C. Ballón Vargas (ed. y coord.), *La complicada historia del pensamiento filosófico peruano, siglos XVII y XVIII (Selección de textos, notas y estudios)*, Vol. 2, p. 377-398; R. H. Pich, The Aristotelian Background of Diego de Avendaño's Moral and Legal Thought, in: *Patristica et Mediaevalia*, p. 53-88.

⁸ See also Á. Muñoz García, Aristóteles; una sociedad imposible sin esclavitud, in: Diego de Avendaño, *Corregidores, encomenderos, cabildos y mercaderes. Thesaurus Indicus (Vol. I, Tit. VI-IX)*, p. 123-168. I especially rely on the excellent study by 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?, in: *Intuitio*, p. 1-28.

⁹ See also Á. 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.

¹⁰ See Didacus de Avendaño, *Thesaurus indicus seu Generalis Instructor pro regimine conscientiae*, Tomus Primus, tit. IX, cap. XII, § 8 ("De contractu Aethiopum mancipiorum"), nn. 180-205, p. 324-330.

¹¹ J. A. Tellkamp, 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 conscientii periculosam, ut si ad regulas iustitiae aptari debeat, vix aliquid occurrat, quo possit plena securitas in huiusmodi contractu reperiri".

regarding black slavery was the inspection of the moral conscience of traders, which depended on the fairness of slavery titles¹³. Although Avendaño reviews positions by Tomás Sánchez, Luis de Molina, Fernando Rebello, etc., I will focus, in order to avoid repetitions – and also because Fernando Rebello¹⁴ *et alii* clearly followed Molina –, on what the last Jesuit Master proposed¹⁵.

Avendaño summarizes six main reasonings proposed by Molina – mainly in Molina's *De iustitia et iure* I, trac. II, disp. 35-36 – regarding the licitness 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 ascertained¹⁶. Since Molina's main positions were expounded above¹⁷, 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" conclusion¹⁸.

According to Diego de Avendaño, (i) it is clear that, even if Luis de Molina recognizes 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 offenses¹⁹. (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*²⁰. (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

¹³ 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.

¹⁴ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, nn. 195–199, p. 327–329.

¹⁵ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, nn. 187–194, p. 326–327.

¹⁶ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, nn. 193–194, p. 327; here n. 193, p. 327: "Denique quod in sexto dicitur non videtur Primo pronuntiatio 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 admittendam titulum luce clariorum exigit; cum tamen nihil tale in venditione appareat, quam propterea adeo acerbe condemnat: non ergo emptio licet, ubi ad illam titulus minime fundatus occurrit".

¹⁷ Cf. R. H. Pich, Second Scholasticism and Black Slavery, in: *Veritas* 64:3 (2019), p. 11–24.

¹⁸ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 187, p. 326.

¹⁹ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 187, n. 190, p. 326; here n. 190, p. 326: "[...] Unde P. Palaus *Tract. de iustitia, et iure, Disput. unica de iustitia in genere. Puncto 9. Num. 11.* Negotiationem dictam in prima emptione condemnans, pro sententia sua merito P. Molinam allegat. [...] Sic ille: dubius equidem de observata instructione, ubi de avaritia esse satis fundata suspicio poterat, quando bellum illud non tantum ob vindicandas iniurias, sed propter argenti fodinas, quae in eo tractu esse fama vulgaverat, potius agebatur".

²⁰ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 187, n. 191, p. 326; here n. 191, p. 326: "[...] sed cum addita praecautione, quantum scilicet *salva conscientia fieri possit*. Non vult Christus fidem iniuriis 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 retribute freedom in that case. Avendaño, however, clearly favors the restitution of freedom in such a situation²¹.

(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 as highly unlikely²². 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 cases²³.

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” itself²⁴, 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 oritur dubium, quomodo circa libertatem sit partialis facienda restitutio, [..]. [..]; in casu enim dubiae servitutis existimo posse dominum compelle a iudice, ut redemptionem admittat, quia est ius illius imperfectum, et est maxime libertati 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 istorum, et cuiusque illorum permittendam, quam si luce clarius eam iustam esse constet, tum quod libertatis causae: quippe quae piissima 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*²⁵. 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 slavery²⁶, 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 Jesus²⁷, 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 obligation²⁸; (ii) the purchase of “a bunch of slaves” (*mancipiorum copia*), inhumanly transported by merchants from African regions, was not licit in

Europe and the Indies²⁹; (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 too³⁰; (iv) in general it was not licit to buy such enslaved people brought by merchants to the market in the Americas, no matter how many “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”³¹.

