



Publicatieserie Stichting Oud-Katholiek Seminarie

<https://hdl.handle.net/1874/432958>

ALONSO "EL TOSTADO"

(c. 1410 - 1455)



*His doctrine on jurisdiction and its influence
in the Church of Utrecht*

JAN HALLEBEEK

Publicatieserie Stichting Oud-Katholiek Seminarie

aflevering 29

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Amersfoort: Stichting Centraal Oud-Katholiek Boekhuis.
— (Publicatieserie Stichting Oud-Katholiek Seminarie; nr. 29)

ISBN 90-70596-63-6

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Jan Hallebeek

Alonso Tostado, as a theologian and canonist-jurist in the Church of Utrecht during the 15th century, was a prominent figure in the development of the doctrine of jurisdiction. His work, *De iurisdictione*, is a key text in the history of the Church of Utrecht. He was a member of the University of Utrecht and a member of the Order of the Golden Bull. He was a member of the Order of the Golden Bull and a member of the Order of the Golden Bull.

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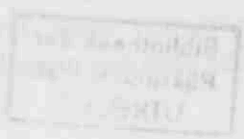
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Alonso "el Tostado" (c. 1410-1452)

His opinion on jurisdiction and the Church
in the Church of Utrecht

illustration on the cover:

Alonso "el Tostado" as depicted in the edition of
his work *De optima politia* (Venice 1529, fol. 2r).



I. Introduction

Within Jansenism, as a theological and ecclesiastical movement in continental Europe during the seventeenth and eighteenth centuries, several different forms can be discerned. Apart from an early, doctrinal Jansenism, mainly determined by the well-known dispute concerning the doctrines of divine grace and predestination, and a later, moral-theological Jansenism, there is also a third and last manifestation, viz. ecclesiological or legal Jansenism. In the Church of Utrecht, it emerged at the end of the seventeenth century and was predominantly present during the entire eighteenth century. This ecclesiological Jansenism, which is often said to have its roots in the propositions proclaimed by the theological faculty of Paris and in the writings of Edmond Richer (1559-1631), is, as regards contents, far removed from the original controversies¹. In early Jansenist authorities not much attention is yet given to the teachings of Richer. One may encounter ecclesiological or legal premises which came to prevail in the Church of Utrecht during the eighteenth century, but these do not yet belong to the central issues of the movement and are not further developed².

The secondary literature considers the Gallican theologian Edmond Richer, just mentioned, to be the principal originator of the ecclesiological Jansenism. The latter is even quite often depicted as characterised by “richerism” or “richerianism”. A pamphlet by

¹ Some authors qualify the original doctrinal dispute as the ordinary Jansenist controversy. See e.g. C.A. Bolton, *Church reform in 18th century Italy (The synod of Pistoia, 1786)*, The Hague 1969, p. 26.

² There are, for example, some remarks by Antoine Arnauld (1612-1694), which are perfectly in conformity with the opinion of Richer, such as the observation that bishops, just as the Pope, acquire their authority from Christ. Cf. the *Requête présentée au Roi par les Ecclésiastiques qui ont été à Port-Royal (1668)*, Article XIII, in A. Arnauld, *Oeuvres*, Tom. XXIV, Paris/Lausanne 1779, p. 430.

Richer, dating from the year 1611 and dealing with ecclesiastical administrative powers³, is supposed to have strongly influenced the Louvain canonist Zegers Bernard van Espen (1646-1728) and through him the Church of Utrecht. However, it is insufficient to refer merely to Richer and his pamphlet. A distinct influence can be ascribed to a number of late mediaeval canonists and theologians.

In this study I would like to confine myself to one of those influential authors, viz. Alonso "el Tostado", the fifteenth century bishop of Avila. On earlier occasions I pointed out *en passant* the influence his teachings on jurisdiction probably had upon the ecclesiological and canon law opinions which came to prevail in late Jansenism and in the Church of Utrecht⁴, but I devoted only little space to the doctrine of Tostado itself. Moreover, it is surely appropriate to compare his doctrine to the one of the School of Paris and Edmond Richer, to which the literature rather exclusively ascribes all influence. The differences resulting from such a comparison may show whether other opinions on ecclesiastical jurisdiction, such as Tostado's, have also left their marks in the ecclesiological opinions of our ancestors.

³ Emundus Richerius, *De ecclesiastica et politica potestate liber unus*, Paris 1611.

⁴ J. Hallebeek, *Over de oorsprong van jurisdictie* [Publicatieserie Oud-Katholiek Seminarie, 23], Amersfoort 1992, p. 18,19,24 and 39 (note 69); J. Hallebeek, *Omnis jurisdictionis fons ecclesia. An eighteenth century debate on the origin of jurisdiction*, in IKZ 85 (1995), p. 123-125,128 and 131.

II. Alonso Fernández de Madrigal “el Tostado”

El Tostado is the surname of Alonso or Alfonso Fernández de Madrigal. He was born at Madrigal de las Altas Torres around the year 1410 and became known by two surnames, that is to say *el Tostado* and *el Abulense*. *El Tostado*, literally translated “the tinted one” or “the roasted one”, may be a reference to skin colour. The other surname, *el Abulense*, is due to the fact that in his later life Alonso was bishop of Avila.

In 1426 Tostado commenced his studies at the university of Salamanca, where he gained the title of *magister* (of arts) in the year 1432. From that moment onwards he taught moral philosophy and continued at the same time his own studies. In 1441 he gained the degree of master of theology, which allowed him to teach in the faculty of theology. Having two teaching commitments now, he still found the time to study law and gained the Bachelor's degree in the *canones*. In 1441 Tostado was appointed canon of the cathedral of Salamanca and from the year 1446 until his appointment as bishop of Avila in 1454 he was chancellor of the university. Tostado was known for his exceptional erudition. At an early age he had mastered Greek, Latin and Hebrew, remembering everything he once set eyes on and he was, according to his contemporaries, a walking library.

At the request of King Juan II of Castile (1405-1454) Tostado made a trip to Italy in the year 1443, where he asked for an interview with Pope Eugenius IV (c. 1383-1447). It was his intention to elucidate twenty one propositions derived from his works, which were criticized or misinterpreted. The Pope consigned the inquiry to a tribunal composed of three cardinals. One of them was the Dominican Juan de Torquemada (1388-1468). The tribunal raised objections against five proposition, against three of them even serious objections. Only one of those had a doctrinal nature and

referred to the remission of guilt and punishment. The other two propositions contained controversies of a historical nature. Tostado had taught, for example, that Christ died just after reaching the age of thirty three, viz. on April 3 and not on September 25 as was generally presumed ⁵.

During Tostado's absence, there were some attempts to deprive him of his prebendaryship at Salamanca. After returning from Italy in 1444, Tostado retreated to the Carthusian monastery of *Scala Dei* in Tarragona and from here he sought to preserve his source of revenue. His attempts were not successful and eventually he had to give up his prebendaryship. Tostado stayed in the monastery until King Juan II urged him to return to Castile. The king engaged him as advisor and chancellor until, in 1454, on the king's recommendation he was appointed bishop of Avila ⁶.

III. Tostado's doctrine on jurisdiction

As stated above, this study is devoted to Tostado's doctrine on jurisdiction. In several fragments in his edited works Tostado explicitly declares that he wrote a monograph on the origin and subdivision of the several kinds of jurisdiction under the title *libellus de origine et distinctione jurisdictionum*. The text of the work itself is

⁵ Tostado defended the three propositions in his work *Defensorium trium conclusionum*, enshrined in Tom. XXV of the *Opera Omnia* (edition Venice 1728).

⁶ Literature: S. Bosi, *Alfonso Tostato, Vita ed opere*, Rome 1952; N. Belloso Martín, *Política y humanismo en el siglo XV, El maestro Alfonso de Madrigal, el Tostado* [Serie Derecho; 13], Valladolid 1988.

not preserved or, at least, has not yet been rediscovered ⁷. However, the context of references to the *libellus* sometimes reveals information about the subject matter of the work. In his commentary on 2 Chronicles 18 Tostado describes the distinction between the jurisdiction for priests and that for lay persons. Such a distinction was lacking in the Old Testament. Sometimes the people were governed by lay persons and sometimes by priests. In case of criminal offences there was an equal punishment for both lay persons and priests: death penalty by legal provision. At this stage of his argument Tostado refers to his monograph on jurisdiction ⁸. From this context we cannot deduce whether the missing monograph did or did not discuss the origin and acquisition of ecclesiastical jurisdiction (the power of the keys).

However, also in another context Tostado refers to the same work and this passage confirms the idea that the monograph probably did pronounce upon ecclesiastical jurisdiction. In his commentary on Matthew 16 Tostado states that it is not St. Peter, but rather Christ himself who is the foundation of the Church. For this reason the Pope is not the foundation of the Church, but conversely the Church is the mother and the foundation of the Pope. Concerning the relation between St. Peter and the other Apostles, Tostado subsequently refers to his monograph on jurisdiction ⁹.

