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## The Jesuits and the Indigenous Slavery: a Debate over Voluntary Slavery in Brazilian Colonial Period

**Abstract:** In 1566, a new legislation over slavery in Brazil motivated a debate between two members of the Jesuit order: Quirício Caxa and Manuel da Nóbrega over the conditions and limits of indigenous slavery. According to Caxa, a man could sell his children or himself in cases of great necessity whereas for Nóbrega this kind of sales could only happen in cases of extreme necessity. The aim of this paper is to shed light on this debate calling attention to some details not sufficiently examined by the more recent studies.

**Keywords:** Voluntary Slavery, Indigenous Slavery, Jesuit Political Thought in Brazil, Manuel da Nóbrega, Quirício Caxa.

**Resumo:** Em 1566, uma nova legislação sobre a escravidão no Brasil motivou um debate entre dois membros da Ordem Jesuíta, a saber, Quirício Caxa e Manuel da Nóbrega acerca das condições e dos limites da escravidão indígena. De acordo com Caxa, um homem poderia vender os seus filhos ou a si mesmo em casos de grande necessidade, ao passo que para Nóbrega esse tipo de venda poderia ocorrer somente em casos de extrema necessidade. O objetivo deste estudo é lançar luz sobre o debate, chamando atenção para alguns detalhes que não foram examinados suficientemente pelos estudos mais recentes.

**Palavras-chave:** escravidão voluntária, escravidão indígena, pensamento político jesuíta no Brasil, Manuel da Nóbrega, Quirício Caxa.

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In 1566, the regent of the Portuguese throne, Dom Henrique, wrote to the Governor-General Mem de Sá requesting precise information about the rumors of unjust captivity and ransom in Brazil and demanding opinion from the political, legal, and religious authorities to define an indigenous policy for the Colony<sup>1</sup>. On July 3 of the same year, a Committee met in Bahia, Brazil, in the presence of the Governor-General, Mem de Sá, the Bishop Pedro Leitão, the *Provedor-Mor* Braz Fragozo, and the provincial Luís Grã to establish a new legislation that became known as *Monitoria*.

The legislation recognized as legitimate cases of indigenous slavery<sup>2</sup> those in which the father sells his children when he is in great necessity, or when someone above twenty years of age, always in great necessity, sells himself. This new legislation provided a more extensive interpretation of the forms of slavery traditionally admitted. Indeed, the titles of slavery, acknowledged by law as legitimate, were four: being captured in a just war; having a death penalty conviction commuted into slavery; being naturally born into slavery; and, finally, the sale of the children or of the person himself, but only in cases of extreme necessity. The sale of human beings in case of great necessity is, therefore, a liberal extension of the traditional forms provided by the Committee<sup>3</sup>.

This new legislation unleashed an important debate within the Jesuit society concerning the exact nature of the kind of necessity required. On one hand, the Spanish professor of cases of conscience and of theology in the School of Bahia, Quirício Caxa (1538-1599), supported the more liberal interpretation of the Committee and admitted the possibility of voluntary slavery in case of

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<sup>1</sup> Cfr. «D. Sebastião, King of Portugal, to Mem de Sá, Governor of Brazil, August (?) 1566», in S. LEITE (ed.): *Monumenta Brasiliae IV (1563-1568)*, Monumenta Historica Societatis Iesu, Roma 1960, pp. 357-360, (hereafter MB).

<sup>2</sup> As Neil Whitehead suggested, the expression «indigenous slavery» means a form of servitude introduced in South America by the Europeans and it is not equivalent to the forms of servitude practiced by the indigenous people in the region. Cfr. N. L. WHITEHEAD, «Indigenous Slavery in South America, 1492-1820», in D. ELTIS - S. L. ENGERMAN (eds.), *The Cambridge World History of Slavery – Volume 3: Ad 1420-1804*, Cambridge University Press, Cambridge, 2011, pp. 248-271.

<sup>3</sup> For classification of the modes of enslavement admitted by traditional Roman Law cfr. W. W. BUCKLAND, *The Roman Law of Slavery. The Condition of the Slave in Private Law from Augustus to Justinian*, Cambridge University Press, Cambridge, 1908 (repr. 1970), specially Chapters XVII and XVIII. The four modes of enslavement recognized by early modern law could be found in Luis de Molina's *De Iustitia et Iure*, t. 1, II, 33. Cfr. also: A. A. COXITO, «Luis de Molina e a escravatura», *Revista Filosófica de Coimbra* 15 (1999) 117-136; A. M. HESPANHA, «Luís de Molina e a Escravidão dos Negros», *Análise Social* XXXV/157 (2001), pp. 937-960.

great necessity. On the other hand, the former provincial of the Jesuit order in Brazil, Manuel da Nóbrega (1517-1570), who had been expressly appointed as member of the Committee, but was unable to attend the session, sustained the more traditional interpretation and admitted voluntary slavery only in cases of extreme necessity.

