



# Two capuchins friars in defense of African slaves' liberty: Francisco José de Jaca and Epifanio de Moirans

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TWO CAPUCHINS FRIARS  
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IFSUL

*"Christians steal and capture Blacks without other reason than the fact that they are Black and should be slaves; as if they were not really men but animals, or dogs and beasts."*

Epifanio de Moirans

In the Iberian intellectual context of the 16<sup>th</sup> and 17<sup>th</sup> centuries, other than the great debate on Amerindian slavery, another important debate drew the attention of moralists and jurists: the one on the lawfulness of Black slavery and slave trade.

This debate did not have the same amplitude as the Amerindian slavery one, neither did it become a passionate debate, with enthusiastic defenses just as Bartolomé de Las Casas's ones in favor of the American Indians. It involved neither unknown beings nor the application of a philosophical theory to practical living (and, thus, the search for empirical correspondents to natural slaves that Aristotle had talked about). Unlike the found American Indians, who were the reason of a great discussion, the Africans were not unknown. On the other hand, and this point is important, the debate on Black slavery was not about an institution that had a more theoretical than practical existence (just as the natural slavery), but about an institution admitted by philosophical tradition and the Church, allowed by the Roman Law and stably operating in several places: the legal slavery. Theoretically, this debate seemed less complex: it was not in question to support or condemn the slavery, but only analyze if it was being practiced with justice. Even though it was apparently simple, the debate over the Black slavery was coated with complexities for other reasons: because of the hateful trade that was established and because of the obligation of Christians to act with justice and safe conscience.

The first authors mentioning Black slavery are the Dominican friars Domingo de Soto (1494–1560), Fernando Oliveira (1507–1581), Tomás de Mercado (1525–1575), and also the jurist Bartolomé Frias de Albornoz (fl. 1553)<sup>1</sup>. But those writing extensively on the issue are the Jesuits, headed

<sup>1</sup> See Dominici Soto, *De iustitia et iure*, Lugduni, 1559, lib. IV, q. 2, a. 2; Fernando Oliveira, *Arte da guerra do mar*, Coimbra, 1555, I, cap. 4; Thomas de Mercado, *Summa*

by Luis de Molina (1535–1600). After Molina, several other Jesuits wrote about it: Tomás Sánchez (1550–1610), Fernando Rebello (1546–1608), Alonso de Sandoval (1576–1652), and Diego de Avendaño (1594–1688), to mention just a few<sup>2</sup>.

In a general way, these authors condemned the slavery occurring without just titles and, clearly, censored the trade of Africans that were unfairly enslaved. However, none of them made a true defense of African slaves' liberty. On the contrary, several of them were only interested in tranquilizing the slaveholders' conscience. However, this approach to the Black slavery issue remained until the arising of two Capuchin friars who had a similar role to Las Casas's in his defense of the Amerindians, because they magnified with audacity and passion the reality before coldly analyzed by moralists and jurists<sup>3</sup>. They are: Francisco José de Jaca<sup>4</sup>,

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*de tratos y contratos*, Sevilla, 1587, lib. II, cap. 20; Bartolomé Frías de Albornoz, *Arte de los contractos*, Valencia, 1573, lib. II, tit. 2, lib. III, tit. 4. I follow here Davis and Boxer, who list these authors as the first ones to talk about Black slavery in the Iberian context; see David Brion Davis, *The Problem of Slavery in Western Culture*, Oxford University Press, Oxford, 1966, pp. 187-190; Charles R. Boxer, *A igreja militante e a expansão ibérica: 1440-1770*, Companhia das Letras, São Paulo, 2007, pp. 45-53. See also Hugh Thomas, *The Slave Trade: The Story of the Atlantic Slave Trade - 1440-1870*, Simon & Schuster, New York, 1997, pp. 126, 146ff.; Josep-Ignasi Saranyana, *La filosofía medieval: desde sus orígenes patristicos hasta la escolástica barroca*, EUNSA, Pamplona, 2003, pp. 483ff.; José Andrés-Gallego, *La esclavitud en la América española*, Ediciones Encuentro, Madrid, 2005, pp. 32-35; Luis Fernando Restrepo, "Colonial Thought", in Susana Nuccetelli, Ofelia Schutte and Otávio Bueno (eds.), *A Companion to Latin American Philosophy*, Wiley-Blackwell, Chichester, 2010, pp. 39-42.

<sup>2</sup> See Ludovicus Molinae, *De iustitia et iure*, Venetiis, 1611, tract. II, disp. 32-40; Thomae Sanchez, *Consilia seu opuscula moralia*, Lugduni, 1634, lib. I, cap. 1, dub. 4; Fernando Rebello, *Opus de obligationibus iustitiae, religionis et caritatis*, Lugduni, 1608, lib. I, q. 10, sect. 1-2; Alonso de Sandoval, *De instauranda aethiopum salute*, Madrid, 1647; Didaci de Avendaño, *Thesaurus indicus, Antuerpiae*, 1668, tit. 9, cap. 12, §8, n. 180-205. See also Andrés-Gallego, *La esclavitud...*, op. cit., pp. 35-42; José Tomás López García, *Dos Defensores de los Esclavos Negros en el Siglo XVII: Francisco José de Jaca y Epifanio de Moirans*, Visión Libros, Madrid, 2008, p. 21-28; Eduardo Cárdenas, "La Ética Cristiana y la Esclavitud de los Negros: Elementos históricos para el planteamiento de un problema", *Theologica Xaveriana* 55 (1980) 250.

<sup>3</sup> This analogy is suggested by García and it seems appropriate, see García, *Dos Defensores...*, op. cit., p. 28. See also Cárdenas, "La Ética Cristiana...", *Theologica Xaveriana* 55 (1980) 241-250; Andrés-Gallego, *La esclavitud...*, op. cit., pp. 42f.

<sup>4</sup> Francisco José de Jaca is born in Jaca (Aragón), in ca. 1645. He enrolls in the Capuchins in Tarazona (Aragón), in 1665. In 1678, he arrives in America to be a missionary, in Caracas. Three years later, he is living in La Habana, where he preaches against Black slavery and meets Epifanio de Moirans, who also defended the African slaves' liberty. Jaca's preaching has unwanted consequences. He is not allowed to preach, to celebrate the Eucharist and to hear confessions and is arrested later. The years of 1682-1684 are tense. Jaca answers to a royal process and is kept arrested, initially in La Habana and then in Cádiz and Sevilla. In the end of the process, Jaca is sentenced to stay arrested for six months in Valladolid. It is estimated that Jaca dies in 1689 in San Antonio del Prado. For more biographical details, see Miguel Anxo Pena González, "Un autor desconocido y singular en el pensamiento hispano", in Francisco

with his work *Resolución sobre la libertad de los Negros y sus originarios, en estado de paganos y después ya cristianos*<sup>5</sup> (hereafter *Resolución*); and Epifanio de Moirans<sup>6</sup>, with his work *Servi liberi seu naturalis mancipiorum libertatis iusta defensio*<sup>7</sup> (hereafter *Iusta defensio*).