⁷ The work is mentioned in the *catalogus opusculorum quae hactenus inventa non sunt*, which is reproduced at the beginning of Tom. I of the *Opera Omnia* (edition Venice 1728).

⁸ The commentary upon 2 Chronicles 18 (*quaestio* 41); Cf. Alphonsus Tostatus, *In secundam partem Paralipomenon*, *Opera Omnia*, Venice 1728, Tom. XVII, p. 399 column 2; De hoc autem magis declarabitur in libro nostro de origine et distinctione jurisdictionum.

⁹ The commentary upon Matthew 16 (*quaestio* 67): Cf. Alphonsus Tostatus, *In quartam partem Matthaei*, *Opera Omnia*, Venice 1728, Tom. XXI, p. 304 column

Tostado's opinion on jurisdiction is much better preserved in some fragments of works edited in his *Opera Omnia*. The most important passages can be found in the commentary on the book Numbers (composed between 1436 and 1438), and in the *Defensorium trium conclusionum*, a further elaboration of his defence of the three propositions in 1443, which work was edited posthumously.

In *quaestio* XLVIII of the commentary on Numbers 15 Tostado states that jurisdiction as an acting (*cum actum*) cannot rest with a multitude, but only with a distinct person, because jurisdiction implies acts such as judging and governing. However, as regards its origin (*origo*) and strength (*virtus*), jurisdiction resides in the community. Whoever acquires jurisdiction, receives it by virtue of the community. Christ granted the keys to the entire Church, but because the "entire Church" cannot have control of the keys, because she is not a distinct person, she entrusted them to St. Peter in the name of the Church.

A different assumption, viz. that Christ granted the keys to St. Peter in particular, will lead to a number of problems. It would follow that the other Apostles would have no jurisdiction at their disposal, and in view of John 20, 22-23 we know they did. However, there is even a more serious problem. The power of the keys would have perished at the moment St. Peter died. Even if we assume that the power of the keys was granted to all Apostles, this problem will remain, because the Apostles were not capable of passing over the power of the keys to others by creating their successors. In a similar way no bishop can of himself create his successor. And yet all successors of St. Peter, as well as the other bishops, have the keys at

2: De comparatione eius (Petri) ad alios apostolos et partes ecclesiae dicetur latius in libro nostro de origine et distinctione iurisdictionum.

their disposal in the same way as St. Peter and the Apostles. For this reason the keys could never be granted to them in person, but only in their capacity as servants of the Church. For this reason the keys were entrusted to the Church. As the Church does not perish, the power of the keys will never perish. The Church holds the keys as regards their origin (*radicaliter*) and the power of the keys was given to St. Peter as to the person chosen for the exercise of jurisdiction. After his death the Church could elect a successor and, by doing so, transfer to him the authority held by St. Peter. Christ did not have to grant the power of the keys for a second time to St. Peter's successor.

In the following passage Tostado makes a comparison with other, secular communities (*communitas* or *collegium*). Jurisdiction resides in such communities, because no one can have jurisdiction at his disposal prior to his appointment as magistrate or administrator. Because the community elects him or appoints him, he has jurisdiction. When he passes away or renounces his office, jurisdiction is not lost, because another person can now be appointed magistrate and administrator and this would be impossible if jurisdiction did not continue to reside in the community. For this reason it is the community itself which holds jurisdiction.

Sede vacante the chapter has all the powers belonging to the bishop's jurisdiction, but not the sacramental ones (*quae sunt ordinis*). If the powers were granted to the bishop in person, they would be lost until there was a successor, but they are not lost and for this reason the powers belong essentially (*radicaliter*) to the Church, rather than to the ministers. The Church must have had these powers from the beginning, because the community cannot of itself establish the power of the keys. After all, jurisdiction includes the authority to absolve from sins. Man is not able to create such an authority. This exclusively belongs to God, because only He himself

grants forgiveness. This jurisdiction was granted once and for all to the Church.

At the moment someone is elected he acquires jurisdiction. The Church holds jurisdiction, but is not capable of exercising it by herself, because she is not a distinct person. For this reason she confers it on someone by election. When the Pope is elected by the cardinals, he is elected by the Church, because the cardinals perform the election in the name of the Church. After all, it is not possible for the entire Church to assemble for the election. The election may be performed by the cardinals as long as they act according to the wish of the Church as expressed in her decrees and constitutions. If these are not observed, no jurisdiction at all is granted and the person elected is no Pope.

In the following *quaestio* (XLIX) Tostado states that the Church accepted the keys and that the Apostles did the same as being servants of the Church. As a consequence, both the Church and the bishops hold the keys nowadays, but they do this in a different way. The Church holds the keys as regards the origin (*origo*) and strength (*virtus*), bishops as regards the exercise (*usus*). The Church is said to hold the keys as regards the *virtus*, because she can through election entrust jurisdiction to the bishop. She is said to hold the keys *per originem*, because the power of ministers does not originate from themselves, but through election from the authority of the Church. The Church, in her turn, acquired this jurisdiction from no one after receiving it for once and for all from Christ. When she grants it to her ministers, she does not abandon it as regards *virtus* and *origo*, but she only confers on them its exercise.

Subsequently a comparison is made to a doctrinal distinction, derived from civil law, that is to say the one between bare ownership

and usufruct¹⁰. The bare owner has no longer at his disposal the powers he gave up. He himself has no usufruct or another title to the use of the property. In such a way the Church has no control over the exercise of the keys. If this would be possible, she would not leave the power of the keys to others. In fact this was the case also in Numbers 15, 34. The entire assembly did not manage to come to a judgement and did not know how to inflict a penalty. It did not exercise jurisdiction by itself, but appointed magistrates, whose task it was to judge the person imprisoned (the one who broke the sabbath)¹¹.

The acquisition of ecclesiastical jurisdiction is discussed also in the *Defensorium trium conclusionum*. According to Tostado it is God himself and not the bishop or the Pope, who at the moment of consecration grants immediate sacramental powers (*potestas ordinis*) to the ordinand¹². Jurisdiction, on the other hand, is granted indirectly by God, but immediately by the ordaining bishop or by the Church. Contrary to the commentary on Numbers, here not the election but the consecration is mentioned as the moment jurisdiction is acquired. However, Tostado does discern within the consecration an element of ecclesiastical law. When the ordinand acquires jurisdiction at the moment of consecration, it is because the prohibition, which until now has bound his hands on the ground of ecclesiastical law, is lifted¹³. Bishops do not acquire jurisdiction

¹⁰ See for the twin concepts *proprietas* and *usus* in Scholasticism also J. Hallebeek, *Thomas Aquinas' theory of property*, in *The Irish Jurist*, Vol. XXII (new series) part 1 (1987), p. 109-110.

¹¹ The commentary upon Numbers 15 (*quaestiones* 48-49): Cf. Alphonsus Tostatus, *In primam partem Numerorum, Opera Omnia*, Venice 1728, Tom. V, p. 357-358.

¹² *Defensorium* (note 5), Pars II cap. 62 (p. 135-136).

¹³ *Defensorium* (note 5), Pars II cap. 63 (p. 136).

according to the law of Christ, but according to ecclesiastical laws. Christ granted jurisdiction to the entire Church and, consequently, this jurisdiction has its origin in the Gospel, but it is derived from the Church, or, to put it differently, the attribution and exercise of jurisdiction is laid down in ecclesiastical law. According to Tostado, however, the Pope does play a part in attributing authority. Although he himself does not derive jurisdiction directly from God, but from the Church as intermediary, the bishops receive their jurisdiction through the Pope ¹⁴.

How can Tostado's doctrine on jurisdiction be summarized? Firstly, it is clear, that jurisdiction is granted to the Church and not to St. Peter in particular. This was an existing opinion. Starting points for this view can already be traced in St. Augustine ¹⁵. In view of Matthew 18, 15-17 (*dic ecclesiae*) it was argued that jurisdiction belongs primarily to the Church. Tostado adopted this view and taught, that whoever holds jurisdiction, including the Pope, derives this jurisdiction from the Church and not immediately from God. The doctrine, that jurisdiction is derived from the community governed by this jurisdiction, is also an existing opinion, defended, for example, by Hervaeus Natalis (d. 1323), Marsilius of Padua (d. 1342) and William of Ockham (1290-1349) ¹⁶.

It is also clear, that according to Tostado the attribution and exercise of jurisdiction is not determined by divine law, but by

¹⁴ *Defensorium* (note 5), Pars II cap. 64 (p. 136-137).

¹⁵ Augustine, *Ennaratio in psalmum cviii*, n. 1, *Migne PL*, 37 column 1431-1432. Cf. also the quotation of Augustine enshrined in C.24 q.1 c.6 and Augustine, *Contra adversarium legis*, lib. 1 cap. 17 n. 36, *Migne PL*, 42 column 623 and Augustine, *Tractatus in Johannem*, cap. 124 n. 5, *Migne PL*, 35 columns 1973-1974.