The debate between these two Jesuits survived partially in one manuscript and was edited and published many times by S. Leite during the first half of the last century<sup>4</sup>. More recently, the debate was analyzed by J. Eisenberg in his PhD dissertation on Political Science<sup>5</sup> and carefully examined by C. A. Zeron in a PhD dissertation on History<sup>6</sup>. Our aim in this paper is simply to throw some light on the presuppositions of the debate not entirely elucidated by the recent studies. So, we will divide this paper in three parts. In the first one, we will try to put the

<sup>4</sup> Cfr. «Respostas do P. Manuel da Nóbrega ao P. Quirício Caxa, Baía», in MB IV, pp. 387-415, and p. 388 for the list of the successive editions.

<sup>5</sup> J. EISENBERG, *Theology, Political Theory, and Justification in the Jesuit Missions to Brazil, 1549-1560*, Unpublished Dissertation, City University of New York, 1998. The Portuguese version of the dissertation was published as: J. EISENBERG, *As missões jesuítas e o pensamento político moderno. Encontros culturais, aventuras teóricas*, Editora da UFMG, Belo Horizonte, 2000. See also J. EISENBERG, «A escravidão voluntária dos índios do Brasil e o pensamento político moderno», *Análise Social* XXXIX/170 (2004) 7-35, which summarizes his main arguments on the debate between Caxa and Nóbrega. Eisenberg sustains that the debates which occurred in the Colony had great influence on Molina and were an important moment in the history of subjective rights (p. 162). I think that Eisenberg overestimates the originality of Caxa's argument. The idea that a free man is master (*dominus*) of his actions is already present in Thomas Aquinas' *Summa Theologiae* IaIIae, a. 1. By the end of the 15th century, the German theologian and canonist Conrad Summenhart seems to be the first to identify liberty as a self-dominion and to affirm that a free man has a right over his own person, even if this *dominium* does not imply that he has the right, for example, to cut his members; cfr. Conrad Summenhart, *Septipertitum opus de contractibus pro foro conscientie atque theologico*, Hanegau 1500, q. 1, ABv: «Et sic liber habet ius super suam personam quamvis non sit dominus membrorum suorum ad ea abscindendum». Summenhart also discusses the cases of sales of free persons in q. 74. On this, cfr. J. VARKEMAA, *Conrad Summenhart's Theory of Individual Rights*, Brill, Leiden 2012, pp. 87-101; J. VARKEMAA, «Utrum homo sit dominus personae suae? The Question of Individual Liberty as an Example of the Confrontation of Canon Law and Moral Theology in Summenhart's Opus septipartitum» M. KORPIOLA (ed.), *Nordic Perspectives on Medieval Canon Law*, Matthias Calonius Society, Helsinki 1999, pp. 51-62.

<sup>6</sup> Cfr. C. A. M. R. ZERON, *Ligne de foi: La compagnie de Jésus et l'esclavage dans le processus de formation de la société coloniale en Amérique portugaise (XVI<sup>e</sup> – XVII<sup>e</sup> siècles)*, Honoré Champion Éditeur, Paris 2009. For the Portuguese translation, cfr. C. A. M. R. ZERON, *A Companhia de Jesus e a escravidão no processo de formação da sociedade colonial (Brasil, Séculos XVI e XVII)*, Edusp, São Paulo 2011.

debate in its original context and make some brief comments on the historical and political context of the Jesuit missionary project. Our main goal is to call attention to Nóbrega's changes of opinion during his work as the Provincial of the Company in Brazil and we will deeply rely on Zeron's interpretation. In the last two parts, we will emphasize the juridical, theological, and philosophical arguments used by both missionaries. The second part focuses on the conditions for the sale of children by their fathers while the third part centers on the arguments for and against voluntary slavery.