In fact, these friars created a truly antislavery project and censored the slavery both through their works and through their militancy and political activism. They were not doctors, but missionaries. They were not only theoretical, but mainly practical. They did not write just as jurists, but spoke with prophetic voice. Therefore, more than a treatise on slav-

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José de Jaca, *Resolución sobre la libertad de los negros, en estado de paganos y después ya cristianos. La primera condena de la esclavitud en el pensamiento hispano*, edición crítica por Miguel Anxo Pena González, CSIC, Madrid, 2002, pp. XXIII-LX; *Idem*, "Francisco José de Jaca: una vida a favor de la liberación de los esclavos negros", *Collectanea Franciscana* 72 (2002) 599-671; García, *Dos Defensores...*, op. cit., pp. 32-46.

<sup>5</sup> The *Resolución* was written in 1681 and consists in a letter aimed at Charles II the King of Spain. The work is divided in two parts and contains eighty paragraphs. The first part is called *Humanos derechos* and contains sixteen paragraphs. There, Jaca presents a discourse on liberty and speaks about slavery due to war and slave trade. The second part is called *Derechos católicos y piadosos* and contains sixty-four paragraphs. In that part, the Capuchin friar presents a theological discourse and speaks about the compatibility between slavery and Christianity. Furthermore, he mentions the theme of reinstatement, speaks about other slavery titles, debates arguments in favor of trade, and criticizes Diego de Avendaño. For details on the *Resolución*, see González, "Un autor desconocido...", op. cit., pp. LXI-XCVIII; *Idem*, "Aportación antiesclavista en tierras de Indias, a fines del siglo XVII", in Ildelfonso Murillo (ed.), *El pensamiento hispánico en América. Siglos XVI-XX*, Universidad Pontificia de Salamanca, Salamanca, 2007, pp. 506-518; García, *Dos Defensores...*, op. cit., pp. 47-62.

<sup>6</sup> Epifanio de Moirans is born in Moirans-en-Montagne (Franche-Comté), in 1644. He enrolls in the Capuchins in Vesoul (Franche-Comté), in 1665. In 1677, he arrives in America to be a missionary, in Cayenne. After only a while he makes contact with Amerindians and Africans. In 1680, Moirans illegally enters Spanish territory (Cumaná) and is arrested. In 1681, Moirans is in La Habana, where he meets Francisco José de Jaca, with whom he starts preaching against Black slavery. From there on, Moirans's destiny is similar to Jaca's. Moirans is kept arrested in La Habana and afterwards in Cádiz and Sevilla. In the end of the process, he spends six months in detention in Segovia. Moirans dies in 1689 in Tours. For details on his life, see Miguel Anxo Pena González, "Epifanio de Moirans: Exponente singular de la práctica antiesclavista", in Epifanio de Moirans, *Servos libres: una propuesta antiesclavista a finales del siglo XVII*, edición crítica por Miguel Anxo Pena González, CSIC, Madrid, 2007, pp. XVII-XXXIX; *Id.*, "Epifanio de Moirans (1644-1689): misionero capuchino y antiesclavista", *Collectanea Franciscana* 74 (2004) 111-145; García, *Dos Defensores...*, op. cit., pp. 33-46.

<sup>7</sup> The *Iusta defensio* was written in 1682, when Moirans had been arrested in La Habana, and is based on the *Resolución*. The *Iusta defensio* contains fourteen chapters and a hundred and thirty-seven paragraphs. It can be divided in five parts: (i) conclusions; (ii) prologue; (iii) discourse on slavery titles; (iv) dispute with authors; (v) discourse on reinstatement. For more details on the *Iusta defensio*, see González, "Epifanio de Moirans...", op. cit., pp. XXXIX-LXXIII; *Idem*, "Doctrina antiesclavista de Epifanio de Moirans en su 'Servi Liberi'", *Naturaleza y Gracia*, 52 (2005) 279-327; *Idem*, "Aportación antiesclavista...", op. cit., pp. 519-530; García, *Dos Defensores...*, op. cit., pp. 63-105.

ery, Jaca and Moirans wrote a complaint of the injustices committed by Christians against the African people and were not intimidated by the slavery society of their time.

It is true that they did not totally condemn the legal slavery. Jaca and Moirans were sons of their age, and their age accepted that institution. Nevertheless, since J. T. López García made them known in 1982 (by his doctoral dissertation) and since M. A. Pena González prepared the critical edition of their works, Jaca and Moirans are indispensable references for the study of slavery because they wrote the first substantial and explicit condemnation of the Black slavery, the slave trade, and the slavery society of their age.

It is not possible to present here a detailed analysis of the *Resolución* and the *Iusta defensio*. However, I will work here with two relevant points of Jaca and Moirans's anti-slavery project. This project contains five fundamental points: (i) discourse on liberty<sup>8</sup>; (ii) discourse on slavery titles<sup>9</sup>; (iii) discourse on slave trade<sup>10</sup>; (iv) controversy with authors<sup>11</sup>; and (v) discourse on reinstatement<sup>12</sup>. Although (i), (iv), and (v) are significant points of Capuchins' anti-slavery project—mostly because of the fearless affirmation that liberty is inherent to the human being, because of the controversy with authors that had written about the theme, and due to the proposition of corrective measures to the injustices made by the Christians against the Africans—, I will present just a few aspects of (ii) and (iii), because these points reveal clearly that Jaca and Moirans were really committed with the defense of African slaves' liberty.

## 1. Slavery Titles

In an age when legal slavery is an institution accepted by philosophical tradition, law, Church, and society, it is absolutely normal that the question on slavery titles deserves attention. Basically, the attention that Jaca and Moirans devote to the issue is justified for two reasons: (a) to show that the slavery title due to just war was being improperly used to justify the enslavement of Africans and that, thus, this slavery was being practiced illegally; (b) to show that the groundwork of slavery could not be so wide and that, thus, could not exist so many titles for legitimizing it. On the one hand, (a) is crucial for condemning the specific case of Black slavery. On the other hand, (b) fulfills the role of weakening the legal slavery institution, by impugning those titles with a degree of acceptance, as

<sup>8</sup> See *Resolución* I, 1-5; II, 1-9; *Iusta defensio* II, 25-30.

