peoples in his life and works and much, much later extended this to the en-
slavement of Africans, was moving in the same milieu.34

Over the period 1594 to 1614, Jesuit priest Luis de Molina (1535-1600) 
published a five-volume work titled De iustitia et iure (Of Justice and Law) 
(de Molina 1941(1595)). Like his predecessors, he used Aristotle's premises to 
argue that, in the abstract, slavery is morally acceptable under limited conditions 
(Obregón 1999b:479). But in contrast to these, he employed a historical method 
to discuss slavery in the American context, making it evident, although in an 
implicit manner, that slavery is not as natural as it was said to be. However, on 
the subject of the Portuguese slave trade, de Molina did not venture to pass
final judgment. Rather, as did de Mercado, he believed that it was too difficult 
a subject and that it should be resolved by a group of renowned theologians. 
Despite his cautious distance from the primordial moral subject, de Molina 
claims to have undertaken extensive research while he studied and taught in 
Portugal, where he obtained firsthand information about how the slave trade 
was carried out. His conversations with Portuguese slave traders enabled him 
to question the methods used to obtain the African slaves and the abusive treat-
ment they received during and after their transatlantic voyage. He concluded
that there were sufficiently strong arguments for condemning the trading of 
Africans as “impious and unjust” and, as such, all of those who engaged in this 
trade, both the sellers and the buyers, “sin gravely and run the risk of being
condemned for eternity” (de Molina 1941(1595)). He also added that since the 
only benefit of slavery is the conversion of the blacks to the Christian faith, in
order to achieve this purpose, it would be better for the missionaries to go di-
rectly to Africa, after first prohibiting the slave trade (de Molina 1941(1595)). 
However, in the end, de Molina exonerated the slave owners, mainly the Span-
iards in the New World, supposing that they bought their slaves in good faith
as captured with just cause.

From a moral standpoint, therefore, some felt that arguing on the injust-
tice of enslavement was not relevant to their religious mission, therefore they
preferred to direct attention to the excessive abuse and mistreatment of slaves. 
The Jesuits in Brazil — among them, the notorious Father Antonio Vieira (1608-
1697) — would continue with this line of criticism throughout the seventeenth
century. Vieira is also known as the Bartolomé de las Casas of Brazil because he 
fought the enslavement of indigenous people but he accepted African enslav-
ment as an inevitable reality and a necessary economic activity. In his sermons 
on confraternity, printed between 1679 and 1689, he preached the equal hu-

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34 In his Historia, book III, chapter 129 (1560), he said that they were judged "guilty by omission be-
cause, as I later lived and found out, the captivity of Negroes seemed to be as unjust as that of the
Indians." In his Brevisima relación de la destrucción de África he condemned the slave-taking ac-
tions of the Portuguese in African countries saying that their captivity "was as unjust as that of the
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manity of the slaves, reprimanded the owners for mistreatment and asked that evangelization be guaranteed, under threat of falling into sin. However, he urged the blacks to resign themselves to the passion of slavery because that was the road to the salvation—and the freedom—of the soul (Vainfas 1996:68).

Contemporary historian Ronaldo Vainfas asserts that the Jesuit’s concern, represented by Vieira, regarding African slavery in Brazil only began with the boom of the slave market during the seventeenth century and with the growth of the runaway slave community of Palmares (Vainfas 1996:69). Until then, the Jesuits had limited themselves to opposing the captivity of the indigenous people, but they did not exhibit any indignation over the unjust detention or cruel punishment of the African slaves. However, the concern for the plight of slaves was never presented as a fight against their enslavement, as took place with the indigenous people. Vainfas emphasizes that this concern is masked in the project of Christian-slavery because, as the runaway slaves proved, there was complete incompatibility between the conversion to Christianity and freedom for enslaved blacks. For this reason, it seems that it was Vieira himself who paved the way for the final destruction of Palmares when, in 1691, he wrote to the King of Portugal, telling him that if he were to declare the residents of Palmares free and autonomous, it would lead to the “total destruction of Brazil” and that the only solution was a frontal attack (Vainfas 1996:78). A short while later the king answered Vieira that he agreed with his observations, and the oldest and biggest maroon community in the Americas was destroyed in 1695.