¹⁶ B. Tierney, *Religion, law, and the growth of constitutional thought 1150-1650*, Cambridge 1982, p. 44-53.

ecclesiastical, human law. This explains why Tostado in the commentary on Numbers regards the election (element of ecclesiastical law) as the moment when jurisdiction is acquired. In the *Defensorium* he mentions the consecration as such, but then again he discerns within this consecration a decisive element of ecclesiastical law. The fragment in the commentary on Numbers may have been written with respect to the election of the Pope, whereas the passages from the *Defensorium* refer to the consecration of diocesan bishops, but this cannot be deduced from the context with certainty. Tostado's opinion, that the Pope too derives his jurisdiction from the Church (his mother) and not directly from God, has to do with his conciliaristic views as expressed in the *Defensorium*. The entire Church, to which Christ himself granted jurisdiction, primarily displays herself in the General Council. This view is in conformity with the stand taken by the Council of Constance, that the Council acquires its authority directly from Christ and that even the Pope is subjected to this authority¹⁷.

Tostado is certainly no episcopalist, where he teaches that the bishops acquire their jurisdiction through the Pope as an intermediary. According to divine law jurisdiction is given to the Church and ecclesiastical law will determine in which way the Church attributes the exercise of jurisdiction to her servants. This attribution is governed by a solid hierarchy. Bishops acquire their jurisdiction from the Pope and the Pope, in his turn, from the Church. This view, just like that of Jean Gerson (1363-1429), fits in with existing practice, characterized by the reservation for the Roman Pontiff of quite a number of elections.

In the commentary on Numbers not a single trace can be found, either of this solid hierarchy, or of the bishop's subordination

¹⁷ The Council of Constance: the fourth and fifth session (30 March and 16 April of the year 1415); G. Alberigo/H. Jedin, *Conciliorum oecumenicorum decreta*, Bologna, 1973³, p. 408-410.

to the Pope. There, Tostado speaks about the Church as a community (*communitas*) and compares her to a secular corporation which he also denotes as a community (*communitas* or *collegium*, indicating fraternities, guilds, etc.), and with “the entire assembly” in the Old Testament. By doing so, he does not create the impression of adopting the notion “Church” solely as the General Council, the *communitas* par excellence of the universal Church. He does not exclude the local Church and refers explicitly to the chapter, which *sede vacante* exercises jurisdiction and elects the bishop in the name of the Church. The chapter has precisely the same authority at its disposal as the bishop. Essentially this jurisdiction resides in the Church. This explains why the notion “entire Church which holds jurisdiction” may also be understood as the local Church and why she includes more than just the chapter, which merely represents the clergy. The “entire Church” Tostado is referring to, may well coincide with the *ecclesia universalis* as discussed by Ockham and the *congregatio fidelium* mentioned by Marsilius of Padua.

As stated above, Tostado was a conciliarist, but certainly no episcopalist. He took for granted the existing status quo with its numerous reservations. Yet his doctrine on jurisdiction contains arguments which may serve to defend the position of the lower clergy (vicars) towards their bishop and the one of the diocesan bishops towards the Pope. As regards the first of these possibilities, one could emphasize the idea, that jurisdiction resides in the entire Church as regards its origin, strength and property. Because the Church includes the lower clergy, the latter also share in the Church's jurisdiction as regards its origin (*radicaliter*): the bishops merely hold the *usus*. The position of the bishops towards the Pope could be strengthened by Tostado's view, that all jurisdiction, including the one of the Pope, is derived from the Church and that the Pope, just as much as the other bishops, is subordinated to the Church. Unlike Tostado however, the episcopalistic doctrine

considers every bishop, just as the Pope, to derive his jurisdiction directly from the Church without any mediation. This indeed seems to be the case, where the diocesan bishop is still elected by the chapter and the metropolitan or the Pope merely confirms the election.

All in all, the fragment from the commentary on Numbers is more suitable for substantiating an episcopalistic ecclesiology than the one from the *Defensorium*. The latter, on the other hand, is more suitable for substantiating the conciliaristic view.

IV. Edmond Richer

The fact that Tostado's opinion on jurisdiction managed to affect the ecclesiology and canon law doctrines as they developed during the seventeenth and eighteenth centuries in the Church of Utrecht, is with all probability due to Edmond Richer¹⁸. This French theologian quoted extensively Tostado's passages on jurisdiction in support of his own teachings and because his works became influential in late Jansenism and in the Church of Utrecht, Tostado's ideas also were spread. It would not be correct, however, to suppose that Tostado and Richer had identical opinions on the origin of ecclesiastical jurisdiction. Both of them acknowledged that jurisdiction was not granted to St. Peter in person and by so doing they sided against the curialistic view, that all ecclesiastical jurisdiction primarily resides in the Pope. Richer's opinion was based

¹⁸ Literature: A. Baillet, *La vie d'Edmond Richer, docteur de Sorbonne*, Liège 1714, nouv. ed. Amsterdam 1715; E. Préclin, *Edmond Richer (1559-1631), Sa vie, son oeuvre, le richerisme*, in *Revue d'Histoire Moderne* 5 (1930), p. 241-296 and 321-336. Further literature is given in M. Nuttinck, *La vie et l'oeuvre de Zeger-Bernard van Espen, Un canoniste janséniste, gallican et régalien à l'université de Louvain (1646-1728)*, Louvain 1969, p. 437, note 183.

upon the school of Paris, which taught, as did Tostado, that the power of the keys and ecclesiastical jurisdiction (also here the two are linked together!) are given to the entire Church in order to be exercised *ministerialiter* by one person, because the entire ecclesiastical jurisdiction belongs to the Church *essentialiter*, but to the Pope and the other bishops *ministerialiter*¹⁹. The school of Paris used here the notion *essentialiter*, where Tostado spoke about *secundem originem et virtutem*, and used the words *quoad executionem*, where Tostado used the phrase: *quantum ad usum*. Moreover, the notion *ministerialiter* recalls of Tostado's remark, that the keys were handed over to St. Peter and the Apostles in their capacity as servants, ministers of the Church.

However, Richer sometimes deviated from the view of Tostado. This probably has to do with the teachings of Jean Gerson, who strongly influenced the school of Paris. All elements in the French propositions or in the writings of Richer, which clash with the opinion of Tostado, can be traced back to Jean Gerson: the idea, that the notion "Church" only covers the hierarchical Church (resulting in a strong link between sacramental and administrative powers), that it is this Church, to which Christ entrusted *principaliter* jurisdictional powers, and that all parts of the hierarchy acquire their authority directly from God and not from the Pope. Sometimes

¹⁹ Schola Parisiensis (...) docuit, Christum fundando Ecclesiam, prius, immediatus, atque essentialiter, claves, siue iurisdictionem, toti dedisse Ecclesiae quam Petro: seu quod eodem redit, *Claves toti contulisse Ecclesiae, ut per unum ministerialiter exercerentur*, Quandoquidem, tota iurisdictione Ecclesiastica, primario, proprie, ac essentialiter Ecclesiae conuenit: Romano autem Pontifici, atque aliis Episcopis, instrumentaliter, ministerialiter, et quo ad executionem tantum, sicut facultas uidendi oculo (...). *De ecclesiastica et politica potestate* (note 3), p. 6.

Richer explicitly referred to Gerson²⁰, but even where this was not done, the influence of Gerson's doctrine is often clearly perceptible²¹.

And yet both the school of Paris as well as Edmond Richer in some respects deviated from the teachings of Gerson. Through a subtle distinction into three aspects of jurisdiction (*formaliter*, *materialiter* and *usus*) Gerson conceded the Pope a distinct rôle in the attribution of the use of jurisdiction. Like Tostado, he sought an alliance with the existing practice, characterised by an increasing number of reservations²². The school of Paris, however, described only two aspects of jurisdiction (*essentialiter* and *ministerialiter*) and denied the Pope a rôle in handing over authority to diocesan bishops.

Unlike Tostado, the school of Paris strongly asserted the position and rights of the priests, the *second ordre*. With Tostado, it maintained that jurisdiction was granted directly to the entire Church, but this "entire Church" was identified with the clergy, the hierarchical order (the Pope, the cardinals, archbishops, bishops, vicars). According to the decrees of the Sorbonne, dating from the year 1429, it is the lower clergy (priests, vicars), who acquired jurisdiction directly from Christ: *Sexto, dicere inferiorum*

²⁰ The *demonstratio libelli* by Richer contains, for example, a number of quotations derived from Gerson. Cf. Emundus Richerius, *Demonstratio libelli de ecclesiastica et politica potestate*, Parijs 1622.

²¹ One should realise that Richer edited the complete works of Gerson (Johannes Gerson, *Opera Omnia*, ed. E. Richer, IV Vol. Paris 1606) and that he also produced an apology (*Apologia pro Joanne Gersonio*).

²² Cf. for the teachings of Gerson: G.H.M. Posthumus Meyjes, *Jean Gerson, Zijn kerkpolitiek en ecclesiologie*, The Hague 1963, p. 210-251; Cf. for the jurisdiction of the *second ordre* in Gerson: L.B. Pascoe, *Jean Gerson: principles of church reform*, Leyden 1973, p. 146-156.