<sup>9</sup> See *Resolución* I, 6-9; *Iusta defensio* II-V, 25-67.

<sup>10</sup> See *Resolución* I, 10-15; *Iusta defensio* VI-XI, 68-120.

<sup>11</sup> See *Resolución* II, 54-61; *Iusta defensio* VI-XI, 68-120.

<sup>12</sup> See *Resolución* II, 39; *Iusta defensio* XII-XIV, 121-137.

well as playing the same role as (a), by serving as a supplement for condemning Black slavery.

(a)

When Jaca and Moirans wrote their works, the slavery title due to just war title was widely accepted. The same was allowed by law of nations (*ius gentium*) and recognized as just by philosophical tradition. According to this slavery title, one who is captured in just war can be made slave instead of being killed (except if the war is between Christians). And Jaca and Moirans admit the legitimacy of the commutation of life by slavery in case of war. However, they did not recognize that this title could justify Black slavery, because Africans were not enslaved in just wars. The arguments used by Capuchins friars were based in different authorities. Nevertheless, the content of its justification is substantially identical: there is no just war between Europeans and Africans, and neither is there one among Africans themselves. Jaca approaches the theme of just war in Part I, paragraphs 6-9 of the *Resolución*, with two arguments: one about the cause of war between Spaniards and Africans; other about the existence of wars among Africans themselves. The premise of these arguments is established by quotations of two patristic authorities (Augustine and Gregory I) and it occurs in paragraph 6, which is fundamental for the discussion of just war:

It is something common and known that the slavery must be undergone by justified war, founded in investigated, authentic, and legitimate cause. Otherwise, if the justification of it is not certain, this war can only be called robbery and tyranny. "But to crush and subdue people who do not harm you only because of the greed for dominion, what else is this to be called than great robbery?" (*De civitate Dei* IV.6). The war must be of kingdom against kingdom, empire against empire, province against province, and so on, but never of family against family, lineage against lineage, and so on, because that could only be called iniquitous and unjust sedition. "In fact, the wars concern enemies, while the seditions concern citizens" (*Homiliarum in Evangelia* II.35)<sup>13</sup>.

Already in the first argument, a clear denounce discourse can be seen. It is interesting to notice that the Capuchin is based on the Bishop of Hippo, but he does not quote important places where Augustine talks about the war – e.g.: *De civitate Dei* XIX, *Contra Faustum Manichaeum*

<sup>13</sup> See *Resolución* I, 6, p. 8: "Común y sabida cosa es que [la esclavitud] ha de ser padecida por justificada guerra, fundada en averiguada, auténtica y legítima causa; pues alias, no cierta su justificación, sólo compete el título de latrocinio y tiranía. "Populos sibi non molestos sola regni cupiditate conterere et subdere, quid aliud quam grande latrocinium nominandum est?" (Augustinus, *De civitate Dei* IV.6). La cual guerra ha de ser de reino a reino, imperios, provincias, etc., y no de familia contra familia, linaje contra linaje, etc. Porque ésta no se llama sino sedición inicua e injusta. "Bella quippe ad hostes pertinent, seditiones ad cives" (Gregorius I Magnus, *Homiliarum in Evangelia*, II.35).

XXII, or the *Quaestionum in Heptateuchum* VI.10. On the contrary, Jaca prefers to quote a part of *De civitate Dei* where Augustine censures the Assyrian King Ninus, who went to war against neighbor nations motivated by greed. And the reason for that is that Jaca believes there is a perfect parallelism between the fact verified by Augustine (King Ninus's greed and the robberies committed against neighbor nations) and the fact that he himself identifies about the relationship between Spaniards and Africans<sup>14</sup>. But if this parallelism is truly real, then there is no just war between Spaniards and Africans, because there is no authentic and legitimate cause of war, since greed is the motivation, and not a suffered injury. Hence, there is no legitimate slavery title, because the Africans are enslaved guilt free<sup>15</sup>. And just as there is no just war between Africans and Spaniards, there is no just war among Africans themselves, according to Jaca in the second argument, which is based on Gregory I. Other than favoring the thesis that there is no reason of just war between Spaniards and Africans because there is no reason for enmity, the statement that war only occurs between enemy peoples (but not among citizens) allows a reply to the argument about the existence of just wars among Africans of regions where many Blacks were enslaved (Cape Verde and Guinea). But Jaca alleges that it does not appear or is certain that there are just wars<sup>16</sup>. And he does this based on Tomás de Mercado, who had already talked about the unlawfulness of Africans' wars<sup>17</sup>.

According to Jaca, there are no just wars among Africans because: (i) no one attested that there are wars after having verified the data, except

<sup>14</sup> See Miguel Anxo 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. La primera condena de la esclavitud en el pensamiento hispano*, edición crítica por Miguel Anxo Pena González, CSIC, Madrid, 2002, p. LXVIII.

<sup>15</sup> See *Resolución* I, 6, p. 8: "Digo sobre lo de entre manos, que si como dicho es, la esclavitud se introdujo y decretó por justa y no dudosa guerra, [¿] qué razón de guerra justa hay entre españoles y negros (a quiénes, por ver sus padecidas injusticias, de-sagraviar pretendo), que por esclavos traen con tanta violencia, ignominia y tiranía, de sus naturales tierras a éstas y otras más remotas, para ser vendidos y revendidos, con los maltratamientos que constan [?] [...] Que entre los tales no las haya en la forma dicha no se ignora. Y siendo esto así [...], ¿qué ley les da facultad para repeler con fuerza a quienes no hacen daño, extorsión, ni violencia y que padezcan crimen de culpa con la pena de esclavitud sumamente inhumana, no pudiendo éste ni otro suplicio, si no es por proporcionado delito?"

<sup>16</sup> See *Resolución* I, 7, p. 9: "Ni admite, por otra parte duda alguna el ser dicha esclavitud injusta en los referidos negros y sus originarios, de las tierras de donde como perros de caza son traídos [...]. Pues si habían de sujetarse a dicha servidumbre, habían de mediar en sus tierras, reinos y provincias, las justas guerras que como dicho es, para tal sujeción son necesarias, y de esto no consta ni hay certeza".