### **1. The missionary politics of the Jesuits (1549-1556)**

We can divide the period from Nóbrega's arrival in Brazil (1549) until the debate with Caxa (1557) in three stages, which correspond to three different moments of the Jesuit missionary strategy in Brazil and to three distinct opinions on the very nature of the indigenous. The first moment represents the Jesuits' enthusiasm and optimism on their mission. In his letters from that period, Nóbrega describes the large number of baptisms, emphasizes the «great good will» with which the Jesuits were received, highlights the natives' desire for conversion, and presents them as having «bad habits», but their bad behavior was never considered an impediment for their conversion. The greatest difficulty was the amount of work to be done and the low number of Jesuits present in the Colony and able to participate in the missionary project. But the nature of the indigenous was never considered as an obstacle to Christian faith, as Nóbrega admits in a letter addressed to his master in Coimbra, Martín Azpilcueta Navarro:

«From many regions we are called to go teach the things of God and we cannot reach all because we are so few; and certainly, I believe that in all the world there is no land so willing to produce fruit like this one, where we see souls perish, because they cannot be remedied: in lack of this, we spark in them the wish to become Christians, so that if they die during catechism, they receive God's mercy. I do not know how those who love God and want His glory can endure the patience of waiting to come dig this vineyard of the Lord, which is so spacious and so few workers do we here have. Few letters would suffice, because everything is white paper, and there is nothing to do, but willingly write the most needed virtues and zeal so that the Creator of these creatures be known»<sup>7</sup>.

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<sup>7</sup> Cfr. Manuel da Nóbrega, «Ao Dr. Martín de Azpilcueta Navarro, Salvador, 10 de agosto de 1549», in S. LEITE (ed.): *Cartas do Brasil e mais escritos do P. Manuel da Nóbrega (Opera Omnia) com introdução e notas históricas*, (Acta Universitatis Conimbrigensis), Coimbra 1955, p. 51.

The second moment is characterized by the disillusionment of the missionaries facing difficulties in avoiding that those already converted return to their former manners. Two causes seemed to put the missionary project at risk: firstly, the inconstant nature of the indigenous that so easily changes in contact with those who continue to adopt the old practices like polygamy and cannibalism; and secondly, the need to isolate the converts from the Portuguese colonizers and their exploratory practice of indigenous labor. The new Jesuit strategy to avoid the contact of the converted with the ancient customs became one of establishing greater proximity between the missionary and the indigenous by confining the natives from various tribes and nations in a place where they should live together and follow a way of life ruled by work and prayer. These places were the *aldeamentos*.

However, the project of creating a network of *aldeamentos* brought up the problem of their forms of subsistence and raised, within the order, a strong polemic concerning the way of financing these *aldeamentos*<sup>8</sup>. On one side, there was the position defended by Luís Grã, the successor of Nóbrega as the Brazilian provincial and ex-dean of the College of Coimbra. According to Grã, it would be a grave ethical problem for the Jesuits to have slaves and large properties. The missionaries should live exclusively on charity and donations of the local population. On the other side, Nóbrega never ceased to write to the Portuguese King complaining that the donations the order received from the Crown were insufficient for its maintenance. What Nóbrega was looking for was a permanent and autonomous way of funding the Jesuit missionary project in the Colony and he found it in two factors: the exploitation of the land and the work of slaves. In a letter, from 1557, Nóbrega clearly shows his disagreement with Luís Grã, as follows:

«From St. Vincent, I wrote, agreeing with Father Luís Grã, that it seemed to us that we should not accept from the King land and slaves to work the grange. So, agreeing with what was written there (St. Vincent) and with the opinion of the Fathers here (Bahia), now I say everything should be accepted, even hay; and if his Highness would like to send us a good quantity of land, where none has been given, with some slaves from Guinea, which would make provisions for this House, raise animals and go fishing in a boat, catching what is necessary, it would be the best, and the surest way of maintaining this house. Slaves of this land, it does not seem good to have them because of some inconveniences. Slaves from Guinea, tell him to bring many to this land»<sup>9</sup>.

<sup>8</sup> For the details, cfr. C. A. M. R. ZERON, *Ligne de foi*, pp. 77-104.

<sup>9</sup> Cfr. Manuel da Nóbrega, «Ao P. Miguel de Torres, Baía 2 de setembro de 1557», in S. LEITE, *Cartas do Brasil*, p. 267.

In the above passage, Nóbrega seems to be aware that he is moving away from the traditional position, represented by Luís Grã, and he justifies his change of attitude for pragmatic reasons which are presented as shared by other Jesuits in the region: the exploitation of land and slavery would be the best way to ensure the maintenance of the mission. For pragmatic reasons also, Nóbrega refuses that the Jesuits have indigenous slaves, although he does not appear to oppose to indigenous slavery as long as it is founded on a legitimate title.