*praelatorum potestatem iurisdictionis; sive sint Episcopi, sive Curati, esse immediate a Deo, (...)*²³. In Tostado the “entire Church” is a community (*communitas*), comparable to secular corporations or to the “entire assembly” in the Old Testament. In the universal Church this community takes shape as the General Council, but also in the local Church, there is a community which holds jurisdiction. According to the school of Paris, on the other hand, the entire Church (*tota ecclesia*) which acquired jurisdiction, is the clergy, in particular the *second ordre* (the priests). In the Gallicanistic tradition the notion “entire Church” is primarily a reference to the priests. They hold jurisdiction *essentialiter*, the bishops also *ministerialiter*.

As we have seen, Alonso Tostado was no episcopalist. Apparently, he accepted (especially in the *Defensorium*) the existing reservations as an established fact. Diocesan bishops do derive their jurisdiction from the Church, but through the Pope as a middle-man. In this respect his opinion was in conformity with the one of curialists such as Alexander a Sancto Elpidio (d. after 1326), who let the clergy acquire their jurisdiction *mediante papa* ²⁴. Unlike the curialists, though, Tostado regarded the Pope's own jurisdiction as derived from the Church and not directly from God. This view of Tostado, that is to say that jurisdiction is indirectly derived from God, but directly from the Church, is easily compatible with episcopalistic doctrines. One should only acknowledge that diocesan bishops should not be appointed by the Pope, but all should be

²³ The sixth proposition in *Decretum sacrae facultatis theologiae Parisiensis, De potestate ecclesiastica A.D. 1429*, Paris 1611, added to *De ecclesiastica et politica potestate* (note 3), p. 41 and 44.

²⁴ Alexander a Sancto Elpidio, *De ecclesiastica potestate*, Tract. I, cap. VII (In quo probatur quod talis potestas iurisdictionis non est immediate a Christo in episcopis et curatis), in J.Th. Rocaberti, *Bibliotheca Maxima Pontificia*, Rome 1695, Tom. II, p. 8-9.

elected. As a consequence they would obtain jurisdiction in the same way as the Pope himself, namely directly from the Church and not through an intermediary. It is the community which entrusts jurisdiction to the Pope as well as to bishops at the moment of their election.

Unlike Tostado, the school of Paris was characterized by strong episcopalistic leanings, but did not develop such a doctrine. It rejected the idea that jurisdiction is acquired through the Church. This rejection matched the curialists, but unlike the curialists the school of Paris taught that the bishops do not receive their authority *mediante papa*, but, just as the Pope himself, directly from God. There can be no separation between the acquisition of jurisdiction by ministers and the one by the Church. The school of Paris did not discern two moments. Both acquisitions, that is to say of essential jurisdiction by the Church and of ministerial jurisdiction by the bishops, take place at the same moment. Although episcopal jurisdiction may be restricted to its exercise, it is nevertheless directly obtained from Christ, not through the Pope and neither through the Church.

Richer followed clearly the teachings of the school of Paris²⁵. He too considered the power of the keys and the jurisdiction to be granted to the entire Church and also in his opinion this "entire Church" covers the hierarchical order, that is to say the sacerdotal Church and not all the Christian faithful²⁶. Richer

²⁵ Cf. Emundus Richerius, *Defensio libelli de ecclesiastica et politica potestate*, Cologne 1701, Vol. I, p. 10-12.

²⁶ This is the purport of the second chapter of the pamphlet; Cf. *De ecclesiastica et politica potestate* (note 3), p. 7-10 and Emundus Richerius, *Libellus de ecclesiastica et politica potestate, nova editio*, Cologne 1701, p. 3-5; Cf. also the following fragment from the *Demonstratio*, which was adopted in the new edition of the pamphlet (1701): (...) Similiter etiam, prius, immediatus ac essentialius toti Ecclesiae, aut regno Christi,

referred to the imputations by Andreas Vallius (André Duval, d. 1638), that he would have followed Martin Luther (1483-1546) in his opinion that the keys were also granted to the laity, including both porters (*bajuli*) and workers (*cerdones*). But according to Richer, the "Church" covers the sacerdotal Church or the *ordo hierarchicus*, because Christ entrusted the authority to govern the Church only to this hierarchical order²⁷.

Secondly, the jurisdiction, directly acquired from God, is, according to Richer, realised in two different ways. He follows the opinion of the school of Paris, namely that jurisdiction resides in the Church *essentialiter*, but *ministerialiter* only with a part of the Church, namely the Pope and the bishops. However, jurisdiction is not acquired through the Church as inter-mediary²⁸. In this way Richer hardly deviated from the teachings of the school of Paris²⁹.

Because of the differences noticed, Tostado's doctrine on jurisdiction can only to a certain extent be used to support the opinion of Richer. Tostado's theory of indirect acquisition of jurisdiction is incompatible with the French episcopalism. Only where he teaches that jurisdiction can be considered in two different

sumpto pro hierarchico ordine convenit ut seipsum regnat (*Demonstratio*, p. 4; *Libellus*, p. 2); Cf. also the *Defensio libelli* (note 25), Vol. I, p. 98-99.

²⁷ *Demonstratio* (note 20), p. 4-5; *Libellus* (note 26), p. 3. Cf. *Defensio libelli* (note 25), Vol. I p. 93; cf. also Andreas Duvallius, *De suprema Romani pontificis in Ecclesiam potestate*, ed. nova, Paris 1877, Pars I, quaestio III: Cuiam suprema Ecclesiae potestas conveniat? (p. 34-47).

²⁸ *De ecclesiastica et politica potestate* (note 3), p. 6-7; *Libellus* (note 26), p. 1.

²⁹ According to Préclin (note 18, p. 331) Richer himself would have taught that the power of the keys rests with the entire Church (clergy and laity!), which holds the property, while the exercise of jurisdiction rests exclusively with the sacerdotal Church. This interpretation, however, is hard to reconcile with the sources.

ways which allows him to discern between the origin of jurisdiction, residing in the Church, and its exercise, residing in the bishops, may his arguments be of use. In the first edition of Richer's pamphlet no references to the writings of Tostado can be found. Nevertheless they might have had some influence. The *Demonstratio libelli*, dating from the year 1622, contains an extensive quotation from Tostado, taken from the commentary on Numbers, mentioned above. In this *Demonstratio libelli* Richer adduced a number of authoritative authors in order to show that the keys and the ecclesiastical jurisdiction were granted to the entire sacerdotal Church (*tota ecclesia sacerdotalis*). The fragment from Tostado's commentary, adopted in the *Demonstratio libelli*, coincides exactly with the passage paraphrased above. The same text was adopted in the new edition of the pamphlet, published posthumously in the year 1701³⁰, and in the *Defensio libelli*, also dating from around the year 1622 and only printed in 1701. In the latter no less than ten pages are devoted to the opinion of Tostado³¹.

Richer adduced Tostado as an authority, but at the same time he deviated from Tostado's opinion, just as the French tradition did. Richer reproduced in full the passage on jurisdiction derived from Tostado's commentary on Numbers. This quotation reflects an adequate rendering of Tostado's own opinion, which in some respects clashes with the one of Richer. Everywhere Richer's pamphlet gained some authority, consequently Tostado's teachings

³⁰ *Demonstratio* (note 20), p. 23-26; *Libellus* (note 26), p. 12-14; these writings contain also quotations from Tostado's commentary on Matthew 18 (q. 18) and from the *Defensorium* (part 2, cap. 69) in order to support certain conciliaristic opinions.

³¹ *Defensio libelli* (note 25), Vol. I p. 190-200; apart from the well-known passage from the commentary on Numbers, quotations are taken from the commentary on Matthew 16 (q. 74) and 18 (q. 18 and 115) and the *Defensorium* (part. 2, cap. 63, 64 and 69).

on jurisdiction became easily accessible and this irrespective of the spread of Tostado's own writings.

V. Tostado's influence upon late Jansenism and in the Church of Utrecht

As stated above, the works of Richer were influential. Late Jansenism and especially Van Espen are said to have built on these. Through Van Espen's teaching at Louvain, where from 1683 part of the Dutch clergy was educated, and through his many advices for the Metropolitan Chapter of Utrecht, he would have passed over the doctrine of Richer to the Church of Utrecht.

It is not very hard to imagine that the ideas of Richer were well received in the Church of Utrecht. Richer defended a strong and independant position for the local Church, in his case the French one. The Church of Utrecht, which had always been safeguarded against papal reservations, could use such theoretical support, since she had to stand up for her indefeasible rights and offer resistance against Roman interference.

