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XXXI.12 The establishment of tithes

- The Spirit of Law - Book XXXI. Theory of feudal laws among the Franks, in their relation to the transformations in their monarchy -

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The statues issued under king Pépin had given the Church rather the expectation of relief than effective relief ; and as Charles Martel found the entire public patrimony in the hands of the ecclesiastics, Charlemagne found the properties of the ecclesiastics in the hands of men of war. These latter could not be made to restore what they had been given ; and the circumstances they were in at the time made that even more impracticable than it was by its nature. On the other hand, Christianity must not perish for want of ministers, temples, and instruction. [1]

Because of this, Charlemagne established tithes, [2] a new kind of asset, which had the advantage for the clergy that, being specifically given to the Church, it was subsequently easier to recognize usurpations.

Some have attempted to assign much earlier dates to this establishment, but the authorities they cite seem to me witnesses against those who attest them. The constitution of Clotaire [3] says only that certain tithes would not be levied on Church properties [4] : far, then, from the Church levying tithes in those times, what it most wanted was to be exempted from them. The second council of Mâcon, [5] held in the year 585, which orders that tithes be paid, says in truth that they had been paid in ancient times, but it also says that in its time they were no longer being paid.

Who doubts that before Charlemagne they would have opened the Bible and preached the gifts and offerings of Leviticus ? But I am saying that before him tithes could be preached, but were not established.

I have said that the statutes issued under king Pépin had subjected those who possessed Church properties as fief to the payment of the tithes and reparations of the churches. It was significant to oblige the principals of the nation to set an example, by a law of which the justice was beyond dispute.

Charlemagne did more, and we see from the capitulary of Willis that he obliged his own lands to pay tithes : this again was a great example. [6]

But the populace is hardly able to abandon its interests through examples. The synod of Frankfort presented them with a more pressing reason for paying the tithes. [7] They made a capitulary there in which it is said that in the most recent famine the ears of grain had been found empty : they had been devoured by demons, whose voices had been heard reproaching them for failure to pay the tithe [8] ; and in consequence all those who held Church properties were ordered to pay the tithe ; and in further consequence, the same order was given to everyone.

Charlemagne's project did not at first succeed : this burden appeared crushing. [9] The payment of tithes by the Jews had entered into the plan of the foundation of their republic ; but here the payment of tithes was a charge independent of those of the monarchy's establishment. We can see in the provisions appended to the law of the Lombards how difficult it was to get the tithes accepted by the civil laws [10] ; one can judge from the different canons of the councils the difficulty of getting them accepted by the ecclesiastical laws.

The people finally consented to pay the tithes, on condition they might redeem them. The constitution of Louis the Debonair [11] and that of the emperor Lothaire, [12] his son, did not permit it.

The laws of Charlemagne on the establishment of tithes were the product of necessity ; religion alone had a role in it, and superstition had none.

The famous division he made of the tithes into four parts : for the construction of churches, for the poor, for the bishop, and for the priests, indeed proves that he wanted to give the Church that fixed and permanent status it had lost. [13]

His testament [14] shows that he wanted to repair completely the damage that Charles Martel his grandfather had done. He made three equal parts of his movable assets : he wanted two of these parts to be divided into twenty-one, for the twenty-one metropolitan sees of his empire ; each part was to be subdivided between the archdiocese and the dependent bishoprics. He divided the remaining third into four parts : he gave one to his children and grandchildren ; another was added to the two-thirds already given ; the two remaining were used in charitable works. He seemed to regard the immense present he had just made to the churches less as a religious act than as a political distribution.

[1] In the civil wars that arose in the time of Charles Martel, the properties of the church of Reims were given to laymen ; the clergy was left to subsist as it may, it is said in the *Life of St. Rémy*, Surius, vol. I, p. 279.

[2] *Leges Langobardorum*, book III, tit. 3, §1-2.

[3] It is the one of which I have spoken so long in chapter iv above, which is found in the Baluze edition of the capitularies, vol. I, art. 11, p. 9.

[4] *Agraria et pascuaria, vel decimas porcorum, Ecclesiae concedimus ; ita ut actor aut decimator in rebus Ecclesiae nullus accedat*. The capitulary of Charlemagne in the year 800, Baluze ed., p. 336, explains very well the sort of tithe it was from which Clotaire exempts the Church : it was one-tenth of the hogs that were put into the king's forests to fatten ; and Charlemagne wants his judges to pay like the others, to set a good example. We see that it was a seigniorial or economic right.

[5] *Canone 5. ex tomo I. Conciliorum antiquorum Galliae, opera Jacobi Sirmundi*.

[6] Art. 6, Baluze ed., p. 332. It was issued in the year 800.

[7] Held under Charlemagne in the year 794.

[8] *Experimento enim didicimus in anno quo illa valida fames irrepsit, ebullire vacuas annonas a dæmonibus devoratas, et voces exprobrationis auditas*, etc. (Baluze ed., p. 267, art. 23).

[9] See among others the capitulary of Louis the Debonaire for the year 829, Baluze ed., p. 663, against those who with a view to not paying the tithe no longer tilled their lands ; and art. 5. *Nonis quidem et decimis, unde et genitor noster et nos frequenter in diversis placitis admonitionem fecimus*.

[10] Among others, that of Lothaire, book III, tit. 3, ch. vi.

[11] In the year 829, art. 7, in Baluze ed., vol. I, p. 663.

[12] *Leges Langobardorum*, book III, tit. 3, §8.

[13] *Leges Langobardorum*, §4.

[14] It is a sort of codicile recorded by Eginhard, and which is different from the testament itself which can be found in Goldaste and Baluze.