The third moment we would like to highlight corresponds to the change in the economic structure of the Colony. The Portuguese government, without hope of finding riches in the Colony, started using large stretches of land for the production of sugar, a factor that increased the demand for a greater number of slaves. During this period, a new attitude towards the natives began to emerge with Nóbrega and would continue with his successor and friend José de Anchieta: given their nature, the indigenous could only be converted by submission and fear. The system of *aldeamentos* was not neglected, but it was now seen as insufficient. In a famous letter, dated May 1558, Nóbrega explained that the failure of conversion was due to the indigenous' savage nature.

«(...) there are others, who Christians never harmed, and the gentiles captured and ate them, made them depopulate many places and big farms. And they are so cruel and savage, that they killed those who never harmed them, such as clerics, monks, and women. (...) They are human flesh eaters, who, without exception, kill and eat everyone, and no benefits make them decline from their bad habits»<sup>10</sup>.

Paradoxically, the morals taught by the Jesuits were not, till then, sufficient to change the savage nature of the indigenous, since «being well treated and indoctrinated made them worse». Therefore, life in the *aldeamentos* did not seem to be a condition, in itself, strong enough to ensure conversion. So, the only resort would be submission and fear. Surprisingly, Nóbrega presents this solution as beneficial, not only to the purpose of the Jesuit mission, but also to the Portuguese economic project in the Colony, as well as for the settler since the enslaved would be distributed among those Christians who helped to subjugate them:

«Subjecting the gentile, many wrong ways of possessing slaves shall cease, because men will have legitimate slaves, captured in a just war, and they will have work and vassalage of the indigenous and the land will be populated and Our Lord will win over many souls and Your

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<sup>10</sup> Cf. Manuel da Nóbrega, «Ao P. Miguel de Torres, Baía, 8 de maio de 1558», in S. LEITE, *Cartas do Brasil*, p. 445.

Highness will have many riches in this land, because there will be a lot of livestock and many mills since there is not much gold and silver»<sup>11</sup>.

Note that Nóbrega is not justifying the just war as a real offense committed by the indigenous, but because their nature is only controlled through fear and submission.

The analysis of Nóbrega's political attitude during the years prior to the debate with Caxa shows that his main concern was the continuity of the Jesuit missionary project which was threatened by problems of different orders, such as the economic funding of the mission and of the growing lack of belief, by the Brothers, in the indigenous' capacity to be converted. The various solutions proposed by Nóbrega faced resistance, ranging from the most conservative, as in the debate with Luís Grã, to the most liberal, as in the controversy with Caxa.

## **2. How strong should be the reasons for selling a child? Caxa's first argument and Nóbrega's answer**

The core of the debate opposing Quirício Caxa and Manuel da Nóbrega relates to the exact interpretation of the kind of necessity involved in traditional legislation on slavery. According to Caxa, the validity of the sales of children, as well as of those who sold themselves, had as requisite to prove those sales were done in conditions of great necessity, while for Nóbrega, the proof required was stronger because what should be demonstrated in those sales was the existence of extreme necessity. More than a simple semantic problem, this debate had several other aspects and, at least for Nóbrega, it could directly affect the future of the Jesuit missionary project.

The first argument proposed by Caxa concerns the way of interpreting the text of the Law *De patribus qui filios distraxerunt*<sup>12</sup>. Caxa contends that this Law allows the sale of children in cases of extreme necessity. However, relying on the authority of the jurist of Bologna, Bartholomew of Salyceto (who wrote a Commentary on the *Code* at the end of the 14th century), Caxa intends to apply the legal principle «ubi eadem est ratio, idem debet esse ius» to justify his extensive interpretation of the text and allow sales in case of great necessity. Still, according

<sup>11</sup> Idem, p. 448.

<sup>12</sup> Cfr. *Codex*, Book IV, 43, 2 Law. (By «second Law» Caxa means the second and last part of this Law and not, as Eisenberg thinks, the Second Part of the *Summa theologiae* of Thomas Aquinas. See J. EISENBERG, *As missões jesuíticas*, p. 187, n. 39).

to Caxa, the court created by D. João the III to assist him in matters concerning the obligation of his moral conscience and known as the *Bureau of Conscience*, had advised the King to use that principle to extend the sense of his laws, in case of great necessity.

Compared to Caxa's first argument, Nóbrega's response is much broader and elaborate since he mentions a greater number of juridical and theological authorities. But his sources are mainly Thomas Aquinas, Domingo de Soto, and the Bible. He divides his answer into two parts, which he called, following the juridical terminology, as *quid iuris* and *quid facti*. In the first part, Nóbrega examines the legal aspect of the problem by showing that, when the law does not use the term 'extreme necessity', or when it mentions only 'great necessity', in both cases, the correct meaning of the text requires extreme necessity. In the second part, he criticizes the political consequences that would result from adopting Caxa's interpretation.