In Cartagena de Indias, there were also two notable seventeenth century Jesuits who were concerned with the severity of the suffering and the mistreatment of the African slaves, but did not pursue the subject of the illegality of their capture or the immorality of the institution in itself. One was Sevillian Jesuit Alonso de Sandoval, whose mission led him to write his well-known treaty on slavery, published in 1627 (de Sandoval 1987). He also referred to de Molina’s doctrine in mentioning the legal provisions that permitted captivity and he went so far as to write to Father Luis Brandão, a disciple of Vieira’s who ran the Jesuit school in Luanda, to ask him about the legitimacy of capturing Africans. Brandão answered that he and the other fathers that worked in Brazil had bought slaves themselves without any qualms because, though some were illicitly captured, most had been legally obtained. Sandoval seemed satisfied with this answer and he in turn concentrated on his pastoral mission (de Sandoval 1956:90-100).35

In order to engage in better evangelization, Sandoval felt that it was necessary to have a more sophisticated knowledge of the African peoples. In order

35 The original letters are transcribed in (de Sandoval 1956) and also cited in (Brading 1991:170; Rout 1976:33; Thomas 1997).
to achieve this, Sandoval compiled a detailed ethnological study of the diversity that existed among the Africans that arrived in captivity. He studied their languages, customs, religions, physical characteristics, ethnic markings and diseases, as had, in a similar fashion before him, Bernardo de Sahagún with indigenous people. However, although Sandoval condemned the mistreatment of slaves and argued that they were all human beings equal before God, his purpose was not abolitionist. His mission was to evangelize and to do so he helped the slaves who were suffering, work that he performed and for which, two centuries later, his assistant Pedro Claver was canonized. Sandoval and Claver, as was Vieira in Brazil, and others who followed de Molina, accepted the legitimacy of slavery as part of their missionary efforts. That is, the just cause of captivity was not so important to them as the argument of slavery as a valid way of bringing Christianity to infidels (Rebello 1610 q.10 sect.1).

In any case, at this point it is important to mention the fact that the legal legitimacy of slavery goes hand in hand with the philosophical, theological and anthropological writings of the sixteenth and seventeenth centuries. These writings focus on the basic general precept of the need for there to be a just cause in order to enslave other human beings, and not that slavery in itself should be illegal. Having said that, this research has revealed that there are a considerable number of opinions by authorities that believed that this just cause could not be proven in the case of the enslaved Africans who were brought to the Americas. As such, the jurists of the time tried a particular sort of legal reasoning to legitimize some stage of the process after the first illegal transaction. For many, the problem of the just cause was obviated with the first buyer (the Spaniard), who bought them from the Portuguese with the presumption of just cause. His good faith was compensated with the possibility of selling his goods. For others, even though the one who captured the Africans (the Portuguese) and the one who transported them to the Caribbean (the Spaniard) acted in bad faith, failing to prove just cause, the third one (the owner) who bought in good faith did not commit a sin (meaning, he did not break divine law or the laws of society) and he had the right to keep his property.

Despite questioning the probable illegality of slave acquisition, the dubious morality of the transactions, and the knowledge of the inhumane treatment that they received, as we have said, none of the above jurist-theologians or priests denounced the practice for its inherent immorality or called for an end to the slave trade. For this reason, it is extraordinary to find in the late seventeenth century, when the international slave trade in the Caribbean had further consolidated,36 two Capuchin missionaries: Francisco José de Jaca de

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36 *And if previously the theologians condemned it, how would it not be condemnable today when corruption has conquered in such a way, when the iniquities of injustice have grown, violence, stealing, robbery, theft, to the point that now there is no investigation nor does it occur to them to investigate*
Aragón (1645?-1688) and Epifanio de Moirans de Borgoña (1644-1689), who openly and clearly condemned the slave trade as violating all moral, religious and legal arguments. De Jaca and De Moirans invalidated their predecessors' argument of a just cause, called for an end to the slave trade, opposed giving the sacrament to those who, in any way, participated in the purchase or sale of slaves and demanded ample economic compensation for all the victims of slavery.