<sup>17</sup> See Thomas de Mercado, *Summa de tratos y contratos*, lib. II, cap. 20. Even though Jaca and Moirans have more ambitions than Mercado, this author is an important ally of the Capuchins friars. They quote the chapter 20 of *Summa* several times and do not oppose to Mercado's propositions on Black slavery and slave trade.

for the ones who were interested in the slave trade<sup>18</sup>; (ii) the Africans' barbarian lifestyle did not make them search for justified fundamentals to their wars<sup>19</sup>; (iii) the war is not declared by an authority and is not reported that the Africans have a political organization<sup>20</sup>; (iv) the wars that occur are all familiar ones and, thus, just altercations, seditions and perturbations<sup>21</sup>. So, it cannot be recognized that the Africans that are enslaved in such wars are legitimate slaves.

Regarding Moirans, he speaks about just war in the Chapter IV of the *Iusta defensio*, whose title portrays exactly what he aims to prove: *Contra ius gentium nigri sunt servi*. His approach is much more systematic than Jaca's. However, Moirans closely resembles Jaca because of his combative approach. He begins by stating his aim to criticize something that has become usual: the slave trade. But he himself does not fear doing so, because he states, quoting the *Decretum*, that the custom should not stop the truth from prevailing and triumphing, since custom without truth means the perpetuation of the error<sup>22</sup>. In order to prove that Africans are enslaved against the law of nations, Moirans analyzes whether the wars in Africa satisfy the conditions for a just war established by Thomas Aquinas: authority, fair cause, and fair intention<sup>23</sup>. In Moirans's opinion, these conditions are not satisfied in the case of the wars among Africans, and neither are they satisfied in the case of the wars between Europeans and Africans<sup>24</sup>.

The wars among the Africans of Guinea and Cape Verde are not wars, but seditions, rapines and robberies. In effect, they do not have authorities (say, kings or princes) or a perfect republic. There is not a fair cause in their wars, because they are so barbarian that they cannot even look for just causes to fight for. Moreover, they fight between themselves moved by pure greed, being motivated to fight for the slave buyers. Lastly, it is evident that there is no fair intention, since the only cause of war is greed, instead of the wellbeing of the republic<sup>25</sup>.

And not even the wars between Europeans and Africans can be considered just. Moirans points that it does not appear that the European kings (of Portugal, Spain, or France) have declared just war against Africans and adds that they could not do so because of absence of a fair cause. Furthermore, there is not a fair cause because also in that case the only cause is greed. It does not appear that the Europeans had suffered any

<sup>18</sup> See *Resolución I*, 7, p. 9.

<sup>19</sup> Id., *ibid.*, I, 7, pp. 9f.

<sup>20</sup> Id., *ibid.*, I, 8, p. 10.

<sup>21</sup> Id., *ibid.*, I, 9, p. 11.

<sup>22</sup> See *Iusta defensio* IV, 50, p. 70. See *Corpus iuris canonici, Decretum Gratiani* dist. 8, c. 8.

<sup>23</sup> See *Iusta defensio* IV, 51, p. 72. See Thomas de Aquino, *Summa theologiae* II-II, q. 40, a. 1.

<sup>24</sup> See *Iusta defensio* IV, 52, p. 72; 55, p. 76.

<sup>25</sup> Id., *ibid.*, IV, 52-54, pp. 72-76.



injury. Instead, taken by greed, Christians do not search for justified fundamentals to their wars. In truth, Christians commit injury themselves. According to Moirans, Christians invade the African territory and steal and capture Blacks without other reason than the fact that they are Black and should be slaves, as if they were not really men, but animals, or dogs and beasts. And also the fair intention is lacking here, because it is the greed that take Christians to practice crimes and to make wars and slaves<sup>26</sup>.

(b)

Other than showing that the slavery title due to just war was being improperly alleged, Jaca and Moirans also showed that two other slavery titles were being improperly used, viz.: slavery due to crimes; and slavery due to self-sale or due to selling their own children because of need.

In case of slavery due to crimes, the argumentative strategy of Jaca and Moirans is similar to the strategy used to show that there could not be just wars because of absence of authorities. In fact, the lack of an organized political life, of an established law and authorities for the punishment of slavery makes the lawfulness of the title unfeasible. Moreover, even if the sentence is fairly ordered, the slavery due to crimes would only justify in a few cases, but not universally<sup>27</sup>. In the case of slavery due to selling their own children, there are also arguments that try to annul the title in a formal way, or because there is not a necessity, or because the necessity would not be satisfied by the sale of children<sup>28</sup>.

However, the discourse on titles draws attention when the Capuchins friars condemn the slavery because of the small legitimacy that some titles appear to have, and not for their concrete practice. When Jaca and Moirans do this, the strategy is to show that the groundwork of slavery is not so wide and that, therefore, there are not many titles to legitimize it. That is, the strategy is to try to invalidate slavery titles normally accepted, and not to show that these titles were being improperly alleged.

In Jaca's case, his censorship to slavery due to crimes seems to derive from the fact of inexistency of authorities among Africans themselves, as well as of the fact that there is no foundation able to justify the punishment of slavery: "I can neither find nor know who can find a justified fundament to the punishment of slavery"<sup>29</sup>.

However, the most interesting discourse against titles commonly accepted occurs when Moirans censures the slavery due to self-sale or child sale and strongly criticizes Molina, who had defended the legitimacy

<sup>26</sup> Id., *ibid.*, IV, 55, pp. 76f.

<sup>27</sup> See *Resolución* II, 42, pp. 53f.; *Iusta defensio* II, 29, pp. 40f.; V, 58, pp. 82f.

<sup>28</sup> See *Resolución* II, 43, p. 54; *Iusta defensio* V, 59, p. 84.

<sup>29</sup> See *Resolución* II, 42, p. 53: "[...] no alcanzo ni se quién alcanzar puede fundamento justificado para dicha pena [de esclavitud]".

of this title<sup>30</sup>. According to Moirans, it is false and against the law that the father in serious needs can sell his child or himself, because slavery is "civil death" (*mors civilis*). Therefore, only in cases of extreme need the sale will be lawful, viz.: in order to avoid natural death. Since the slavery equates to death and it is worse than poverty, it follows that it is not lawful to sell oneself or a child in reason of a grave necessity, but only in case of extreme necessity<sup>31</sup>.

Just like Jaca, Moirans elaborates a discourse on liberty and affirms that all men are free by nature and that the gift of liberty cannot be taken from them<sup>32</sup>. According to this discourse, the existence of slavery in the world is only justified by the bad use of liberty, i.e., by sin. This sin, whose consequence is death, brought with itself not only natural and temporal death, but also civil death: legal slavery. The natural and temporal death results from Adam's sin and is transmitted (*pertransivit*) to his descendants. On the other hand, civil death results from men's personal and voluntary sins and only gets in (*intra*) sinners who deserve the death penalty, which can be commuted by slavery (civil death)<sup>33</sup>. Therefore, slavery is penalty and can only come from a sin whose penalty is the natural death commuted by civil death.