However, Richer's doctrine was not adopted in its original form, but only with certain adaptations. Broadly speaking, two approaches can be discerned. Firstly, there was an inclination in late Jansenism to interpret the notion of "the Church which received the power of the keys" in a broader sense, that is to say as the whole of clergy and lay people. Within this Church, jurisdiction resides essentially in the collective, whereas its use resides in the bishops. Secondly, there is the opinion which goes one further and was not defended by the French Jansenists, but only in the Low Countries. According to this view it is the entire Church which not only holds jurisdiction essentially, but also has a function in attributing it to her

ministers. Both views have in common that they deviate from Richer by understanding the notion "entire Church" as the community of Christian faithful, but the first opinion sticks more closely to Richer by rejecting the idea that the exercise of jurisdiction is acquired indirectly through the Church. Theologians such as Pasquier Quesnel (1634-1719), Laurent Boursier (1679-1749), Joannes Opstraet (1651-1720), Nicolas LeGros (Maupas, 1675-1751), Claude Mey (1712-1796), Gabriel-Nicolas Maulrot (1714-1803), and also Scipio di Ricci (1741-1810) belong to the first category. The second opinion was defended by Dutch and Flemish canonists, such as Zegers Bernard van Espen (1646-1728), Joan Christiaan van Erckel (1654-1734) and Judocus (Josse) LePlat (1732-1810).

1. *Late Jansenism: the notion "entire Church" includes the community of faithful*

As just stated, the first category of authors maintained that the notion "entire Church" covers the whole of clergy and laity, but was not willing to assign to this "entire Church" a distinct task in attributing jurisdiction to her ministers. Compared to Richer, we are merely dealing with a new, less narrow interpretation of the notion Church. Such an innovation can be seen as an adaptation to the opinion of Tostado, who compared "the entire Church which received jurisdiction" with secular corporations and with the "entire assembly" in the Old Testament. The possibility that the view of Tostado has indeed left its traces here, may not be excluded in view of the fact that quite a number of authors reproduced quotations derived from Tostado, whether or not taken over from one of Richer's works.

a. **Pasquier Quesnel**

In his *Reflexions morales* (1692), while commenting upon Matthew 16.19, Quesnel put the bishops on a par with the Church. In his

opinion the power of the keys was granted to all bishops and to the Church in the person of St. Peter³². However, the notion “Church who accepted the keys” is interpreted more extensively. The Church has the authority to excommunicate as an ultimate remedy. The exercise of this authority resides in the bishops (*les premiers pasteurs*), but the bishops are considered to act with the consent (at least the presumed consent) of the entire community (*du consentement au moins presumé de tout le corps*)³³. From this passage a statement was derived to be condemned as proposition number XC by the bull *Unigenitus* (1713) of Pope Clement XI (1649-1721)³⁴.

b. Nicolas LeGros

LeGros, who taught theology at the Seminary of the Church of Utrecht at Amersfoort from 1726 until 1735³⁵, stated in his early work *Du renversement des libertés de l'Eglise Gallicane* (1716), that the Church essentially consists of the pastors who teach the truth and

³² Pasquier Quesnel, *Le Nouveau Testament en François avec des Reflexions Morales*, Paris 1692, Tom. I, p. 207-208.

³³ Quesnel (note 32), ad Mattheus 18.16, Tom. I, p. 229; See for the interpretation of *tout le corps* as the community of faithful: E. Préclin, *Les jansénistes du XVIIIe siècle et la constitution civile du clergé*, Paris 1929, p. 26.

³⁴ H. Denzinger, *Enchiridion Symbolorum*, 1973³⁵, p. 496: 90. *Ecclesia auctoritatem excommunicandi habet, ut eam exerceat per primos pastores de consensu saltem praesumpto totius corporis.*

³⁵ See for the ecclesiology of LeGros: J. Visser, *Jansenismus und Konziliarismus: ekklesiologische Anschauungen des Nicolas LeGros (1675-1751)*, in IKZ 73 (1983), p. 212-224.

the people (*peuples*) who accept this truth in faith ³⁶. LeGros referred to the school of Paris for the opinion that the entire Church holds the property of jurisdiction, whereas its use resides only in those who have the authority to exercise the powers of the keys in the name of the Church. For this opinion LeGros also quoted a fragment from Tostado's commentary on Numbers ³⁷. However, at this stage he continued by stating that it is not the Church which confers authority to her bishops and vicars. At the moment of ordination God grants sacramental powers, but in a similar way it is also God himself who grants jurisdiction to bishops and vicars at the moment they are elected or appointed by the Church. They receive their administrative powers directly from Christ, albeit in their capacity as the Church's servants and in order to exercise these powers in the name of the Church, whereas their property remains with the entire community (*tout le corps*) ³⁸. After having said that the authority to excommunicate is part of the power of the keys and belongs with the entire Church (*au corps de l'Eglise*), LeGros referred to a fragment where even Jean Gerson described the Church as a community of faithful (*congregatio fidelium*) ³⁹.

In number 21 of the articles against Luther (1542), the theological faculty of Paris stated that the power to excommunicate

³⁶ *Du renversement des libertés de l'Eglise Gallicane dans l'affaire de la constitution Unigenitus*, 1716, Tom. I, p. 234.

³⁷ *Du renversement* (note 36), Vol. I, p. 340-342. There is another quotation of Tostado on p. 345.

³⁸ *Du renversement* (note 36), Vol. I, p. 343.

³⁹ *Du renversement* (note 36), Vol. I, 388; Cf. Jean Gerson, *Libellus articulorum theologicorum contra Petrum de Luna*, art. 15 and 16, in Johannes Gersonius, *Opera Omnia*, Antwerp 1706, Tom. II, column 295.

was according to divine law granted directly by Christ to the Church, but the faculty also taught, that the Church may not be identified with the Pope, who is her visible head, or with the Council, which is her representative, although both Pope and Council receive jurisdiction directly from God. According to Paris the "body" of the Church (*le corps de l'Eglise*) is the community which is represented by the Council and whose first pastor is the Pope⁴⁰. Quesnel spoke about the competence to excommunicate, which was exercised by the first pastors *du consentement au moins présumé de tout le corps* and these words were condemned by the bull *Unigenitus*. According to LeGros the notion *tout le corps* beyond any doubt includes the clergy (*tout le corps des pasteurs*)⁴¹, but neither may the laity be excluded, although LeGros is somewhat reserved here. Moreover, it is unthinkable that a bishop should consult all the faithful before excommunicating someone. He may presume to have the consent of the *corps des pasteurs*. It is impossible to separate these pastors from the Church, because they represent the Church, whereas the consent of the faithful is manifest in a different way: they cooperate, avoid excommunication and say their prayers⁴².

LeGros' lecture notes on the ecclesiology date from his initial period at Amersfoort (1727). They were handed down for many years as manuscripts and were only posthumously published. Again LeGros appears to follow the school of Paris as reproduced by Richer, but without referring to Richer. Episcopal jurisdiction is directly obtained from Christ. Tostado is quoted again in this work,

⁴⁰ *Du renversement* (note 36), Vol. I, p. 389-390.

⁴¹ *Du renversement* (note 36), Vol. I, p. 392.

⁴² *Du renversement* (note 36), Vol. I, p. 394-396.

but merely to show that the Church holds the property of the keys and the *pastores* their use⁴³.

c. Laurent Boursier and Joannes Opstraet

Also jansenists such as Boursier and Opstraet stuck to the opinion of Richer that ministers acquire their jurisdiction directly and not through the Church as intermediary. This appears from the criticism they passed on the *Resolutio Doctorum Lovaniensium*, dating from 1717, which was primarily the work of Van Espen, where the idea of an indirect acquisition of jurisdiction was openly recognized.

Boursier, who took his doctoral degree at the Sorbonne in 1706, complained about Van Espen's opinion to Quesnel. The expression "to derive from the Church" would be incorrect. The power of the keys is given to the Church, merely to be exercised by her ministers. Christ grants this power immediately. Thus, the bishops acquire their authority directly from Christ⁴⁴.

A little later Opstraet, the vice-president of Pope Hadrian College at Louvain (Van Espen's residence), reported to Quesnel,

⁴³ *Tractatus Dogmaticus et scholasticus de ecclesia*, Rome 1782, Tom. II, cap. IV, concl. VI (p. 115).

⁴⁴ A letter from Boursier to Quesnel, dated 26 December 1717, reproduced in J.A.G. Tans, *Pasquier Quesnel et les Pays-Bas, Correspondance, publiée avec introduction et annotations*, Groningen/Paris 1960, p. 595; See also F. Smit/ J. Jacobs, *Van den Hogenheuvel gekomen, Bijdrage tot de geschiedenis van de priesteropleiding in de kerk van Utrecht, 1683-1723*, Nijmegen 1994, p. 194-195.

that Van Espen had reconsidered his opinion, and now admitted that jurisdiction is acquired without the Church's intercession⁴⁵.

d. Claude Mey and Gabriel-Nicolas Maulrot

In their *Apologie* (1752) Mey and Maulrot followed again the opinion of Quesnel and LeGros: the notion "Church" covers the whole of Christian faithful, but the pastors receive their authority directly from Christ. The power of the keys is granted to the entire Church, but the pastors do not receive their authority indirectly from Christ⁴⁶. The entire Church is composed of clergy and laity⁴⁷. Like sacramental powers, jurisdictional powers are acquired directly from Christ and not from *le corps du peuple chrétien*. Also the school of Paris rejected the idea of locating the origin of jurisdiction in the election by the people. Thus, the power of the keys belongs at the same time both to the entire Church and to her ministers, but in different ways: the collective holds the property of jurisdiction, the ministers its use and exercise⁴⁸.