These texts, and their authors, merit more attention than history has given them. The documents were kept, unedited, for 300 years, until Venezuelan José Tomás López García printed them in his book Dos defensores de los esclavos negros en el siglo XVII (Two Defenders of Black Slaves in the Seventeenth Century), published in 1982. The documents that López García presents, and that sparked minimal reaction after their publication, came from a trial that began in Havana on 22 November 1681 and that finished in Madrid in 1686. De Jaca and de Moirans met in Havana. De Jaca had arrived from Cartagena where he had surely met Alonso de Sandoval. De Moirans arrived in Havana from Cumaná (Venezuela), having been exercising his ministry in other parts of the Caribbean. It seems that de Moirans was inspired by de Jaca's daring sermons and accompanied him to preach that the slaves were free by nature. Both refused to give the sacrament to those who did not promise to release their slaves and compensate them for the entire time that they had been unjustly detained.

According to de Moirans and de Jaca, they were, in reality, the only ones who were truly exercising a Christian mission in the Americas.37

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37 Apparently, a century earlier, Juan del Valle (?-1561), the first bishop of Popayán (Colombia), put forth the thesis that the forced indenture of the indigenous people was "contrary to universal good and the usefulness of the republics everywhere," and he forbade giving absolution and communion to the owners of encomiendas because they were in a state of open sin so long as they did not release the indentured Indians and return their possessions. Del Valle was accused before the Royal Court of Santafé and before the Council of the Indies. See (J. Friede 1961). However, the provincial council of Santo Domingo, on 28 December 1622, made an official declaration on the matter of abusing Indian servitude: "They are obligated to fully compensate those who, by force or fraud on in any other manner, have usurped more than the assessment required of the Indians. And the Visitors will make sure that is done, and the confessors have been warned to not give absolution to the penitents guilty of this if they have not already made the due restitution" quoted in (López García 1982:36).

The case of two Jesuits in Brazil, Frei Miguel García and Frei Gonçalo Leite, is worth mentioning. In the late sixteenth century, they too refused to give the sacraments or to hear confession from those who owned African slaves. Apparently García and Leite returned to Europe in protest and did not leave any written records of the importance of De Moirans and De Jaca. See (H. Thomas 1997).
Because of the complaints that were made about de Moirans and de Jaca, regarding their sermons and their refusal to hear the slave owners’ confessions, the two were arrested. The case is very complex, but for the purposes of this article it is sufficient to say that the Capuchins were accused by a supervisory father of having fraudulent credentials for confessing and preaching. Consequently, they were thus accused of being seditious missionaries for telling the slaves that they were naturally free.39 Although we do not have textual evidence of their sermons, in the trial against them, several witnesses testified to having been present during sermons in which de Jaca or de Moirans, going against Aristotle’s thesis, preached the natural freedom of all men, and consequently of the blacks. The witnesses also testified that the accused would not administer the sacraments or hear their confessions because they were slave owners. The witnesses asserted that such attitudes and words put everyone in danger because the message of their sermons could inspire slave uprisings.40

During their lengthy captivity, de Jaca and de Moirans wrote reports and their legal defense, arguing the “cause of the blacks.” Also –in a motion that they must have learned from de las Casas– they questioned the submission and the mistreatment that the indigenous people received at the hands of the landowners. Although de Jaca and de Moirans were more concerned about the black slaves, they did not neglect to make comparisons and references to the submission and mistreatment of the indigenous people. They requested that they be allowed to continue their mission in the Caribbean region and demanded that their manuscripts be returned to them. De Jaca and De Moirans sustained that they had been detained in an illegitimate manner when, in fact, they were the only ones who were fulfilling a mission in accordance with Christian principles and natural law.41

Although de Jaca and de Moirans wrote two autonomous and different texts, they each followed a parallel defense that is divided into three parts. First, they repudiated slavery and demonstrated why the institution goes against natural law, divine law and the law of nations (ius gentium). Second, they carefully refuted the contemporary supporters of slavery, making reference to laws, biblical texts and quoting jurists or theologians such as de Mercado, de Molina, Aristotle, Rebello, Avendaño and Saint Thomas, among many others. In a very structured manner they referred to and attacked, one by one, the arguments that were given at the time to justify slavery, even that of just cause, and they concluded that slavery is a “manifest robbery of the freedom of blacks.”

