

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

BY COUNT APPONYI.

It is a fundamental, yet common, mistake to regard the Austrian Empire as comprising Hungary as a constituent part of it, and to consider Hungarian independence as a sort of provincial autonomy, conceded to that "turbulent province" by the central power of the Empire. The truth is the very opposite of this; the primal 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. 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.

The following facts indicate how the connection between Hungary and Austria was brought about and shaped. That connection began in 1526, when Ferdinand of Austria was elected King of Hungary, under the express condition, accepted by him and his successors, that the independence of the Hungarian kingdom should remain unimpaired. But the connection took shape and a tie was formed between the two countries only in 1723, when hereditary right to the Hungarian throne was conferred on the Austrian house by the well-known "Pragmatic Sanction" which was embodied in the Hungarian laws I and II of the same year.

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The enactments of these laws may be thus summed up and analyzed:

1. Hereditary right to reign over Hungary is conferred on the male and female descendants of the Kings Leopold I, Joseph I, and Charles III, in conformity with the law of primogeniture already in vogue in the Austrian domains, to the effect that, as long as the above-mentioned lineage lasts, the same physical person must infallibly reign in both countries, Hungary and Austria, with no legal possibility of division. The other collateral branches of the Austrian house have no right to succession in Hungary, though they may be possessed of it in Austria.

2. Notwithstanding that personal union, the independence of the Hungarian crown and the old liberties of the kingdom are solemnly recognized and reasserted.

3. When the above-described lineage shall become extinct, Hungary will use again her ancient right of free election to the throne, irrespective of what Austria, or any part of Austria, may choose to do in that emergency.

4. As long as this lineage lasts and the same physical person reigns in both countries, Hungary and Austria are bound to assist each other against foreign aggression.

On analyzing this fundamental transaction we must take note of its contents and of its form.

In the contents there is nothing to take away any particle of Hungary's independence and national sovereignty. A personal tie is formed, it is true, with another country; I call it "personal" because it lasts only as long as a certain set of persons, a certain lineage, exists, and becomes *ipso facto* severed whenever those persons disappear. But that personal tie, the identity of the ruler, does not affect the juridical independence of the country, because that identity exists only with respect to the physical person, while the personality of the King of Hungary remains quite as distinct in public law from the personality of the Austrian ruler as it had been before; as King of Hungary that monarch wields his prerogative, checked and controlled by the nation; as ruler in Austria he wields—or wielded at that time—a power almost absolute, grown of a combination of feudal and Roman law, both unknown in Hungary. To that personal tie, a solemn league and covenant was added, a mutual obligation to assist each other against foreign aggression. Is there anything in the nature

of such a covenant which should, of necessity, impair the independence of the nations who are parties to it? The answer to that depends wholly on the form of the transaction, on the sources from which it derives its binding character, on the forces which insure its execution. Had that obligation for mutual defence been laid upon Hungary by a power outside her own public powers and superior to them, or should there be any sort of such superior legal organization able to enforce its execution against Hungary's free will or to interpret its meaning in a way binding upon her, then, indeed, Hungary would be no more a sovereign nation. But of all this there is not even a trace. Hungary entered that compact of mutual defence by an act of her sovereign will, *and its execution as well as its interpretation*—let me emphasize this point, because it absolutely settles the question—*depends entirely on her good faith and on her discretion*. Neither before, nor in, nor after the solemn transaction called the "Pragmatic Sanction" will anybody be able to discover even the trace of any power superior to the public powers of Hungary, entitled to control her, able to force on her what she does not choose to accept or to do. Now, this way of forming and of keeping compacts with another nation exactly answers to the idea of national sovereignty. We shall see later on that these characteristic features of the legal status of Hungary suffered no alteration whatever through more recent transactions.