⁴⁵ A letter from Opstraet to Quesnel, dated 12 January 1718, reproduced in Tans (note 44), p. 528-530.

⁴⁶ *Apologie des jugements rendus en France contre le schisme par les tribunaux séculiers*, 1753 (third edition), Tom. II, p. 79-80.

⁴⁷ With references to St. Augustine; *Apologie* (note 46), Tom. II, p. 82; Cf. also p. 84,90 and 92.

⁴⁸ *Apologie* (note 46), Tom. II, p. 86,94 and 95.

e. Scipio de Ricci

The view of the Italian bishop Scipio de Ricci is not so easy to determine. In a letter to Grand Duke Leopold of Tuscany (1747-1792), Ricci described as a fundamental principle of Church reform the idea that Christ has granted the powers in spiritual affairs to the Church and from there to the pastors who are dependant on the Church⁴⁹. Such an indirect acquisition seems to be incompatible with the French doctrine as followed by Quesnel and LeGros and yet Ricci recommends in the same letter LeGros' treaty *De ecclesia*⁵⁰. It is doubtful whether the Council of Pistoia, which took place in 1786 presided over by Ricci, accepted this opinion or whether Ricci himself always stuck to it. According to the *Lettera pastorale per la convocazione del sinodo diocesano di Pistoja*, God granted authority to the Church, so that she would pass it over to the pastors, her servants⁵¹. This statement was condemned as the second proposition in the bull *Auctorem fidei* of 1794, at least in the sense that the pastors would derive their administrative powers from the community of faithful⁵². In fact two ideas were rejected here, viz. the view that the Church which received authority is the community

⁴⁹ Thus Bolton (note 1) on p. 148, referring to N. Rodolico, *Gli Amici e i tempi di Scipione dei Ricci, Saggio sul Giansenismo Italiano*, Florence 1920, p. 74-75.

⁵⁰ Cf. Bolton (note 1), p. 25.

⁵¹ The letter (in Italian and dated 31 July 1786) appeared the same year in print. A French translation of the passage referred to can be traced in: *Actes et decrets du concile diocesain de Pistoie de l'an 1786 traduits de l'Italien*, Pistoia 1788, Tom. I, p. 32; an English translation is given by Bolton (note 1), p. 58.

⁵² 2. Propositio, quae statuit, "potestatem a Deo datam Ecclesiae, ut communicaretur pastoribus, qui sunt eius ministri pro salute animarum"; sic intellecta, ut a communicate fidelium in pastores derivetur ecclesiastici ministerii ac regiminis potestas: - haeretica; Denzinger (note 34), p. 519.

of faithful and the view that it is this community which attributes jurisdiction to her ministers⁵³. None of these two opinions can be traced in the writings of Richer. We are dealing here with adaptations of his doctrine, which may have taken place under the influence of Tostado's opinion. After all, Tostado taught that the Church is a community and that jurisdiction is acquired indirectly, viz. through this community as an intermediary. The first opinion was quite generally accepted in late Jansenism, but the second was not⁵⁴.

Whether the opinion as described in the second *propositio* should actually be ascribed to Ricci is hard to say. The letter to Grand Duke Leopold, mentioned above, does seem to point into that direction. However, in his defence Ricci stated that authority is acquired directly from God at the moment of episcopal consecration and as a defender of the *second ordre* he took a similar stand regarding the ordination of priests⁵⁵.

2. *A second adaptation: bishops derive jurisdiction from the Church*

As has been shown above, from the end of the seventeenth century there is an inclination within Jansenism to adapt the doctrine of Richer by understanding the notion "Church which received

⁵³ This idea is also rejected in the third *propositio* of *Auctorem fidei*.

⁵⁴ For this reason it is very confusing to connect these condemned propositions with the name of Richer. Cf. Denzinger (note 34), p. 519, note 1 ad nr. 2602 and G. Leclerc, *Zeger-Bernard van Espen (1646-1728) et l'autorité ecclésiastique*, Zürich 1964, p. 326 (note 15) and p. 331 (note 41).

⁵⁵ Bolton (note 1), p. 59.

jurisdiction" not solely as the sacerdotal Church, but as all the Christian faithful. The opinion of Tostado, handed down through the writings of Richer, may have played an influential rôle in this adaptation. The same can be said for a second adaptation, which was not as generally accepted as the first one and was even, as seen above, explicitly rejected by some authors. They stuck to the direct acquisition of jurisdiction as defended by Richer. Especially some Flemish and Dutch canonists went one better by following Tostado in his opinion that ministers acquire their jurisdiction through the Church as an intermediary. Unlike Tostado, however, they did not assign the Pope a distinct rôle. By doing so they developed some kind of episcopalistic version of Tostado's doctrine. However, the difference should not be overestimated. Tostado probably took the existing reservations as an established fact, but for the diocese of Utrecht reservations were never made and the right of the chapter to elect the bishop was always recognized. Moreover, the rôle Tostado assigned to the Pope is merely based upon ecclesiastical law.

It is hard to indicate the origin of this episcopalistic version of Tostado's doctrine. The writings of both Van Espen and Van Erckel date from approximately the same period. Moreover, a mutual influence may be assumed in view of their correspondence and the contacts between the two, already dating from Van Erckel's college days at Louvain.

a. Van Espen

The Louvain canonist Zegers Bernard van Espen⁵⁶ is said to be influenced by Richer, but in the works published during his life Van

⁵⁶ Literature: B. van Bilsen, *De invloed van Z.B. van Espen op het ontstaan van de Kerk van Utrecht*, The Hague 1945, Leclerc (note 54) and Nuttinck (note 18).

Espen nowhere quoted Richer ⁵⁷, whereas he quoted Tostado only in his later works. This does not mean, though, that Van Espen did not know their opinions.

Already in his treaty *De censuris ecclesiasticis* (1709) Van Espen seems to accept the indirect acquisition of jurisdiction, where he writes, that the power of the keys resides *principaliter* in the Church and should remain there. Ecclesiastical laws prescribe in which way its use can be entrusted to the bishops, who may exercise it as servants of the Church and in the name and by virtue of the Church ⁵⁸. In the *Resolutio Doctorum Lovaniensium* (1717) Van Espen even more clearly adopted the idea of indirect acquisition. The bishop derives all his authority and jurisdiction from the Church as an intermediary ⁵⁹. The *Resolutio Doctorum* displays a terminology, which may be inspired by Tostado: jurisdiction resides in the Church *radicaliter* (Tostado wrote *radicalius*) and *quoad proprietatem* (Tostado compared the Church with a bare owner who had handed over the usufruct) ⁶⁰.

⁵⁷ Cf. Visser (note 35), p. 221; a reason could be that the pamphlet by Richer (*De ecclesiastica et politica potestate liber unus*) was placed on the Roman *Index* (decrees of 10 May 1613, 2 December 1622 and 4 March 1709), but this does not seem to be very likely. In the Southern Netherlands, the *Index* was never promulgated with a royal *placet*. Moreover, Van Espen's own works were during his life already put on the *Index*.

⁵⁸ Zegerus Bernardus van Espen, *Tractatus historico-canonicus de censuris ecclesiasticis*, cap. II § 1 in *Opera Omnia*, Louvain 1766, Tom. IX p. 22-23. Moreover, Van Espen takes the notion "Church" here as the *communitas fidelium*, covering not only the priests and deacons, but also the laity.

⁵⁹ In the literature this opinion is sometimes mistakenly considered to be inspired after Richer; Cf. Nuttinck (note 18), p. 436-437.

⁶⁰ Just as in his treaty *De censuris ecclesiasticis* Van Espen seems to consider the notion "Church" as covering not just the *second ordre*, because *sede vacante* the

As stated above Van Espen's opinion on the indirect acquisition of jurisdiction was criticised by Boursier and Opstraet. In a series of lecture notes on the subject of ecclesiastical and political power (*de ecclesiastica et politica potestate*), dating from the year 1718, Van Espen seems to have taken this criticism quite seriously⁶¹. Probably Richer's book played a part of some interest in his teaching. Quite a number of notes are derived from this work. Tostado, on the other hand, is only referred to a few times, and sometimes even indirectly, viz. through the revised edition of Richer's *libellus*⁶². Van Espen indeed seems to have reconsidered his opinion. This appears from the fact that he rejected the proposition that the Pope and bishops derive their jurisdiction only indirectly from God. Moreover, he seems to follow the school of Paris by regarding the Church as including only the clergy, where he stated that the power of the keys is granted immediately to the Church or the hierarchical order. This leads to the conclusion, that

chapter, as the representative of the clergy, still continues to derive jurisdiction from the Church and not from itself. Cf. Zegerus Bernardus van Espen, *Resolutio Doctorum Lovaniensium*, in *Supplementum ad varias collectiones operum Z.B. van Espen*, Napels Tom. II, p. 199-200. Nevertheless, in his later work, the *Vindiciae resolutionis* the "Church" is sometimes adopted as the bishop and the clergy. Cf. Zegerus Bernardus van Espen, *Vindiciae resolutionis*, *Disquisitio tertia*, § V.1 (*Supplementum ad varias collectiones operum Z.B. van Espen*, Napels, 1769, Tom. II, p. 500): *Ea porro potestas et jurisdictio sic tota atque indivisa est penes ipsum corpus, quod ex episcopo et clero constat, (...)*.