39 The accusations against de Jaca and de Moirans concerned their conduct but did not have theological or argumentative content.
40 De Jaca has a chapter titled “We are all free by nature” (Todos somos libres por naturaleza). See (López García 1982:125).
41 It seems that other manuscripts that they wrote while in detention were never returned to them and, according to López Garcia, “it is not known, to date, aside from those that we presented, where they
Finally, based on Thomas' doctrine of restitution, both de Jaca and de Moirans demanded compensation for the blacks as the only way of redeeming partly, the terrible sins committed by all who had participated in the slave trade. De Jaca wrote: "these blacks, and their ancestors, are free, not only as Christians, but also in their native land. And as such, not only does the obligation exist to restore their freedom, but also, in pursuit of justice, to pay them what they would have inherited from their forebears, parents, etc., that which would have enriched them, the lost time, the labor and the damages that they have suffered, in accordance with Thomas Aquinas, for his enslavement and for his personal service pro rata temporis, since one follows the other" (de Jaca 1982:160). De Moirans uses de Jaca's text to write and more fully develop his own, reasoning in the following manner:

Slavery being unjust, the sale and purchase unjust, possession iniquitous and being possessors in bad faith against natural, divine, positive law and the law of nations, it is obvious that their freedom must be restituted and all that which derives from it; as well as all that the owners have gained. Because of this, the possessors are in bad faith, according to theologians and as set down in the Rules of Law in VI "No one shall enrich himself through injury or to the detriment of another." This being so, both in Avendaño and in Europe, injury was committed by taking the blacks away as slaves, against natural law, [and] it is evident that all that has made the [owners] richer must be restored. Because, in truth, with the blood, sweat and labor of the unjustly enslaved slaves, the other was bought unjustly and by means of this, enrichment has taken place through injury and injustice in the Indies. Consequently, they are obliged to restitute all that which was acquired by means of the blacks (de Moirans 1982:278).

De Moirans explains that the restitution, according to Thomas de Aquinas, derives from two reasons: when something is unjustly received or when something is unjustly held. For clarity's sake, de Moirans lists all the possible forms of reception or possession that the "theologians commonly follow." Those responsible for providing restitution because of their participation in the unjustness are: "1) the person in command, the one who gives the order, 2) the one who advises, counsels, exhorts or instructs, 3) the consenter, like he who participates in an unjust war, 4) he who with his praise, recommendation or by some similar means induces one to do harm to another, 5) he who receives or keeps the unjustly obtained object, 6) he who aids or cooperates in unjust possession, 7) the one who keeps silent, he who could prevent the harm with his words but who does not speak up, 8) he who with his favor and aid could prevent the harm but does not do so, and 9) the one who may be" (López García 1982:45).

De Moirans cites Thomas Aquinas: S. Th. II-II, q. 62 a.2. de (de Moirans 1982:278).
does not manifest, who does not allow another to prevent the harm....” In sum, de Moirans made such an enumeration to show that there was an extended responsibility by all of those who in one way or another participated in the unjust slavery of the blacks, and all are obligated to make repairs (de Moirans 1982:280).