Nóbrega starts quoting the legal text of the *Codex*<sup>13</sup>, pointing out that the expression 'extreme necessity' is not employed by the Law, which only mentions extreme poverty and need. The common assumption that the law contains a reference to 'extreme necessity' should be taken as evidence of how the text must be read. As Caxa had done, Nóbrega also evokes the authority of the jurists to justify his own position, but the names he quotes are more famous and include Domingo de Soto, Accursius, Dinus Mugellanus, Andrea Alciate, and the professor of canon law and Bishop of Segovia Diego de Covarrubias. Afterwards, Nóbrega presents what he calls «the reason upon which everything must be based»<sup>14</sup>, namely that in case of conflict between two laws of nature, the strongest must prevail. So, when there is conflict between one law ordering to not steal and another ordering to preserve life, the latter prevails. The reason for this is that when human beings are in conditions of extreme necessity and their lives are in danger, the law and the obligation to preserve life make all things common. Nóbrega affirms to be following here the

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<sup>13</sup> Cfr. *Codex* 4, 43, 2, *De patribus qui filios distraxerunt: Imperator Constantinus*: «Si quis propter nimiam paupertatem egestatemque victus causa filium filiamve sanguinolentos vendiderit, venditione in hoc tantummodo casu valente emptor obtinendi eius servitii habeat facultatem». Cfr. the translation by K. HARPER, *Slavery in the Late Roman World, AD 275-425*, Cambridge University Press, Cambridge, 2011, p. 415: «If anyone, due to extreme poverty or need, should sell a newborn son or daughter for the sake of subsistence, it is valid only in this instance, and the buyer has the capacity to obtain its service».

<sup>14</sup> Cfr. Manuel da Nóbrega, *Respostas*, p. 397.



teachings of Thomas Aquinas and explicitly quotes question 66, IIaIIae, a. 7 of the *Summa Theologiae*, where Aquinas asks whether it is lawful to steal in cases of extreme necessity. Observe, however, that Aquinas characterizes the conflict in a slightly different way that is as one involving a conflict between a human law and a divine or natural law, and asserts that the former cannot derogate the latter. For Aquinas, all things are common by natural law, being private property a creation of positive law. Nóbrega also finds in the same article of the *Summa theologiae* the canonical authority he needs for his argument: the *Decretal* of Pope Gregory IX<sup>15</sup>. According to Nóbrega, the *Decretal* proves that even in cases of great necessity theft should be punished, but not in cases of extreme necessity, or in case of *urgens necessitas*, to employ here the vocabulary of Aquinas.

The theological bias of the argument continues when Nóbrega opposes the possible authorization given by the Bureau of Consciences to allow the sale of children in case of great necessity. Indeed, the Bureau would have followed Domingo de Soto in his *De iustitia et iure*. Now, if that were the case, it would suffice to refer to Soto's position to solve the issue. In his commentary to the famous sentence of Aesop (quoted by Miguel de Cervantes in his *Don Quijote de la Mancha*) «Liberty is not well sold for all the gold», Soto says that according to «the divine law» (*fas*), freedom can be sold, but only to save lives<sup>16</sup>. However, if the Bureau of Conscience had not followed that lesson it would have created an unjust law, because it would not have considered the local customs and would have legislated only in favor of the Portuguese. Notice also that the conditions, presented by Nóbrega to determine whether a law is just, are those listed by Isidore of Seville and mentioned by Aquinas in his *Treatise on law*<sup>17</sup>. Once more the *Summa* plays the role as Nóbrega's source.

<sup>15</sup> Thomas Aquinas, *Summa theologiae* IIaIIae q. 66, a. 7, arg. 1: «Ad septimum sic proceditur. Videtur quod non liceat alicui furari propter necessitatem. Non enim imponitur poenitentia nisi peccanti. Sed extra, de furtis, dicitur, *si quis per necessitatem famis aut nuditatis furatus fuerit cibaria, vestem vel pecus, poeniteat hebdomadas tres*. Ergo non licet furari propter necessitatem. [...] Ad primum ergo dicendum quod decretalis illa loquitur in casu in quo non est *urgens necessitas*».

<sup>16</sup> Domingo de Soto, *De iustitia et iure*, Lyon 1569, L. IV, q. 2, a. 2: «*Non bene pro toto libertas venditur auro: Vendi tamen pro vita fas est, quae omni est pretiosior auro*».