⁶¹ Zegerus Bernardus van Espen, *De ecclesiastica et politica potestate*, in *Supplementum ad varias collectiones operum Z.B. van Espen*, Napels 1769, Tom. I. One should realise that we are dealing here with nothing else but a collection of notes and references, which were published posthumously. Cf. Nuttinck (note 18), p. 454.

⁶² *De ecclesiastica* (note 61), Pars I, cap. VI, propositio I and III (p. 425) and Pars II cap. X [notes from Richer] (p. 440).

the Pope and bishops receive their jurisdiction directly from God, albeit through the ministry of those who consecrate and elect them in the name of the Church. Suddenly Van Espen seems to be much more reserved regarding Tostado's doctrine. Like Richer, he was quite selective, this time, in adopting Tostado's reasoning⁶³. It is not clear, however, whether Van Espen renounced the idea of an indirect acquisition once and for all, or, forced by his Jansenist surroundings at Louvain, only temporarily revised his teaching. This will have to appear from his later works.

In one of those, the *Vindiciae resolutionis*, dating from the year 1727, Van Espen referred again to Tostado's doctrine on jurisdiction, but this time he was less reserved than in the lectures of 1718. He remarked that Tostado was venerated as a saint in the Church of Avila and, because he astonished the world with his great erudition, was known as the *stupor mundi*⁶⁴. According to the *Vindiciae resolutionis*, all power resides directly in the Church as regards its origin and property. "As regards its origin" (*radicaliter*) suggests that the Church is the root (*radix*) of episcopal jurisdiction. Van Espen did not declare this explicitly, but reproduced two passages derived from Tostado (again from his commentary on Numbers 15, questions 48 and 49, which might have been adopted from Richer's *libellus*). These quotations do not contain the fragments where Tostado clearly describes all jurisdiction as acquired from the Church, but there are similarities between the opinions of Tostado and Van Espen, because, unlike Richer, neither of them pays much attention to the position of the *second ordre*. Van

⁶³ *De ecclesiastica* (note 61), Pars I cap. VI propositio III (p. 425-426).

⁶⁴ Referring to the Jesuit Antonio Possevino (1533/34-1611). See A. Possevino, *Apparatus sacer*, Cologne 1608, t. I p. 46-47. The qualification as *stupor mundi* refers to Tostado's epitaph: *Hic stupor est mundi, qui scibile discutit omne*.

Espen merely emphasized, that all diocesane bishops received the keys, as did St. Peter ⁶⁵.

In the following passage Van Espen seems to return much more clearly to his previous stand. Both Pope and bishops are said to derive all their jurisdiction from the Church. The supreme authority and the plenitude of all spiritual jurisdiction resides in the Church and is exercised by her *ministri* ⁶⁶. This opinion is more in conformity with the doctrine of Tostado than with that of Richer, although Tostado accepted the existence of reservations and subordinated the diocesan bishops to the Pope. The assumption that Van Espen returned here to his original opinion seems to be confirmed by quite a number of other statements in the *Vindiciae resolutionis*: the Church is the source of all spiritual jurisdiction ⁶⁷, the bishop derives all his jurisdiction and authority from the Church ⁶⁸, all power and authority are derived from the Church, who is the mother and *domina* of all ⁶⁹ and the chapter or clergy derive their jurisdiction from the Church and not from the Pope ⁷⁰. At the moment the Pope is invested and consecrated by the bishop of Ostia, it is not the latter who hands over jurisdiction, but rather the Church whose servants the consecrating bishops are. The power of the keys cannot pass from hand to hand, but resides and continues to reside in

⁶⁵ *Vindiciae* (note 60), *Disquisitio tertia* § III.V (p. 496).

⁶⁶ *Vindiciae* (note 60), *Disquisitio tertia* § III.VI (p. 497).

⁶⁷ *Vindiciae* (note 60), *Disquisitio secunda* § VII.II (p. 441).

⁶⁸ *Vindiciae* (note 60), *Disquisitio tertia* § III (p. 492).

⁶⁹ *Vindiciae* (note 60), *Disquisitio tertia* § V.I (p. 501).

⁷⁰ *Vindiciae* (note 60), *Disquisitio tertia* § V.VI (p. 503).

the Church ⁷¹. Thus, the Pope too derives his authority from the Church and not directly from Christ ⁷².

In summary, the doctrine of Van Espen eventually seems to deviate from Richer in two respects. According to Van Espen, the Church covers more than just the hierarchical order and, secondly, ministers derive their jurisdiction from the Church. The first difference was already pointed out in the literature ⁷³, but the fact, that Van Espen in more respects deviated from both the School of Paris and Richer's pamphlet has most of the time been overlooked.

b. Van Erckel

In his work *Assertio iuris*, dating from the year 1703 and published under the initials J.C.E, Joan Christiaan van Erckel, a student of Van Espen who was to become dean of the Metropolitan Chapter of Utrecht, stated that the power of the keys is granted to and belonging to the Church rather than to the bishops. He substantiated this proposition by a reference to St. Augustine and a quotation from Tostado's commentary on the book of Numbers ⁷⁴. Van Erckel

⁷¹ *Vindiciae* (note 60), *Disquisitio tertia* § III.VII (p. 497).

⁷² Since this appears to be Van Espen's opinion, it would be more appropriate (just as Tostado did in the commentary on Numbers) to take an element of ecclesiastical law (the election) as the moment jurisdiction is acquired and not an element of divine law (consecration) or to discern within the episcopal consecration an element of ecclesiastical law, as did Tostado in the *Defensorium*.

⁷³ Van Bilsen (note 56), p. 103; Leclerc (note 54), p. 129, 223 and 281.

⁷⁴ In addition to this fragment Van Erckel stated that the jurisdiction exercised by the chapters, rests with the Church and with the clergy, represented by the chapter, rather than with the canons themselves (*magis inesse Ecclesiae et ordini clericali*). For this reason the notion "Church" covers more than just the clergy.

seems to follow Tostado in his opinion that jurisdiction is derived from the Church. He did not declare this explicitly, but certainly implied it, where he wrote that even if the bishop and chapter would perish, jurisdiction is still preserved within the Church, provided that the clergy manages to maintain its position. One single lay person (man or woman) is apparently not capable of preserving jurisdiction. At the same time he considered the Church which holds jurisdiction to cover more than just the clergy. The same holds good for the universal Church. If the Pope and cardinals were suddenly all killed by an earthquake, papal authority would still be preserved within the Church and a new college of cardinals could be elected ⁷⁵.

Also in his *Observationes Prodromae* (1728) Van Erckel made references to Tostado's doctrine on jurisdiction and also here he enshrined a quotation in order to substantiate the proposition that the power of the keys resides in the Church, rather than with her *ministri* ⁷⁶. This passage shows similarities with an anonymous and undated Dutch writing, entitled "Korte Memorie" ⁷⁷. This text rejects the curialistic idea that authority and jurisdiction come from Rome. It defends the basic principle that jurisdiction essentially resides in the Church, but is exercised by her bishops ⁷⁸. In the

⁷⁵ *Assertio Juris Ecclesiae Metropolitanae Ultrajectinae Romano-Catholicae per J.C.E.*, Delft 1703, § IX (p. 52-54); See for this passage also J.Y.H.A. Jacobs, *Joan Christiaan van Erckel (1654-1734), Pleitbezorger voor een locale kerk*, Amsterdam 1981, p. 159-165.

⁷⁶ J.C. Erckelius, *Observationes prodromae*, in the *Appendix of the Defensio Ecclesiae Ultrajectinae*, Amsterdam 1728, nr. XXIV (p. 239-241).

⁷⁷ According to Jacobs the paper is in Van Erckel's handwriting and should be dated c. 1706; Jacobs (note 75), Chapter VI note 1 (p. 508).