But de Moirans did not stop there. He continued describing those who should be judged responsible in participating in the unjust enslavement by expanding the responsibility to the state, to international trade and, it may be said, to all the European slave-using societies: “And from this, the kings, the Spanish merchants, Portuguese society, the Paris dealers, those who buy blacks and sell them to others, the transporters, the ship owners and the others who are effectively involved in this, the possessors and buyers, in the Indies and in Europe, the sellers and representatives and all of those set down in these lines would be obligated to restitute the freedom of the blacks, as well as the damages incurred and the value of their labors” (de Moirans 1982:280, 289). De Moirans believed that if his statements were left as a simple abstract enumeration, it would allow many to evade responsibility. So, he decided to continue explaining, with specific and concrete examples, why the slavery of the Africans is illegitimate and illegal and why the parties who participate in it are responsible, whether they have benefited from it or whether they did not do anything to prevent it from continuing.

In sum, according to de Jaca and de Moirans, the slaves must be compensated economically, calculating: 1) what they would have inherited from their ancestors, 2) what they could have earned had they not been enslaved, 3) the time lost in servitude, 4) the forced labor performed at no cost, 5) the physical and moral harm they suffered, and 6) “everything that they did that made the slave owners wealthier” (de Moirans 1982:278, 287).

However, they were aware that the damages were so extensive that restitution would be impossible. “The [victims] are not few, furthermore, there are so many blacks who over time have been exported to the Indies, that neither the Indies, nor Spain, would have enough for the restitution of the labor, its fruits and the damages that resulted, or for the liberty unjustly usurped, both concerning the fruits of fortune and the corporal assets and the rest.” Therefore, de Moirans offers a possible solution, “I would suggest a very simple remedy so that it would not appear that I am throwing Christians into despair.... the Europeans should not think they are exempt from restitution if the blacks have died or because they do not have children or heirs, or because these are not known... they are still obligated to restitute.” De Moirans’ solution, in accordance with Saint Thomas, is that when the victim is known, his heirs and descendents should be compensated. But if he is not alive or his family is unknown, then all the money and ill-gotten benefits of the owner should be given

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43 De Moirans repeats this statement in several parts of the text (de Moirans 1982:284, 287).
to the poor, "because these are the fruits of iniquity and because they are obliged
to do so under threat of eternal condemnation" (de Moirans 1982:288). Never-
theless, in a gesture of apparent desperation, de Moirans proposes an impos-
sible solution, though it is the only one he considers closest to justice: "Freedom
is of a superior order than all the assets in the world, and consequently restitu-
tion must be made, even with the destruction of all the Indies, Spain and France... the labor there is at the expense of blood and the Europeans have got-
ten rich off their blood, and consequently they are obligated to restitute the
labors even to the detriment of their assets... in accordance with the legal regu-
lation: 'Persons shall not enrich themselves through injury or harm to another.
They came naked to the Indies, let them return naked to Spain" (de Moirans
1982:297)

De Moirans and de Jaca concluded that the tragedy of slavery was not
based on an erroneous interpretation, nor on the innocent acceptance of a just
cause, but rather on the intentional deafness and blindness of all of those who
participated in some aspect of the trade, be they as vendors or recipients of
slaves. De Jaca and de Moirans repeatedly noted that there were enough theo-
logical and juridical arguments against the trade in human beings for all to
have rejected it. As such, the only possible conclusion was that they were all
acting in bad faith or, at least, that so much injustice had blinded those who
could otherwise have denounced and impeded the continuance of a trade that
was condemning them to eternal damnation. They also discussed that even by
accepting Aristotle's just cause theory, it was widely known that in the case of
the enslaved Africans brought to the Indies, the just cause consideration did
not apply at all. De Jaca wrote, "If the doctors, theologians, confessors, religi-
gious men had not been silent dogs in the Indies, then iniquity and injustice
would not have developed so enormously and without remedy" (de Moirans
1982).

Although de Jaca and de Moirans' daring was truly extraordinary, their
texts updated and stated a series of suppositions that had already been implicit-
ly or explicitly formulated in previous work. As said earlier, the idea of the
injustice of slavery should not only be considered in a linear and evolutionary
manner, as the product of nineteenth century liberalism, but rather it has a
more complicated history. Perhaps we should not be so surprised about the ex-
ceptionality of de Jaca and de Moirans' documents, if for no other reason than
we may not know about other texts that were so systematically opposed to sla-
very as these two in their time. In fact, as one delves further into colonial ar-
chives, a more complex and complete image may emerge of the first debates
about the slave trade.