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 [*aliqua*liter] justified”³². 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

²⁵ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 191, p. 326-327: “Quod autem in Tertio habetur, est quidem pie, et sapienter dictum; sed certe non esse necessarium pro servitute permittenda, 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”.

²⁶ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 188, p. 326; n. 191, p. 327.

²⁷ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, nn. 195-202, p. 327-329.

²⁸ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 203, p. 329-330.

²⁹ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 203, p. 330.

³⁰ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 203, p. 330.

³¹ The status of slavery can, however, expire after a period of time; see Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 203, p. 330: “[L.]: quia ex multiplicatione dominorum non melioratur titulus servitutis; contra libertatem siquidem non est praescriptio, ut habetur communi iure praescriptum. [...] Cum tamen e contrario mancipium possit contra servitutem praescribere spatio viginti annorum, si adsit bona fides, etiamsi desit titulus coloratus, [...] Ex infecta origine non potest aqua sana procedere”.

³² Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 204, p. 330: “Emptio dicta in Indiis, et Europa iustificari potest aliqua”.

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 "inverosimilis" is involved, purchasers have nothing to worry about; (6) African slaves are most needed in the Indies, 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 Indies 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 holidays³³. 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 probabilism³⁴. 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 others³⁵. 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

³³ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. XII, § 8, n. 204, p. 330: "Primo: quia Doctores aliqui, licet eorum quidam insequenter 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: Episcopus, Religiosus, 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 Indiis 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".

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 slaves³⁶ – although it is unquestionably an overstatement to claim that he was against slavery *simpliciter*³⁷. Avendaño seems to be in line with the "positivistic 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 thought³⁸. In general lines, Silva agrees with the interpretation of Avendaño's fifth reason given by Muñoz García, 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 of 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 shut³⁹.

At any rate, Silva also emphasizes that, in case we accept Muñoz García'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 position⁴⁰. And how are we to explain passages in which Avendaño said that African slaves could be bought by and have men religious as owners⁴¹, as well as passages in which he explicitly confirms that slaves (in general and based on human law) do not have any legal status⁴² and devalues Africans as human beings to whom no honor is due and who are contemptible⁴³ – and are, moreover, economically and industriously important, particularly to clerics, men religious and the Catholic Church as an institution⁴⁴?

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 slave 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

³⁶ Á. Muñoz García, *Diego de Avendaño y la abolición de la esclavitud*, p. 32.

³⁷ Á. Muñoz García, *Diego de Avendaño y la abolición de la esclavitud*, p. 24-25.

³⁸ Á. Muñoz García, *Diego de Avendaño y la abolición de la esclavitud*, p. 25.

³⁹ 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 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, cause defensione militantes allegavimus. Quin etiam, qui a nobis dicta deservire praeterea poterunt, ut mancipiorum istorum domini humanius cum ipsis agant, scientes ius domini, quod in ipsos se habere existimant, esse adeo dubium, ut opus sit in re ista, ne lumen veritatis obsistat, clausis fere oculis ambulare".

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. 23-26. I take the references in footnotes 41-44 from L. D. Silva's study.

⁴¹ Didacus de Avendaño, *Thesaurus indicus* I, tit. IX, cap. IV, n. 43, p. 293; *ibid.*, tit. VI, cap. III, n. 24, p. 258.

⁴² Didacus de Avendaño, *Thesaurus indicus* I, tit. V, cap. XXVIII, n. 253, p. 222.

⁴³ Didacus de Avendaño, *Thesaurus indicus* I, tit. IV, cap. XVII, n. 150, p. 140. *Ibid.*, cap. XVIII, § 1, n. 152, p. 141; *ibid.*, tit. V, cap. XXVIII, n. 253, p. 222.