However, even if slavery can be justified only because of the bad use of liberty (sin), Moirans makes flexible the requirement of previous sin and admits that slavery can be justified only as commutation. But it is interesting to note that this adjustment in requirement of previous sin does not widen the base of justification of slavery. Instead, the adjustment limits this justification because the requirement of "grave necessity" is replaced by the requirement of "extreme necessity", which is understood as a high risk of losing the natural life.

Basically, behind Moirans's argument is the idea of limiting slavery to an act of life preservation, i.e., to a "*servare*". If it does not come from a sin, then it can only be justified in the interest of conserving the greater good of a human being. Slavery is a degrading and hateful institution. So, saying that someone embraces it voluntarily can only make sense if the situation is really of extreme need.

Moirans was aware that the title on selling was improperly alleged and that it had been defended by Molina, as long as a just price was being paid. Because of that, the Capuchin friar criticizes the title not only from a formal point of view —saying that the sale does not suppress necessity and that it would not be Christian to buy children<sup>34</sup>—, but also from its content. Since slavery is like death, slavery is more serious and harmful than poverty. Therefore, it can only be commuted by death, not by

<sup>30</sup> See Ludovicus Molinae, *De iustitia et iure*, tract. II, disp. 33, 35.

<sup>31</sup> See *Iusta defensio* VI, 72, p. 106.

<sup>32</sup> See *Iusta defensio* II, 25-26, p. 38. See *Resolución* I, 1-2, pp. 4f.

<sup>33</sup> See *Iusta defensio* II, 27-28, pp. 38f.

<sup>34</sup> Id., *ibid.*, V, 59, p. 84.

poverty. And there is no just price able to pay the liberty commuted by something lower than life<sup>35</sup>. Moreover, it is not even a Christian act to bargain with hungry and poor people. The Christian act would be to aid the needy purely for charity<sup>36</sup>. Sarcastically, Moirans says that Molina moved away from the Gospel and asks if he would sell himself or if he would accept to be sold by his own father<sup>37</sup>.

Still criticizing Molina, Moirans presents the incoherence of the title. According to the Capuchin, a human being who sells himself receives in vain the price of his liberty, because he gets nothing for it. When he becomes a slave, nothing else is his, but of his owner. On the other hand, if that human being sells himself because of another person, he is not helping himself, but the other one. Thus, the title loses its sense<sup>38</sup>. It is true that Moirans accepts the lawfulness of slavery due to selling, as well as of slavery due to war and crimes. However, it is interesting to note that his discourse on slavery titles is not restricted to juridical discussion. And the treatment on selling seems to corroborate this, because it shows that the Capuchin friar is based more on a discourse on liberty than on a legal discourse. And the claims that the liberty is more valuable than the supply of basic needs and that it is only not greater than the preserving of life reveal Moirans's commitment with the defense of Africans' liberty. Indubitably, this commitment can be equally seen in Jaca, who also has a substantial discourse on the liberty. However, Moirans's systematic text reveals it more clearly.

And this same commitment with the cause of Africans' liberty also appears in Jaca and Moirans's discourse on slave trade, because both Jaca and Moirans approach this theme moving away from authors who tolerated the usurpation of Africans' liberty by establishing distinctions among the slave purchases. I deal with this below.

## 2. Trade and Purchase

Obviously, if purchase fosters slave trade, then it is natural that someone will condemn trade due to purchase (whatever it may be: first purchase or later purchase; in Africa or outside Africa; by trader or slaveholder; with good faith or bad faith). Moreover, if someone wants to analyze the slave trade having a compromise with the truth and the justice, then this person cannot analyze the purchase distinguishing it from the act of enslavement or paying attention only to buyer's intention. Well, Jaca and Moirans have this idea really clearly. And from this idea they analyze the trade and condemn it, adopting a different methodological

<sup>35</sup> Id., *ibid.*, VI, 71, pp. 104f.

<sup>36</sup> Id., *ibid.*, V, 59, p. 84; VI, 72, pp. 104-108.

<sup>37</sup> Id., *ibid.*, VI, 72, pp. 104-108.

<sup>38</sup> Id., *ibid.*, VI, 72, p. 106.

perspective, which departs from the perspective of others authors. Therefore, Jaca and Moirans analyze the slave trade: seeing it as a single event—from the moment of the act of enslavement in Africa until the moment of the purchase in America and Europe—, and not as a sequence of isolated and disconnected acts; and avoiding to work with the distinctions “first purchase”, “second purchase”, “purchase in Africa” and “purchase in America or Europe”; because they want to face all moral problems that are involved in the trade, and not just those moral difficulties that arise after the purchases made in America and Europe.

But if this methodological perspective is already relevant, the theoretical positioning adopted by the Capuchin friars is equally relevant, viz.: a positioning that is contrary to probabilism and close to tutorism or even to probabiliorism<sup>39</sup>. Of course, the reason for this is that the Jesuit probabilism was almost a moral laxism, which inevitably was hiding the truth behind the trade and masking its injustices, favoring slaveholders instead of slaves and increasingly promoting the trade. This positioning is favored by Pope Innocent XI's recent condemnation of a few propositions of probabilistic nature (in 1679)<sup>40</sup> and, furthermore, it is also explained why the probabilism was even being contested inside the Society of Jesus (by Tirso González de Santalla)<sup>41</sup>. Therefore, if it had been sufficient to follow probable opinions earlier, even against something more probable, now it would be necessary to follow certain reasons in order to act correctly.

And the combination of a methodological perspective that avoids analyzing isolated events with a theoretical positioning contrary to probabiliorism enables Jaca and Moirans to be extremely strict and demanding from a moral point of view. Hence, they are able to put together a discourse on slave trade that: disapproves all acts caused by an illegitimate slavery, because said discourse does not admit that the unfairly enslaved Black in Africa can be turned into a legitimate slave in America or Europe due to buyer's good faith or because it would be impossible to end the doubt over the legitimacy of slavery; demands that the buyers must follow only certain reasons (instead of probable ones) and after all doubts have been overcome; does not tolerate excuses such as “ignorance” or “good faith”, because this discourse does not admit any ignorance regarding liberty and it only admits good faith if it is preceded by inquiry; never grants the benefit of the doubt to slaveholder, but always to slave;

<sup>39</sup> See González, “Aportación antiesclavista...”, op. cit., pp. 500-503.