A certain confusion has been caused by the title of "Emperor of Austria." Many people think that this imperial title extends over all His Majesty's domains, Hungary included, and that it represents a collective sovereignty superior to that of the Hungarian Crown. The corresponding territorial idea is that of an Austrian Empire, including Hungary.* Now, these conceptions are absolutely false. The new imperial title has nothing whatever to do with Hungary, it has legal existence only with respect to those other domains which, from that date, can be properly

* The Empire of Austria is composed of seventeen States, each of which has its own local Legislature, and also Representatives in the Imperial Parliament at Vienna. The total area of the Empire is 115,903 square miles (Arizona has 112,920 square miles), and the population in 1900 was 26,150,597. Hungary has its own Parliament, has no Representatives in the Austrian Parliament, contains 125,039 square miles (New Mexico has 122,460 square miles), and in 1900 the population was 19,207,103. Hungary is larger in area than the Austrian Empire, but has not quite so large a population.

called "Austria"—to the exclusion of the Kingdom of Hungary. As ruler of those other domains, His Majesty may call himself whatever he pleases; but in Hungary he is merely King. It is quite as absurd to think of the Emperor of Austria as ruler of Hungary as it would be to fancy the King of Hungary as reigning in Austria. To our public law, the Emperor of Austria is a foreign sovereign.

We next have to inquire whether the celebrated compromise of 1867 has in any way altered the legal status of Hungary, or taken away any particle of Hungary's juridical independence? This question is to be emphatically negatived.

The celebrated transaction called the "Compromise of 1867" is embodied in Law XII of that year. In its first (declaratory) part, this law fixes again the meaning of the Pragmatic Sanction, emphasizing its two principles: our sovereign national independence, and the mutual obligation to mutual defence with Austria. Then it proceeds to state that the fact of Austria's having been endowed with a constitution, which gives to her people a right of controlling their government, makes some new provision necessary in those branches of administration which bear direct relation to mutual defence, and in which it is, therefore, highly desirable that the joint action of both countries should be un-faillingly secured. To that end, the two great agencies of national defence—foreign affairs and war-administration—are to a certain extent declared common affairs, but in the executive sphere only, where action originates. Legislation on them (such as assenting to international treaties, framing of laws on the conditions of military service, on recruiting, etc.) is expressly reserved to the juridically independent action of both legislatures, which are, however, desired to do their best to agree on these matters. To provide for these common affairs, common ministries of foreign affairs and of war are called into existence; the expenses of these two departments are jointly to be borne by both countries in proportion to their comparative financial power—measured until now by the results of taxation in each. Both countries have equal control over these common departments, a control which they can exert through ways direct and indirect.

The common ministry of foreign affairs implies a common diplomatic service. It is not so clear up to what point unity of the armed force is implied in common war-administration. Our

law mentions a Hungarian army as part of the whole army, which is to be unitedly commanded and regulated as to its inner organization by the King, in the exercise of his constitutional prerogative. The somewhat oracular terms of this proviso have given birth to much controversy, and to some trouble lately. But one fact towers above all controversy, namely, the fact that, in public law, the individuality of the Hungarian army has been expressly maintained; and this is all that need be said about the matter here, where we are considering the juridical aspect of things only.

Particular provision has been made for the annual vote on common—foreign and war—expenses, and for a direct parliamentary control of the respective common ministries. Anything like a common parliamentary body being out of the question, the natural proceeding would be to submit these questions to both parliaments, but practical difficulties might arise if their votes should differ; how could two great parliamentary bodies residing in two different countries come to an agreement as quickly as the necessities of immediate action might sometimes require? To meet this practical difficulty, select committees are annually chosen by both parliaments to the number of sixty members each. These are called Delegations, and hold their annual meeting at the Emperor's and King's call alternately at Vienna and at Budapest. The Delegations do not sit together; they are two separate bodies, like the mother assemblies, only more handy ones to adjust difficulties. In case of disagreement they communicate through written messages, and only when it seems impossible to settle differences through correspondence (a very rare occurrence) do they meet for a simultaneous vote, at which meeting no discussion can take place. What is, then, the juridical meaning of that simultaneous vote? Is it to get a joint majority out of both bodies? That would contradict the fundamental principle of the institution, which is no sort of common parliament, but only a channel of easier communication between the two parliaments; the real meaning of that somewhat anomalous expedient is simply to bring face to face the two dissentient national wills, and to make the more fixed of them prevail when joint action must be secured one way or other.

The only function of the Delegations is to fix the figures of the budget of both common departments and to bring the controlling

power of both parliaments over these departments into direct action. The figures, as fixed by them, are incorporated into the Austrian and into the Hungarian budgets. The ratifying vote of the Hungarian parliament is essential to give legal value to their resolutions, and—though the parliaments cannot alter them—the Hungarian parliament at least has power altogether to reject any decision of the Delegations, when it thinks that the latter have gone beyond their constitutional competence.