<sup>17</sup> Thomas Aquinas, *Summa theologiae* IaIIae q. 95, a. 3, arg. 1: «Videtur quod Isidorus inconvenienter qualitatem legis positivae describat, dicens, *erit lex honesta, iusta, possibilis secundum naturam, secundum consuetudinem patriae, loco temporisque conveniens, necessaria, utilis; manifesta quoque, ne aliquid per obscuritatem in captionem contineat; nullo privato commodo, sed pro communi utilitate civium scripta*».

Only after showing that his interpretation is consistent with natural, divine, and canonical law, Nóbrega can respond directly to the Committee that wrote the new legislation. Indeed, the task assigned by the King to the Committee was to propose a legislation that would take into account the events, which were happening in the Colony, without changing what was laid down by natural, divine, and canonical laws. So either it is admitted that the Committee had overpassed the limits of its authority, or one should accept that even having used the expression ‘great necessity’ the Committee only had in mind cases of extreme necessity.

Concerning the events in the Colony, or the *quid facti* part of the argument, Nóbrega says that he is aware of only one case in which indigenous parents sold their offspring. This occurred in 1550, when the Potiguares sold their children, due to «pure hunger and without intervention of any other cause»<sup>18</sup>. The remaining occurrences of selling children in the Colony were pure simulation and served as an excuse used by those who wanted to sell the unfairly submitted indigenous.

At the end of his first reply, Nóbrega writes directly addressing the King of Portugal and no longer to his opponent in the debate, the Jesuit brother Quirício Caxa. We can understand this change as a way to show what would have been his view, if he had been able to participate in the Committee. Nóbrega’s position was very clear: the sale of children should be forbidden in the Colony, because it is not an accepted practice among Christians and the goal of the Crown was to make Brazil political in its customs. We can recognize here Nóbrega’s attempt to emphasize the connection between the colonization projects of the Crown with the Jesuit missionary project, as it is clear in the following passage:

«And this is because everyone confesses that within the Christian police [polícia] the sale of children is not a practice even in cases of extreme necessity. Since His Highness intends to convert Brazil from its mistakes and make it political in its customs, I see no reason to introduce among them a custom they never had, being as barbaric as they are. The natural law of love for their children had never allowed them to practice [that custom], before the perverse greed arrived in this land»<sup>19</sup>.

### **3. Voluntary slavery: Caxa’s second argument and Nóbrega’s answer**

The second argument advanced by Caxa is more striking: Can someone who has reached legal age sell himself, even if he is not in extreme necessity?

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<sup>18</sup> Cfr. Manuel da Nóbrega, *Respostas*, p. 401.

<sup>19</sup> *Idem*, p. 402.

Caxa's argument clearly echoes the debate over the notion of «dominium» and of freedom as a human right, which involved many thinkers of the School of Salamanca. Despite the authorities mentioned by Caxa, such as Nicholas of Lyra, Duns Scotus, Richard of Mediavilla, and Peter de la Palu, his argument relies again on Thomas Aquinas and Domingo de Soto. Caxa presents three assumptions to demonstrate that an adult can sell himself. First, that a free man is master of his own liberty. According to Caxa, nobody denies this assumption, since if the men were not masters of their own freedom, they could never sell their freedom, even to preserve their lives. The only possible rejection would come from someone as the Cardinal Cajetan who denies that men are masters of their own fame and that they could not detract themselves even to avoid the torments of torture. Nevertheless, Caxa thinks that Cajetan is wrong and that men are masters of their own reputation and, therefore, of their own freedom.

Caxa does not explain why he thinks that Cajetan was wrong, but we can conjecture what would be his reasons noticing that the vocabulary he uses is very similar to the one employed by Soto when the Spanish theologian criticizes Cajetan in the very same point<sup>20</sup>. In fact, as Sven K. Knebel has shown, Soto's thesis that «a man is the master» or «proprietor of his own reputation» (*homo est dominus suae famae*) represented a revolution inside the Dominican order and had become a commonplace among theologians<sup>21</sup>, to the point that Soto's position is explicitly mentioned in the notes accompanying the Spanish translation of the *Summa*<sup>22</sup>. And since Soto was one of the main sources for Caxa, it is probably Soto's arguments that Caxa had in mind.

Both in his *Summula* and in his Commentary to the *Summa theologiae*, Cajetan sustained that no one can detract his own reputation without committing mortal sin, since, as he explains in the *Summula*, it is much worse a sin than

<sup>20</sup> In fact, Caxa's criticism to Cajetan's position is not entirely new and, contrary to Eisenberg's interpretation (*As missões*, p. 151), it is closely related to Soto's *De iustitia et iure*.