<sup>40</sup> Here are two condemned propositions that are cited by Moirans (*Iusta defensio* XI, 113, pp. 170f.): “II. Probabiliter existimo, iudicem posse judicare juxta opinionem etiam minus probabilem. III. Generatim dum probabilitate sive intrinseca sive extrinseca, quantumvis tenui modo, a probabilitatis finibus non exeat, confisi aliquid agimus, semper prudenter agimus” (Innocent XI, *Decret de N. S. P. le Pape Innocent XI contre plusieurs propositions de morale*, 1679, p. 6).

<sup>41</sup> See González, “Aportación antiesclavista...”, op. cit., p. 503.

condemns absolutely the trade in reason of its wide bad fame and because of impossibility of obtaining any certainty about the lawfulness of the slavery titles; finally, this discourse on slave trade demands the manumission of African slaves, the payment of their works, and the payment of compensations.

In the *Resolución*, Jaca's discourse on trade and purchase occurs basically in Part I, paragraphs 10-15<sup>42</sup>. Jaca does not dispute with any particular author, but indirectly dispute with all authors who recognize the lawfulness of the second purchase and the purchases made outside Africa, and this because he absolutely condemns the excuses of good faith in the purchase of slaves<sup>43</sup>. It does not matter if the buyers, sellers or masters are mediate or immediate. The good faith can only exist by previous investigation. Additionally, the good faith also presupposes that the buyer must have overcome all and every doubt and that, therefore, he must be sure about the justice of the slavery title<sup>44</sup>. Moreover, alleging ignorance does not make sense either. In fact, it is not easy or possible that someone can justify himself claiming ignorance, because no one can fail to know the principle that liberty should not be usurped or stolen. Just as it is impossible for someone to ignore the first principles and other not so universal ones, in that way it is also impossible for someone to ignore the fact that the human liberty cannot be violated. According to Jaca, liberty is connatural to human being and also a natural right. Hence, it is absurd that someone declares ignorance over human trafficking, when said person knows that liberty is a natural right and cannot be stolen<sup>45</sup>.

But claiming ignorance is also impossible for another reason: it is openly known that the slave trade is a dishonest business. In fact, the doctors that wrote about it admitted with certainty that it involves violence, misdemeanors, and thefts. And there is no reason for someone to have scruples or doubts about a business that is openly dishonest. As a matter of fact, if you add the possibility of scruples to the knowledge of the trade's injustices, it only reveals slavery to be even more unfair and inhuman. According to Jaca, since slavery is a certain punishment imposed by the law of nations, it is certain that cannot have scruples in concerning to those suffering the damage and punishment, but "certain knowledge"

<sup>42</sup> A further development of this discourse also occurs in the second part, paragraphs 47-50. In that context, Jaca answers to four arguments in favor of the continuity of the trade and one of them is about the excuse of good faith or ignorance in the purchase.

<sup>43</sup> See *Resolución* I, 10, p. 12: "Volviendo pues los ojos hacia los agraviados negros, en las excusas con que se quieren sus opresores justificar contra ellos. Digo no les vale alegar a los tales vendedores, compradores, amos, amas, etcétera, ora lo sean inmediatos ora mediatos, de los referidos morenos y sus originarios, razón de buena fe o ignorancia en sus compras, etcétera".

<sup>44</sup> *Id.*, *ibid.*, I, 10, p. 12.

<sup>45</sup> *Id.*, *ibid.*, I, 12, p. 13; II, 47, p. 57. See Thomas de Aquino, *Summa theologiae* I-II, q. 94, a. 2.

(*ciencia cierta*) about the lawfulness of their sentence. So, if someone admits the existence of violence, misdemeanors, and thefts, but still has scruples, then slavery cannot be justified<sup>46</sup>.

This specific argument is crucial for Jaca's condemnation of the trade because it expunges the possibility of conjectures about Black slavery justice. Indeed, Jaca thinks that the slave trade is so openly vicious that there is no place for scruples, doubts, good faith or ignorance. Since no one looks for "certain knowledge" (*ciencia cierta*) there is actually only place for "cruelty" (*crudelidad*), "greed" (*codicia*), and "extortion" (*extorsión*) in the trade<sup>47</sup>. So, any scruples or doubts can only be phony. And such expedients can only be in favor of those who defend the continuation of the trade. But what can we say about the known example of the good faith buyer that doubts the lawfulness of the slavery title after having bought the slave? Although Jaca has not openly discussed with authors (except with Avendaño), he says something important about the buyer that only doubts afterwards (even though he himself denies the possibility of someone acting with ignorance or with good faith without having investigated the title before). Well, this buyer is bound to manumit the slave, because *in dubio melior est conditio possidentis* ("in doubt, the situation of the owner is better")<sup>48</sup>. In this case, the owner is the slave, not the buyer or master.

However, what Jaca does here is something new in the treatment of Black slavery. The *in dubio melior est conditio possidentis* principle had already been quoted by some authors before Jaca, but in order to justify the right of the slaveholders. Molina himself had said that the situation of the master is better, because the master would be the possessor<sup>49</sup>. And so did Tomás Sánchez<sup>50</sup>. But Jaca quotes the principle offering an interpretation in favor of the slave, i.e., an interpretation able to favor the ownership of the natural liberty of the African that was unfairly enslaved, and not the possession based on title of purchase. However, Jaca does not develop this point in enough detail. Actually, it does not appear in the treatment of the purchase and almost passes unnoticed in the *Resolución*. As has been well observed by González, it is Moirans who will explore and develop this point, giving it a systematic treatment in the *Iusta defensio*<sup>51</sup>.

<sup>46</sup> See *Resolución* I, 13, p. 15.

<sup>47</sup> *Id.*, *ibid.*; I, 15, p. 17.

<sup>48</sup> See *Resolución* I, 8, p. 11. This principle is derived from a rule of Roman and medieval law which helped to decide cases involving doubtful ownership of goods. The rule is: "In pari delicto vel causa potior est conditio possidentis" (*Corpus iuris canonici, Liber Sextus Decretalium*, lib. V, tit. 12, *De regulis iuris*, reg. 65). According to this principle, an owner of a thing cannot be deprived of it as long as the unlawfulness of his possession has not been sufficiently established. For details on the use of this principle, see Rudolf Schüssler, "On the Anatomy of Probabilism", in Jill Kraye and Risto Saarinen, *Moral Philosophy on the Threshold of Modernity*, Springer, Dordrecht, 2005, pp. 98-100.

<sup>49</sup> See Ludovicus Molinae, *De iustitia et iure*, tract. II, disp. 35-36.

<sup>50</sup> See Thomas Sanchez, *Consilia seu opuscula moralia*, lib. I, cap. 1, dub. 4.