The parliaments—the Hungarian parliament at least, for the Austrian law gives greater power to the Austrian Delegation than Hungarian law bestows on the Hungarian one—have, as I already hinted, indirect means, besides the direct one, of controlling the common departments. Law and custom desire the administration of common affairs—though entrusted to common ministers—to remain, as to its leading principles, in constant agreement with the Hungarian ministry; the latter is, therefore, co-responsible for the general conduct of foreign and war affairs to the Hungarian parliament, which may give an adverse vote on any question touching those departments. Such a vote, though affecting directly the Hungarian ministry only, would most certainly have an indirect bearing on the position of the common minister of the department involved—or on his policy. This indirect influence of our parliament shows still more clearly that the common affairs and the common executive agents are anything rather than representatives of a power higher than the public powers of Hungary; they are, on the contrary, constantly controlled by these powers and entirely dependent on them.

Several other enactments of the law XII, 1867, which express the advisability of Austria and Hungary's agreeing on some matters not exactly belonging to the sphere of mutual defence,* I pass by here, because—being entirely facultative in their execution—they can have no possible bearing on the juridical aspects of national independence. But it is now my task to analyze the institutions created in 1867, and to inquire whether they have impaired Hungary's independence as a sovereign nation.

* The most important of these enactments is one which provides for customs union to be periodically established. It is far from improbable that in a few years that union will be dissolved and a commercial barrier rise between Hungary and Austria. Nor will this modification of their economic relation juridically affect the connection as established by the Pragmatic Sanction and shaped out by the law of 1867.

That there is mutual dependence, in the political sense of the word, between two nations which are bound to act together in certain affairs and have created institutions to secure such identity of action, seems perfectly clear. Mutual dependence of this kind certainly exists between Hungary and Austria; there is a strong party in Hungary which objects even to this, and calls itself, on that account, the party of independence. But with this political aspect of the question I have here nothing to do. Mutual dependence between two equals depending on the free will of both does not affect their independent juridical individuality—in the case of a nation, the nation's sovereignty. That would be impaired only should the nation be incorporated as a part into some larger body, or controlled by some legal power superior to her own public powers. Now, is this the case of Hungary since 1867?

The question put in these terms is negatived by the very nature of the transaction which we are examining. We call it a "compromise"; and such it is politically speaking. Hungary—before creating law XII, 1867—ascertained in a proper way that that law would settle the difficulties pending with the dynasty and with Austria as common good sense required her to do. But, as to *its binding force*, this celebrated law is no treaty, but simply a law like any other law, liable to be abolished or changed at Hungary's uncontrolled pleasure. It is immaterial, for the purposes of the present discussion, that Hungary would certainly think the matter twice over before tampering with that particular law: that is the *political* aspect of the question. *Legally*, the whole machinery of common affairs and common ministries can be destroyed by an independent act of the Hungarian legislature, with which nobody has a right to interfere. Now, how can institutions which depend for their very existence on the sovereign will of Hungary represent a power superior to her—or controlling her? They are not even a new tie between Austria and Hungary, for the simple reason that Hungary is not tied by them. Matters are left, then, exactly as they stood after the Pragmatic Sanction: an independent and sovereign Hungarian nation has entered personal union with Austria, and both countries are bound by solemn compact to assist each other against foreign aggression.

Though this settles the question, let us consider the common institutions in their activity, and let us inquire whether they

represent, while existing, some fragment at least of an imperial establishment—an establishment, including both Hungary and Austria, superior to their public powers and, let us say, provisionally controlling them to a certain extent. What constitutive elements of such an establishment can be found in the machinery set up by the legislation of 1867?

It has no territory; there is a Hungarian territory, and there is an Austrian territory: Austro-Hungarian territory there is none, as has been declared by a resolution of Parliament, when dealing with an inaccurately worded international treaty.

It has no citizens: there are Hungarian citizens and there are Austrian citizens; the rights of these two classes of citizens being not only distinct, but widely different in the legal conditions of acquiring and losing them.

