

**THE JURIDICAL NATURE  
OF THE  
RELATIONS BETWEEN  
AUSTRIA AND HUNGARY**

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The Juridical Nature of the Relations Between Austria and Hungary by Albert Apponyi

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BY  
COUNT ALBERT APPONYI

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COUNT ALBERT APPONYI, Member of Hungarian House of Commons. b. Hungary, 1846. Doctor of political and social science. Member of several literary and scientific associations, and of The Hague Tribunal for international Arbitration, Privy Councillor to His Majesty the King of Hungary. Author of articles on public law and social science in Hungarian, German, French, and English magazines.



INTEND to put before you a brief account of the juridical nature of our connection with Austria. In doing so I must apologize for such defects in my address as will arise from the absence of those scientific sources which I should have been glad to have consulted even on a subject so familiar to me as this one is. When I left Europe I had no idea of being honored by a call to address an audience of American jurists. I am, therefore, totally unprovided with scientific materials and must merely rely on my memory which, however, will hardly fail me on this subject in anything essential. For more than thirty years of parliamentary life it has been constantly in my mind; on no other topic have I bestowed so much time and attention. It is not my intention, however, to trouble you with my personal opinion on any controversial matter; I mean to state nothing but fact, law and what is the common creed of all my countrymen without distinction of party.

The relations between Austria and Hungary seem to be such a network of intricacies to foreign observers that very few of them care to get to the bottom of the matter. In fact, the great difficulty which is experienced in mastering this problem arises not so much from its own nature than

from the prevalence of certain false general notions and misleading comparisons. The most widespread fundamental error, the *Πρωτον ψευδος* as I should like to call it, consists in considering an Austrian empire which is understood to contain Hungary, as the primordial fact, and whatever is known of Hungarian independence as a sort of provincial autonomy, conceded to that "turbulent province" by the central power of the Empire. Austrian court politicians and some German writers have done their best — or rather their worst — to propagate this theory, which, however, is radically false, and being almost daily contradicted by facts, engenders hopeless confusion in the minds of all who choose to be guided by it. The truth is the exact counterpart of the abovequoted proposition; in truth, historical, legal, and material, the primordial fact is an independent kingdom of Hungary, which has allied itself for certain purposes and under certain conditions to the equally independent and distinct empire of Austria, by an act of sovereign free will, without having ever abdicated the smallest particle of its sovereignty as an independent nation, though it has consented to exercise a small part of its governmental functions through executive organs common with Austria. If the term of "concession" is to be used at all, it is Hungary who has granted some concessions, by concurring in the creation of such common organs of government; she had none to ask for, as there is no earthly power placed above her entitled to control her, and as she is possessed of all the attributes of a sovereign nation. That Austrian Empire which is supposed to include Hungary has no existence, except, in false theory and in former oppressive practice; in public law it always was and now in fact is, a nonentity. Even the term "Austro-Hungarian empire" — what the German call *Das Reich* — is a false one; and the officially used term "Austro-Hungarian Monarchy" (not a very happy because a misleading one) can be

accepted, as we shall see, only in the sense of their personal union under a monarch, physically one, but representing two distinct personalities of public law, the Emperor and the King, and of their joint action in questions of peace and war; but an objectively unified body containing both Hungary and Austria does not exist.

From the moment you have well grasped these fundamental truths, on which no Hungarian even admits discussion, it is like a falling of scales from your eyes, and everything at once becomes clear and all facts are easily accounted for. To bring them into full evidence I must trouble my hearers with some briefly sketched peculiarities of our constitutional development and with a short outline of the events which brought about and shaped our connection with Austria.

## 1

The Hungarian constitution is as old as the Hungarian nation herself, at least, as old as anything history knows of her. No written document exists which could be called the Hungarian constitution; no illustrious lawgiver or set of lawgivers is entitled to the praise of having framed her. She is the product of organic evolution, worked out through centuries by the genius of the nation, in uninterrupted continuity; her principles and rules must be collected from numbers of laws, customs, and precedents, reaching as far back as the eleventh century. In this respect there is an analogy between the growth of the English and of the Hungarian constitution, which is the more striking because the two racial individualities are as dissimilar as they well could be, and because there is no trace of mutual influence in their development. Even some dates happen to coincide. In 1222, seven years after the Magna Charta, appeared the Golden Bull of our King Andrew II, which, like the



older British document, laid no claim to being considered as a new enactment, but was meant to be a confirmation of old liberties. The legal distinction between constitution and law, that chief feature of American institutions, is unknown to Hungarian public law. It is within the power of our legislature to effect constitutional changes through simple legislative acts, just as she can alter a tariff or legislate on railway matters. In fact, the strongest conservatism prevails in dealing with constitutional questions, and that compound of time-hallowed prescriptions which bears the collective name of constitution is cherished with a respect nowhere to be surpassed. Some aspects of our constitutional growth will be placed now before this distinguished audience preparatory to the subject proper of my present address. ✕