<sup>51</sup> See González, "Aportación antiesclavista...", *op. cit.*, p. 502.

Anyhow, it is undeniable that Jaca has the merit for attacking a thesis clearly used in favor of the slave trade, viz.: the thesis that doubt favors the slaveholder.

Concerning Moirans's discourse on slave trade, it is central within the *Iusta defensio* and occurs in almost all the work. It is closely attached to the discourse on liberty and occurs in two important parts of the work: when Moirans examines the law that would legitimate the enslavement of the Africans (Chapters II-V); and when he disputes with opponent authors (Chapters VI-XI). Fundamentally, this discourse leads Moirans to three important conclusions, which allow him to condemn absolutely the trade and demand the correction of its injustices: (1) No one can buy or sell any African slave; (2) All slaveholders must manumit their slaves, under penalty of eternal damnation; and (3) All slaveholders must pay for the services of their slaves and compensate them<sup>52</sup>.

Obviously, the proposition of the first conclusion is derived from the fact that Africans were unfairly enslaved. Unlike other authors, Moirans does not want to condemn only the purchase and sale of slaves that were unfairly enslaved, but the trade as a whole. For that reason he affirms that "no one" (*nemo*) can buy or sell African slaves and that "all" (*omnes*) slaveholders must manumit their slaves. At first sight, that condemnation suggests that he condemns the legal slavery institution. But that is not exactly Moirans's point. As other authors, Moirans approves this institution. However, he denies the lawfulness of all trade. Just like Jaca, Moirans diversifies his position when he absolutely condemns the trade and when he refutes the expedients used by authors who condemned only partially the trade, tolerating flagrant acts of the violation of men's natural liberty.

Fundamentally, the condemnation of all and any purchase and sale of slaves is established because no one can be sure of the lawfulness of slavery titles. And since no one must act in doubt, just as Mercado had alerted, it follows that no one should purchase slaves. Since it is impossible for someone to distinguish a legitimate from an illegitimate slave, it follows that said person should buy none<sup>53</sup>.

And the allegations of ignorance or good faith are invalid also for Moirans. Indeed, it is impossible for someone to ignore that the liberty

<sup>52</sup> Altogether, there are five conclusions that Moirans wants to prove. The other two are these: (4) Black inhabitants of places in America where they are taken as slaves are obliged to leave them and look for other places where they can focus on their eternal salvation; (5) Because of the injury against Blacks seized in Africa and exported to America, Christian princes will escape from the African lands and will lose them, the bishops and clerics will emigrate from those lands and will sail as runaways, and the Christians will be made prisoners and slaves. See *Iusta defensio*, Argumentum libri, p. 4.

<sup>53</sup> Id., *ibid.*, II, 32, p. 46. See Thomas de Mercado, *Summa de tratos y contratos*, lib. II, cap. 20.

must be respected when it is a human being's natural right. And it is equally impossible for someone to claim ignorance when everyone knows that the Africans are unfairly enslaved and when the injustices of the trade have already been recognized not only by theologians and doctors, but also by even the traders and sailors themselves. On the other hand, it is impossible for a buyer to claim good faith when no one is concerned about checking and justifying the slavery titles. Given the trade's bad fame, it is absurd for someone to claim good faith without being sure about the lawfulness of the title of slavery. In fact, there is utter bad faith in the business, because everyone who does not check on it and does not justify slavery titles disrespects the natural law by violating the Africans' natural liberty<sup>54</sup>.

Briefly, according to Moirans, we could very easily claim that the slave trade is not an honest business. Indeed, the trade is a dirty and iniquitous business; everyone acts with doubt, dissimulation or irresponsibility; and, what is worst, all involved disrespect the Africans' natural right to live freely. Because of that, no one can buy or sell slaves (Moirans's first conclusion). All of the people involved in the trade are dirty. So, the trade must stop.

However, stopping is not enough. Stopping the slave trade only partially solves the problem of the injustices against the African people. African slaves' liberty must be returned through manumission. Moreover, the African slaves should receive payments and compensations for their services (second and third conclusions).

But, in order to prove the necessity of reinstatement and compensation, Moirans needs to show that the slaveholders illicitly own their slaves and, above all, he needs to show that the doubt over the lawfulness of a title of slavery does not favor the slaveholder. In summary, Moirans must have something consistent to say about the *in dubio melior est conditio possidentis* principle, because the expedient of the doubt along with that principle only favored the maintenance of the trade and the continuity of its injustices.

The argument that shows that the slaveholders possess illicitly their slaves appear in the end of the Chapter II and since then the conclusion that the slaveholders are illegitimate owners of their slaves will be reiterated in many occasions in order to defeat the argument that doubt favors the slaveholder. In the end of the Chapter II, Moirans proves the unlawfulness of the ownership of the slaveholders and, then, he sets the obligation of the manumission, resorting to four rules of the *Liber Sextus*: "It is assumed that there is no good faith in someone who buys against the law"<sup>55</sup>; "The possessor of bad faith never prescribes"<sup>56</sup>; "The sin is not for-

<sup>54</sup> See *Iusta defensio* II, 32-33, pp. 46f.; VI, 69, pp. 98f.

<sup>55</sup> See *Liber Sextus Decretalium*, lib. V, tit. 12, *De regulis iuris*, reg. 82: "Qui contra iura mercatur, bonam fidem praesumitur non habere".

<sup>56</sup> *Ibid.*, reg. 2: "Possessor malae fidei ullo tempore non praescribit".



given if it is not given back what has been taken"<sup>57</sup>; "The things done against the law should be considered undone"<sup>58</sup>. Based on these rules, Moirans acts as a prosecutor against slaveholders and shows that there is no law able to help them. The argument begins in the paragraph 32, with the proposition: "no one can buy Blacks in their lands and regions if the slavery titles are not justified and verified, because the possession is always in favor of the Blacks' natural liberty"<sup>59</sup>. Moirans starts with an easily accepted proposition. Even the most favorable author to the trade would accept such proposition, for it was widely accepted that no one should be enslaved unfairly and that the traders, in Africa, should be alert to this fact and only purchase slaves that had lawful title. However, the great question behind Moirans's argument is what will be deducted from that proposition.

According to what Mercado had already said, the traders do not justify nor verify slavery titles in Africa. And, Moirans adds, they are also not verified in America. Therefore, the Capuchin friar concludes that all the people involved in this business (sellers, buyers or slaveholders) do not have good faith, because they purchase against the law<sup>60</sup>. Because of that, the ones that own slaves have them in bad faith. And that bad faith never prescribes<sup>61</sup>. And, of course, an important thesis is set here, because Moirans wants to assign responsibility to slaveholders for the things they did in bad faith.