<sup>21</sup> S. K. KNEBEL, «Casuistry and the Early Modern Paradigm Shift in the Notion of Charity», in J. KRAYE – R. SAARINEN (eds.), *Moral Philosophy on the Threshold of Modernity*, Springer, Dordrecht 2005, pp. 115-139. Cfr. also R. SCHÜSSLER, «Moral Self-Ownership and Ius Possessionis in Scholastics», in V. MÄKINEN – P. KORKMAN (eds.), *Transformations in Medieval and Early-Modern Rights Discourse*, Springer, Dordrecht 2006, pp. 149-172.

<sup>22</sup> Cfr. Paulo de Palacio, *Summa Caietana, sacada en lenguaje Castellano: con anotaciones de muchas dudas y casos de consciencia*, Lisbon 21560, p. 108v: «Se note que la sententia del Autor fue la sententia comun: agora es la contraria, muchos tienen que puede uno infamar se [...]». Palacio mentions Thomas Aquinas and Domingo de Soto in this note.

committing suicide<sup>23</sup>. In the Commentary to the *Summa*, he gives two reasons. First, it is against the precept of charity according to which one should love oneself. Second, it is an offense against the community of the Church and so against the duties of justice towards the other community members<sup>24</sup>.

Soto reacted twice against Cajetan's position. Firstly, in his *De ratione tegendi et detegendi secretum*<sup>25</sup>, a small book based on his previous teachings at the University of Salamanca during the year 1540-1541, and later in his *De iustitia et iure*, asking whether a man is master of his own life and «reputation» (*fama*)<sup>26</sup>. Soto said that Cajetan's point of view was commonly accepted in the school and he had followed it for a certain time, even if he believed there were no good reasons for this, but now he has changed his mind. Cajetan was right when he stated that the precept of charity requires to love oneself. However, the duty to love oneself is related to spiritual goods. As for material goods, they are referred to only in so far as they are necessary for spiritual purposes. So if fame or reputation are not absolutely necessary for virtue, we should not speak of sin against charity. Thus, it is not a mortal sin if someone denigrates his own fame or honor, because, being fame and honor external goods, we are free to use them as we are to the other external goods. As Soto makes it clear, the dispute concerns the determination of what are the goods that we can freely afford without compromising our spiritual salvation.

«There are two kinds of goods: the one over which we have dominion, as money and external wealth which can give or lose according to our free will, so that even if we do that without a sufficient reason, we do not commit mortal sin. However, there are other kind of goods over which we do not have full control, like life, because we are not allowed to commit suicide.

<sup>23</sup> Thomas de Vio, *Summula Caietani*, Lyon 1551, p. 142: «Detrahare sibiipsi (hoc est infamare seipsium) peccatum est mortale ex suo genere gravius, quam detrahare proximo, quanto magis tenetur deligere famam suam propter Deum et commune bonum, quam proximi. Nec excusatur a peccato mortali propter metum aut tormenta: quoniam sicut nullus metus nullumque tormentum excusat a vulneratione aut occasione sui, ita nec infamatione sui. Quamvis enim pati detrimentum famae propriae, sit proprio arbitrio constitutum, si in aliorum malum non redundat, sicut pati vulnera et mortem: inferre tamen sibiipsi danum famae, criminis est, sicut vulnerare aut occidere se. Et in iudicio propter tormenta hoc fit, duplicatur iniquitas; quia adiungitur mendacium in iudicio perniciosum».

<sup>24</sup> Thomas de Vio, *S. Thomae Aquinatis Opera Omnia IX – Commentaria in Secundam Secundae D. Thomae*, Roma 1897, q. 73, a. 2, p. 135.

<sup>25</sup> Domingo de Soto, «De ratione tegendi et detegendi secretum», in Domingo de Soto, *Relecciones y opúsculos, II-1: El abuso de los juramentos; La ocultación y revelación de secretos*, edición, introducción y traducción de A. O. FERNÁNDEZ-LARGO, Editorial San Esteban, Salamanca 2000.

<sup>26</sup> Domingo de Soto, *De iustitia et iure*, Lyon 1582, IV, q. 2, a. 3, f. 103v-105r.

Cajetan thinks honor and fame are like life and that, therefore, a person does not have absolute dominion over his fame, but that only God and the society has it. So whoever detracts himself commits an act of injustice against society and must repay the good that they deprived»<sup>27</sup>.