From the day when our forefathers were converted to Christianity (at the end of the tenth century) we find at the head of the nation a king with a vast prerogative, which it was necessary to invest him with, because the constant dangers threatening our country from the west as well as from the east could be faced only by a strenuous concentration of power. But that prerogative was submitted from the beginning to several checks. There was the national assembly — the gathering of all freemen — soon to evolve into national representation, the assent of which was needed to give permanent force to royal enactments, and which became an openly recognized and organized factor of legislative power in the second part of the thirteenth century. There was the semi-elective character of the crown which, though vested in a reigning dynasty, could be transferred by election to any member of that dynasty, making it advisable for the king to conciliate public opinion if he wished to insure succession to his son. There was, moreover, that remarkable clause of the Golden Bull, which remained in effect till 1686, conferring in so many words on the estates of the realm a right of resistance to the king should he

infringe their liberties. There are two laws more remarkable still, considering their date, which is 1235 and 1298, enacting the first of them that the Palatine (head of the King's Government) should be dismissed on a vote of the national assembly adverse to his administration, while the second one states that no royal ordinance should take legal effect if not signed by certain dignitaries designated by the national assembly. In what other country do we find at so early a date such full-grown elements of parliamentary government?

Medieval Hungary could reach such a high state of constitutional development for the same reason as made the power of Hungarian kings the most efficient one of that epoch, and that reason was the absence of feudalism. No doubt, infiltrations of feudalism, as prevalent throughout Europe, are to be found in our old institutions, but as an accidental intermixture only, not as their essence and chief feature. That blending of public prerogative with rights belonging to the sphere of private law, which is the essence of feudalism, never prevailed in the organization of our public powers, never broke their action on the nation as a whole. To this early prevalence of public law in the government of the country do we owe not only a superior efficiency, not detrimental to liberty, of our public powers, but in connection with it an early growth of conscious national unity, of patriotism on broad lines, at a time when tribal feeling and feudal allegiance subdivided all European nations into small units which paralyzed each other, and into a corresponding fractional mentality adverse to the very idea of state and to national feeling. But for this happy peculiarity of her old institutions Hungary could never have been able to hold her own against scheming neighbors of tenfold her material power.

In 1686 the Hungarian Crown became hereditary; henceforth, she missed the guarantee contained in free election;

but in the meantime some substitute for it had grown up in the institution of coronation and the legislative acts by which that august ceremony is attended. Old laws require the heir to the throne to get himself crowned within six months of his accession and they suspend some important part of his prerogative (we name only his participation in legislative power) till he has done so. But crowned he can be only with the assent, or to state it more correctly still, through the agency of the national representation, which puts thereon such conditions as it thinks necessary. Every coronation, then, is founded on a new agreement between king and nation, embodied in a document called "inaugural diploma" and accompanied by a solemn oath of the king to observe the terms of that document and the general enactments of the constitution. By these proceedings the fundamental principle of our institutions, the principle that every power, the prerogative of our kings included, has its source in the nation, and comes to those in whom it is vested through delegation from the nation, is constantly reasserted and held in evidence; it is the nation who crowns the king, under the sanction of God's most holy Majesty; the prerogative of the king, his very title to reign, is blended into one with popular rights and their guarantees; both together, prerogative and people's right, are designated in their joint force and sacredness by the name of "the holy Hungarian crown", of which every Hungarian citizen is a member, this membership not being a mere metaphor, but implying the great principle that there is no difference as to inviolability and sacredness between the king's exalted prerogative and the poorest subject's individual and public rights, and that there is no prerogative apart from or in opposition to the nation.

I insisted at some length on the peculiar character of the Hungarian monarchy because it contains the most distinctive feature of our constitution and may be considered as the