Later, following the argument, this accountability will finally receive the name of "reinstatement" (*restitutio*), by the use of another rule of the *Liber Sextus*. Since sin is only forgiven by the reinstatement of what had been removed, it follows that the buyers and slaveholders' bad faith can only be forgiven if they give back the Africans' liberty by manumission, because, if they do not do so, they are doomed to damnation. And because of that, the second conclusion talks about the risk of eternal damnation. And, in that point of the argument, the situation of the slaveholders is this: they are not exempted from responsibility and are obliged to manumit their slaves to escape damnation. However, these partial conclusions still do not help Moirans answer well the argument about the benefit of doubt.

Because of that, the last step of his argument consists in impugning the validity of purchase and sale contracts, since the authors who used the *in dubio melior est conditio possidentis* principle referred to the ownership of the title of purchase. Well, if something that is made against the law must be considered undone, then all contracts must be considered invalid,

<sup>57</sup> Ibid., reg. 4: "Peccatum non dimittitur, nisi restituatur ablatum".

<sup>58</sup> Ibid., reg. 64: "Quae contra ius fiunt debent utique pro infectis haberi".

<sup>59</sup> See *Iusta defensio* II, 32, p. 46: "neminem posse emere nigros in terris suis et regionibus ab aliis nigris, nisi iustificatis et verificatis titulis iustae servitutis, quia semper possessio stat pro libertate naturali nigrorum".

<sup>60</sup> Id., *ibid.*, II, 32-33, pp. 46f.

<sup>61</sup> Id., *ibid.*, II, 33, p. 48.

because, by violating the natural law, such contracts were unjust. But, in that case, possessing a slave with base only on a title of purchase is completely invalid. Therefore, the slaveholders are not legitimate possessors and should manumit their slaves<sup>62</sup>. They are obliged to it not only to avoid damnation, but also, and that is an important point, because there is no law that can favor them. Thus, it is evident that the *in dubio melior est conditio possidentis* principle does not favor the slaveholder, as he never actually owned anything. He is merely a false owner. Between slaveholder and slave, the only true owner is the slave, not the slaveholder. The slave did not lose his liberty when unfairly enslaved. The slave had had his liberty stolen, but never lost his right to liberty, did not as much stop being its real owner.

But even though Moirans responds to the argument about the benefit of doubt, it is important to notice that he himself does not admit the possibility of doubt. His answer to that argument is set to show that the slavery society of his age should account for their crimes and give back to the people they have harmed. But it does not mean that the doubt may occur to the buyer or to the slaveholder at some time. Just like Jaca, who had demanded "certain knowledge" in the purchases, Moirans takes a position next to tutiorism and rejects the hypothesis of someone acting without certainty of what they will do.

In Moirans's thought, all purchasers should investigate—both the ones who buy in Africa and the ones who buy in America— as well as all slaveholders that (unduly) have doubts only after the purchase. Furthermore, all are obliged to be certain that the slavery titles are lawful, because "in order to undo the doubt, probable reasons are not enough, but only certain reasons"<sup>63</sup>.

According to Moirans, a slavery title should be brighter than light. Consequently, having only probable reasons does not allow one to act with a safe conscience<sup>64</sup>. As liberty is a natural right, and its defense is an extremely important cause, probable reasons are not enough to take someone's liberty away. And, since we should favor the defendant and follow the minimum when there is obscurity, it follows that merely probable reasons always favor the slave<sup>65</sup>. Hence, probability favors manumission rather than slavery.

Fundamentally, what enables Moirans to defend African slaves' liberty by opposing to probabilism is the fact that Innocent XI had con-

<sup>62</sup> Id., *ibid.*, II, 35, p. 50.

<sup>63</sup> Id., *ibid.*, VII, 80, p. 120: "Sed dico quod ad deponendum dubium non sufficiunt rationes probabiles, sed debent esse certae".

<sup>64</sup> Id., *ibid.*, VIII, 83, 85, 88, pp. 124, 128, 134.

<sup>65</sup> Id., *ibid.*, VIII, 88, p. 134. Moirans elaborates this argument by using two rules of *Liber Sextus*: "Quum sunt partium iura obscura, reo favendum est potius quam actori" (*Liber Sextus Decretalium*, lib. V, tit. 12, *De regulis iuris*, reg. 11); "In obscuris minimum est sequendum" (*ibid.*, reg. 30).

demned some propositions of a probabilistic nature. According to Moirans, Innocent's condemnation shows that the probability is not a good way for someone to act with safe conscience. Furthermore, it reveals that the opinion of the several doctors who favored the continuity of the trade cannot actually justify its continuity. Even granted that these doctors create some probability, they do not offer a safe path to be followed. After all, it is not safe to follow the probable, especially when the theme in discussion is something as important as the human liberty<sup>66</sup>.

### Brief Conclusion

It is undeniable that, in Jaca and Moirans's opinion, legal slavery is a degrading and hateful institution. For them, it is one of the biggest evils that terrorize the world. And it is only not worse than death. However, it also cannot be denied that this institution was accepted by both Jaca and Moirans.

The cause for which Jaca and Moirans were fighting was very noble, but it was still not abolitionism. In fact, they did not preach the end of slavery, but the end of the injustices made by Christians against Africans. So, they do not condemn the slavery by itself or in its entirety, but the Black slavery and the trade of African slaves. Anyway, it is undeniable the importance of Jaca and Moirans to the history of ideas, because all complaints made in their anti-slavery project become them great defenders of African slaves' liberty. And their discourses on slavery titles and on slave trade and purchase reveal that clearly, because these are discourses affirming the liberty of ones who once had that liberty stolen from them.

### RESUMEN

El propósito de este artículo es presentar brevemente dos puntos del proyecto antiesclavista desarrollado por Francisco José de Jaca, OFM Cap (1645-1689), y Epifanio de Moirans, OFM Cap (1644-1689). Esos puntos se refieren al discurso de Jaca y Moirans acerca de los títulos de esclavitud y la compra y venta de esclavos. Por medio de la presentación de esos dos puntos, se puede percibir que esos misioneros capuchinos estaban muy comprometidos con la defensa de la libertad de los esclavos africanos. A diferencia de otros autores que habían escrito sobre la esclavitud negra, Jaca y Moirans asumieron el papel de abogados de los esclavos africanos y, con talante profético, no tuvieron temor de denunciar las injusticias de la trata y de predicar la manumisión de todos los esclavos africanos.

<sup>66</sup> See *Iusta defensio* XI, 113, pp. 170f.