Against Cajetan, Soto places honor and fame among the external goods, denying that it belongs to the same order as one's life. So, a person has the same kind of «dominium» over his reputation that he has over his external goods. Soto can then conclude that every «man is master of his own reputation» (*homo est dominus suae famae*), and Caxa can add that the same is true for freedom.

The second assumption presented by Caxa is a necessary condition for any kind of legal sale, that is, a thing has to have a price in order to be sold. Then, when the law allows the sale of human beings in cases of extreme necessity, the law implicitly admits that it would be possible to measure human liberty in monetary terms.

Caxa's third and last presupposition is that there is no law (divine, natural, or human) that forbids a person to sell himself, and he gives two reasons for that. The first one is simply a Portuguese translation of Thomas Aquinas' two ways of understanding what belongs to natural law: «First, because nature inclines thereto: e.g. that one should not do harm to another. Secondly, because nature did not bring in the contrary: thus we might say that for man to be naked is of the natural law, because nature did not give him clothes, but art invented them»<sup>28</sup>. According to this, the possession of all things in common and universal freedom are said to be of the natural law. In this sense, slavery is neither something natural nor a creation that contradicts natural law. The same is confirmed by the Spanish canonist and theologian Martin de Azpilcueta who says that, when a person sells himself, he is not doing something illicit, since it is neither against divine or natural law, nor prohibited by human law<sup>29</sup>. Accepting these three presuppositions, the conclusion follows easily: a free man is master of his own liberty and can sell himself if he wants.

Nóbrega's answer to this second argument is emphatic. He does not deny that

<sup>27</sup> Domingo de Soto, «De ratione tegendi et detegendi secretum», op. cit., p. 220.

<sup>28</sup> Thomas Aquinas, *Summa theologiae* I-II, q. 94, a. 5, ad 3. We quote the English translation from *The Summa Theologica of St. Thomas Aquinas*, literally translated by Fathers of the English Dominican Province, Online Edition Copyright © 2008 by Kevin Knight, URL = <http://www.newadvent.org/summa/2094.htm#article5>.

<sup>29</sup> Martin of Azpilcueta, *Commentarius resolutorius de usuris*, Si foeneraueris 14, q. 13: «Septimo, quod quamvis teneremus posse aliquem se vendere aut se alicui ad tempus aut perpetuo in seruum tradere, eo quod licitum sit, secundum ius naturale, diuinum, non prohibitum humano tamen [...]».

a man is master of his own liberty. He only replies that without a fair cause, no one can sell himself. So the core of the debate is this: can a free man arbitrarily give up his freedom and sell himself, or does a free man need to justify his action explaining that he has a very strong reason to abandon his freedom?

According to Nóbrega's pragmatic point of view, a man never gives up his freedom without a very strong cause. What was happening in Brazil were not cases of men freely selling themselves, but of some unfair Christians using the argument that the indigenous freely sold themselves as an excuse to commercialize the unjustly captured indigenous and avoid punishment. Accepting a form of slavery based not on a fair cause, but on a simple and arbitrary desire to become a slave, is equivalent to creating, in the Colony, a way to justify the enslavement practices of Portuguese settlers and to forget the principal aim of the Jesuit project: the indigenous conversion.

Nóbrega also accuses Caxa of misreading his sources in order to prove his ideas. It is surely true, as Caxa supposes in his first argument, that a man is master of his own freedom. Nevertheless, it is a law of nature that someone should conserve his freedom, and only when this law is in conflict with another law of nature (to preserve life) can a man give up his freedom. It is also true that someone can estimate his freedom in monetary terms, but it does not mean that he can sell his freedom without a strong cause. Furthermore, the passage of the *Summa theologiae* that Caxa quotes in favor of his argument should be read in an opposite sense. Aquinas really says that «communis omnium possessio» and «omnium una libertas esse iure naturali». However, the human law cannot introduce slavery without a reason and a benefit to human life. This benefit is not something arbitrary, but a just cause. After this, Nóbrega can therefore conclude:

«Destroyed the grounds for your argument and resolving the matter, I say that freedom belongs to the natural law, and it cannot be lost unless reason, based on natural law, permits it. But when there is no freedom of will or there is another form of tyranny, or there is not a just cause for someone to sell himself, he cannot be a slave without the sin of injustice»<sup>30</sup>.

In the rest of his answer, Nóbrega analyses the cases of unjust captivity in the Colony and proposes to the Crown ways on how captives should be treated. Again, Nóbrega is trying to impose an interpretation of the law that will favor the Jesuit missionary project, one which he says is the same as the political project of the Crown.

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<sup>30</sup> Manuel da Nóbrega, *Respostas*, p. 410.