⁴⁴ Didacus de Avendaño, *Thesaurus indicus* I, tit. VI, cap. III, n. 24, p. 258; I, tit. IX, § 9, nn. 176-177, p. 323-324.

authors after him, particularly on accounts by thinkers who lived in and experienced the institution of slavery in colonial Latin America⁴⁵. 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 (v), (vi), 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 salute* (the background of which was Sandoval's ministry in Cartagena de Indias, Colombia, and was first published in 1627)⁴⁶: Sandoval combines a sort of factual-empirical description of the natural and civilizational 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 Antonio Vieira (1608-1697)⁴⁷ – 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 –

⁴⁵ 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.

⁴⁶ Cf. R. H. Pich, Alonso de Sandoval S.J. (1576/1577-1652) and the Ideology of Black Slavery: Some Theological and Philosophical Arguments, in: *Patristica et Mediaevalia*, p. 51-74; R. H. Pich, Religious Language and the Ideology of Black Slavery: Notes on Alonso de Sandoval's *De instauranda Aethiopum salute*, in: *Filosofia Unisinos – Unisinos Journal of Philosophy*, p. 213-226; M. P. Cenci, African Slavery and Salvation in the *De instauranda Aethiopum salute* of Alonso de Sandoval S.J. (1577-1652), in: *Patristica et Mediaevalia*, p. 75-89.

⁴⁷ Cf. A. Ferreira Jr. e M. Bittar, A pedagogia da escravidão nos Sermões do Padre Antonio Vieira, in: *Revista Brasileira de Estudos Pedagógicos*, p. 43-53; R. Vainfas, *Antônio Vieira: Jesuíta do Rei*, p. 291-292; F. L. da Silva, A doutrina do império da eloquência: Antônio Vieira e os escravos etíopes, in: *Caderno de Letras*, p. 57-70.

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 rights 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 justice⁴⁸. 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 Jaca⁴⁹ 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)⁵⁰, and Epifanio de Moirans wrote the treatise *Servi liberi seu naturalis mancipiorum libertatis iusta defensio* (finished in 1682)⁵¹. 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's 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 reputation⁵². But these are subjects of future research on the topic of black slavery and the new characteristics of 17th-18th century works on it.

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⁴⁸ 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.

⁴⁹ See M. A. Pena González, Un autor desconocido y singular en el pensamiento hispano, in: Francisco José de Jaca, *Resolución sobre la libertad de los negros, en estado de paganos y después ya cristianos*, p. XXIII-LX; M. A. Pena González, Francisco José de Jaca: una vida a favor de la liberación de los esclavos negros, in: *Collectanea Franciscana*, p. 599-671.

⁵⁰ 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 y singular en el pensamiento hispano, p. XXIII-LX; M. A. Pena González, Francisco José de Jaca: una vida a favor de la liberación de los esclavos negros, p. 599-671. On the characteristics and structure of the *Resolución* (1681), see M. A. Pena González, Un autor desconocido y singular en el pensamiento hispano, p. LXI-XCVIII; M. A. Pena González, Aportación antiesclavista en tierras de Indias, a fines del siglo XVII, in: I. Murillo (ed.), *El pensamiento hispánico en América: Siglos XVI-XX*, pp. 506-518.

⁵¹ See M. A. Pena González, Epifanio de Moirans: Exponente singular de la práctica antiesclavista, in: Epifanio de Moirans, *Siervos libres: una propuesta antiesclavista a finales del siglo XVII*, p. XVII-LXXIII; M. A. Pena González, Epifanio de Moirans (1644-1689): misionero capuchino y antiesclavista, in: *Collectanea Franciscana*, p. 111-145; M. A. Pena González, Doctrina antiesclavista de Epifanio de Moirans en su 'Servi Liberi', in: *Naturaleza y Gracia*, p. 279-327; M. A. Pena González, Aportación antiesclavista en tierras de Indias, a fines del siglo XVII, p. 519-530. Epifanio de Moirans arrived 1677 in America, in Cayenne, to be a missionary. In 1680, Moirans illegally entered Spanish territory (Cumaná) and was arrested. In 1681, Moirans was in La Habana, where he met Francisco de Jaca, with whom he started preaching against black slavery. From then on, Moirans's destiny was similar to Jaca's. The *Iusta defensio* was finished in 1682, when Moirans had been arrested in La Habana, and is based on the *Resolución*.

⁵² 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 tratos y contratos*.

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