It is therefore worthwhile to ask ourselves, why did this rich series of
juridical and theological critiques not prosper and how did the fertile debate
on slavery in the sixteenth and seventeenth centuries come to be forgotten? We
cannot simply suppose that these voices were too marginal, given that their texts circulated widely as later readers, de Jaca and de Moirans, demonstrated, since they were familiar with the existing literature on the subject. It is also relevant that during the seventeenth century the Capuchins, Jesuits, Dominicans and even archbishops continued sending letters protesting some aspect of the slave trade to the Congregation for the Doctrine of the Faith in Rome (Thomas 1997:148). As such, by the end of the seventeenth century there was enough juridical and theological debate to consolidate a more solid intellectual opposition to slavery.

All of this “new” information suggests that we should rethink the subject of slavery’s illegality/legality. Would these documents have been dangerous enough to cause the destabilization of the colonial system? And if this were so, why even today do we know so little about important texts like those of de Jaca and de Moirans? What would happen if the issue of reparations were to have been taken seriously, even in the nineteenth century, nearly 200 years after de Jaca and de Moirans’ proposals, when the abolition of slavery took place? The questions remain pending given the impossibility of answering them. However, it seems important to once again highlight the relevance that these texts may currently have, in recognizing the shameful situation of poverty and abandonment in which many communities of African descendants in Latin America continue to live, and when the subject of reparations is once again being discussed and debated.

REFERENCES

Alonso y Sanjurjo, Eugenio (1874), Apuntes sobre los proyectos de abolición de la esclavitud en las islas de Cuba y Puerto Rico, Madrid, Imp. de la Biblioteca de Instrucción y Recreo.


Blanchard, Peter (1992), Slavery and Abolition in Early Republican Peru, Wilmington, SR Books.


Castellanos, Jorge (1980), La abolición de la esclavitud en Popayán, 1832-1852, Cali, Colombia, Departamento de Publicaciones.
de Albornoz, Bartolome (1953 (1573)), *Arte de los Contratos*, Edited by A. d. Castro, Madrid.


de Mercado, Tomás (1977), *Suma de Tratos y Contratos*, Edited by N. Sánchez-Albornoz, Madrid, Fabrícia Nacional de Moneda y Timbre.


de Sandoval, Alonso (1956), *De instauranda aethiopum salute; el mundo de la esclavitud negra en América.%, Bogotá, Empresa Nacional de Publicaciones.


Feliu Cruz, Guillermo (1973), *La abolición de la esclavitud en Chile; estudio histórico y social*, Santiago de Chile, Editorial Universitaria.


Friede, Juan (1961), *Vida y luchas de don Juan del Valle, primer obispo de Popayán y protector de indios, Popayán, Colombia, Editorial Universidad.

García Añoveros, Jesús María (2000), *El pensamiento y los argumentos sobre la esclavitud en Europa en el siglo XVI y su aplicación a los indios americanos y a los negros africanos, vol. VI*, Edited by C. S. d. I. Científicas, Madrid, CSIC.


Gerbi, Antonello (1973a), *The Dispute of the New World*, Translated by J. Moyle, Pittsburgh, University of Pittsburgh Press.


López García, José Tomás (1982), *Dos defensores de los esclavos negros en el siglo XVII (Francisco José de Jaca y Epifanio de Mórains)*, Caracas, Editorial Arte.


Pérez-Cisneros, Enrique (1987), *La abolición de la esclavitud en Cuba* [S.I., s.n.].


Sepúlveda, Juan Ginés de (1941), *Democrats alter o Tratado sobre las justas causas de la guerra contra los indios 1547*, Edited by M. Menendez y Pelayo, México, Fondo de Cultura Económica.


Soto, Domingo de (1922), *Tratado de la justicia y el derecho*, Translated by J. T. Ripoll, Madrid, Editorial Reus.


Tavara, Santiago (1855), *Abolición de la esclavitud en el Perú*, Lima, Imprenta del Comercio.