⁷⁸ (...) Nu met de magt en geregtigheden der kercken is het aldus gelegen, dat ze geen uytvloeynge van Romen zijn, maar onmiddelyk van den hemel komen. En hoewel

Observationes Prodromae it is not clear from the beginning what should be understood by the *ministri* and by the Church. In a quotation from Tostado (taken again from the commentary on Numbers 15, quaestion 48), it appears that the Church is some kind of community, whereas the *ministri* which exercise jurisdiction are the Pope, the bishop and the chapter. Here we again trace the opinion, that the keys were not given to St. Peter in person. Tostado is said to have adopted it from the commentary of St. Augustine on psalm 108. Subsequently, there are some additional remarks on the relation between the universal and the local Church. The universal Church includes the local Churches, which at the moment of their foundation acquired jurisdiction directly ⁷⁹ from heaven ⁸⁰. For this reason it is unnecessary to search for another source. The Pope is certainly no source of ecclesiastical jurisdiction ⁸¹. This passage has nothing to do with the defence of the *second ordre*. Consequently the Church can be seen as a community of all the faithful, rather than just the clergy. Moreover, Van Erckel does not pronounce upon the acquisition and exercise of jurisdiction by ministers (whether or not through the Church as intermediary). His only intention is to show

deze magt door de Bisschoppen beoeffend ende te werck geleijd word, egter is ze in den grond aen de kerk gegeven en in dezelve berustende ende de bisschoppen zijn in hare magtoeffeningen de dienaren der kerk (...) (State Archive Utrecht, AOBC inv. nr. 791-3).

⁷⁹ *Proxime*; Cf. Van Espen, referring to Alexander Natalis (1639-1724): the power of the keys rests with the Church *tamquam in subjecto proximo*, and with the Pope and bishops *tamquam in subjecto remoto*. See *Vindiciae* (note 60), *Disquisitio III § III.V* (p. 496).

⁸⁰ Compare the phrasing "*proxime acceperunt a coelo*" with the text of the "Korte Memorie" (note 77-78).

⁸¹ The Pope is not even the intermediary by ecclesiastical law, as he is in Tostado's *Defensorium*.

that jurisdiction is directly received from heaven and not through the Pope.

c. **LePlat**

The Louvain canonist Josse LePlat⁸² taught at the Seminary of the Church of Utrecht at Amersfoort from 1798 till 1805 and advised the bishops several times during this period in matters of canon law. Some years before his coming to Amersfoort he published a series of letters, defending the Council of Pistoia⁸³. LePlat regarded the notion "Church" as including the laity. Discussing one of St. Augustine's sermons, he stated that St. Peter when receiving the keys was representing not only the pastors, but also the ordinary faithful. Thus, the community of the Church is not restricted to the *second ordre*. Subsequently, LePlat quoted the passage from Tostado's commentary on Numbers 15, which explains that whoever acquires jurisdiction, receives it by virtue of the community⁸⁴.

⁸² Literature: J. Roegiers, *Un janséniste devant la Révolution: les avatars de Josse Leplat de 1787 à 1803*, in F. Stevens/D. van den Auweele (eds.), "Houd voet bij stuk", *Xenia iuris historiae* G. van Dievoet Oblata, Louvain 1990, p. 75-103 (with references to older literature); F. Smit, *Josse Le Plat en de Clerezie (1798-1805)*, in *Batavia Sacra* [Publicatieserie Oud-Katholiek Seminarie, 24], Amersfoort 1992, p. 63-77.

⁸³ Jean-Baptiste Mouton (d. 1803) at Utrecht corrected these letters before they were published. See Bolton (note 1), p. 137-138 and J. Roegiers, *Le Synode de Pistoia en Belgique*, in C. Lamioni (ed.), *Il Sinodo di Pistoia del 1786, Atti del Convegno internazionale per il secondo centenario, Pistoia-Prato, 25-27 settembre 1986*, Rome 1991, p. 418.

⁸⁴ *Lettres d'un théologien-canoniste à N.S.P. le Pape Pie VI au sujet de la bulle Auctorem fidei*, Bruxelles 1795, Tom. I, Quatrième lettre, p. 103-106.

VI. Conclusions

The idea that the power of the keys (ecclesiastical jurisdiction) is granted to the Church, was generally accepted in late Jansenism and in the Church of Utrecht. It was considered a legitimate opinion, based upon a long theological tradition. Authorities to support it could be traced back in the history of the western Church from the period of the Church Fathers until the decrees of the Council of Trent⁸⁵. Following a number of (late-) mediaeval authors, for the greater part also handed down through the writings of Richer, the doctrine that jurisdiction had been granted to St. Peter as a servant of the Church and was now residing *essentialiter* in the entire Church, but only *ministerialiter* with the bishops was adopted.

Moreover, the Church of Utrecht did not attribute to the Pope an essential rôle in distributing jurisdiction. For the diocese of Utrecht, this too was a legitimate stand. During the era in which papal reservations emerged, a series of concordats for the territory of the German Empire, and therefore for Utrecht, time and again recognized the right of the chapters to elect the diocesan bishops.

From the end of the seventeenth century the opinions of Richer gained more influence. It would be somewhat inaccurate, though, to describe late Jansenism or the canon law doctrines as defended in the Church of Utrecht in terms of richerism. Firstly, Richer himself is part of a much more comprehensive tradition. In the second place, his doctrine did not penetrate into late Jansenism in its original form. A first and generally accepted adaptation consisted in the fact that the Church which accepted the keys was no longer considered as the sacerdotal Church, but as the community of all faithful. This adaptation somehow met the opinion of Tostado and was accepted by at least a number of French Jansenist authorities.

⁸⁵ Sess. 14 De Sacram. Poenit. can. 15; Cf. Alberigo (note 17), p. 713.

However, somehow they also stuck more closely to Richer's doctrine, that is to say by rejecting a second adaptation to Tostado's doctrine, which regarded the acquisition of jurisdiction as taking place indirectly, namely through the Church as intermediary.

As we have seen, in the Roman condemnations of late, ecclesiological Jansenism, specific ideas were regarded as reprehensible or even heretical, which by no means can be found in the writings of Richer. They are, by contrast, clearly perceptible in the doctrine of Tostado. This holds good for proposition XC of the bull *Unigenitus* (1713) as well as for the second and third proposition of the bull *Auctorem fidei* (1794) ⁸⁶. However, these condemned propositions are at the same time linked with the writings of Richer, which time and again were put on the Roman *Index*, whereas the works of Alonso Tostado kept out of range ⁸⁷.

The Church of Utrecht cherished certain ecclesiological and canon law doctrines (the power of the keys is granted to the Church, not to the Pope; the principal equality of all bishops), but not as some kind of curiosities. All later attempts to represent these opinions as heterodox or even heretical do not alter the fact they were experienced —and to some extent nowadays still are — as legitimate opinions, previously prevailing in extensive parts of the

⁸⁶ This does not imply that the works of Tostado should be considered heretic. Firstly, in the *Defensorium* Tostado assigns the Pope a certain task in distributing jurisdiction albeit merely on the basis of ecclesiastical law. Secondly, we do not know in which way an author would render his teachings in a different time and a different context.

⁸⁷ Originally, the works of Tostado were sometimes censored in Portugal and Spain, because of the three controversial propositions he defended at Sienna. After the *Index* of Zapata (1632), a rehabilitation took place, whereas Tostado's name was never found in the Roman *Indices*.

western Catholic Church, accepted by General Councils and defended by great theologians and canonists.

The same can be said for the view that the Church which essentially holds jurisdiction is the community of faithful. As seen above, mediaeval theologians such as Tostado defended this idea. For this reason, it is simplistic to ascribe the occurrence of this view in late Jansenism and the Church of Utrecht solely to the influence of Calvinism, especially in the Northern Netherlands⁸⁸. By doing so, one passes over the fact that there is a distinct mediaeval or even earlier origin of such an opinion. Before Calvinism emerged it was sometimes even accepted that ecclesiastical jurisdiction was exercised by lay persons. In the fourteenth and fifteenth centuries, cardinals or diocesan bishops without ordination or episcopal consecration were no exception.

Late Jansenism and the Church of Utrecht display, as seen above, a further elaboration of Richer's doctrine on jurisdiction. Substantially these developments can be seen as adaptations towards the teachings of Tostado. Apart from the availability of Tostado's *Opera Omnia*, his doctrine on jurisdiction was handed down without any change through the works of Richer. The assumption that his teachings may have exerted some influence, is confirmed by the many quotations from Tostado, as could be traced in Van Erckel, Van Espen, LeGros, Mey and Maultrot and LePlat. Until now the literature has shed insufficient light on this influence and that is putting it mildly. In the publications by Préclin, Leclerc and

⁸⁸ See, for example, Préclin (note 33) p. 26 (there especially for Quesnel).

Nuttinck referred to above, one will search in vain for one single reference to Alonso "el Tostado" 89.

89 I would like to thank Dick Schoon (IJmuiden) for his useful remarks, Prof. Jan Visser (Utrecht) for his comment on the draft version of this paper and Margaret Hewett (Cape Town) for correcting the English of my text.

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1714667

De publicatieserie van de Stichting Oud-Katholiek Seminarie wordt uitgegeven onder verantwoordelijkheid van docenten en leden van het curatorium van deze stichting.

Redactie: Mr G.Chr. Kok, Dr K. Ouwens, Dr J. Visser, Mw A. Paasen

Secretariaat: Dr K. Ouwens
Noorderhoofdstraat 131
1561 AT Krommenie

Administratie: Centraal Oud-Katholiek Boekhuis
Koningin Wilhelminalaan 3
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De prijs wordt per nummer vastgesteld; intekenaren genieten een korting van 25%.