It has no legislative power; we have seen that even in common affairs legislative acts are expressly reserved to both legislatures; we have further seen that the Delegations have no legislative power, and are, even in the sphere of their competence, nothing like imperial representative assemblies, but simply select committees of both parliaments, called into existence for purposes of easier communication between them, and working under their constant control.

It has no judiciary; questions arising between the two countries must be settled, if agreement is impossible, by international arbitration, as was done in a boundary question a few years ago.

But it seems to have, at least, an executive? What are the common ministers, if not some embodiment of a common, of an imperial, executive power? Now, let us overlook the queer aspect of an imperial establishment, possessed of no other attribute, no other public power, but an executive; let us overlook the little hand-trick which must be performed imperceptibly to glide from "common"—which supposes two parties at least—into "imperial," which means one; and let us simply state that even a common executive power does not exist, cannot exist,—between Hungary and Austria. There are common ministers, indeed; but in what constitution of the world is executive power vested in ministries? We find it everywhere among the constitutional attributes of the first magistrate, subject to more or less restrictions, but vested in him, having its real existence personified by him, ministers being merely his agents, agents designated by

the constitution. In Hungary, executive power is vested in the King; in Austria, in the Emperor.* Now, the King of Hungary and the Emperor of Austria, though meeting in one physical person, are two distinct personalities in public law, every part of their prerogatives being distinct and generally different. The King of Hungary can only be invested with the executive power of Hungary, the Emperor of Austria with the executive power of Austria; no third personality of public law, no sort of imperial first magistrateship, has ever been conferred on His Majesty, nor does such a personality, I presume, evolve out of nothing by a sort of "*generatio equivoca*"—spontaneous growth. So there exists no person in whom such common, or imperial, executive power could possibly be vested, just as there is no source from which it could be derived. Common ministers are simply agents of both executive powers, Austrian and Hungarian, for those branches of government in which both executives should act together; they are ministers of the Emperor and of the King, to assist His Majesty in those acts through which he simultaneously exercises both his executive prerogatives, imperial and royal.

What is the bearing of such a connection between Austria and Hungary, as two sovereign nations, on the international situation of either of them separately or of both taken jointly?

That Hungary, taken separately, has a legal personality in international law stands above doubt; it simply follows from her being an independent Kingdom, not subject to any other Kingdom or nation, as a fundamental law of 1791 declares it. But,

* Austria and Hungary were both represented at the recent session of the Interparliamentary Union, which caused the calling of the second conference at The Hague. Count Apponyi was president of the delegation from the Hungarian Parliament, Vladimir Ritter von Gniewosz was president of the delegation from the Austrian Empire. Count Apponyi is Chamberlain to the King of Hungary. Mr. Gniewosz is Chamberlain to the Emperor of Austria. A Chamberlain is a man who has access at all times to the head of the State. Franz Joseph, as King, receives Count Apponyi on matters which concern Hungary. As Emperor, he receives Mr. Gniewosz on matters which concern Austria. If we imagine a law passed in Mexico making the Presidents of the United States in succession Presidents also of Mexico, but bound by the Constitution and laws of Mexico in his actions as President of Mexico, the relation between Austria and Hungary will become plain. The President would act in one set of matters as President of the United States, in others as President of Mexico. The Congresses, courts and other governmental agencies of the two nations would go on unimpaired by this choice of a common President.

since she is bound to Austria by a covenant of mutual defence, and since the law of 1867 has declared common affairs "those foreign affairs which affect the interests of both countries"—meaning those which bear direct relation to national defence—Hungary, as well as Austria, has for the time being disabled herself *by her own law* to act separately in international matters of that kind; she has, with respect to these matters, for the time being, renounced the separate use of her personality in international law, and must, in all cases of such nature, act jointly with Austria. The permanent potentiality of that joint action, the union of the two nations for that purpose, is called "Austria-Hungary," or—since their ruler is physically one monarch—the Austro-Hungarian monarchy, though that term, as being apt to misinterpretation, is not very felicitously chosen and will probably fall into desuetude. Austria-Hungary then—as is shown by the double term itself—does not mean one empire, but the permanent union of two nations for certain international purposes. In all international affairs not belonging to the sphere of national defence (such as railway conventions, extradition treaties, copyright conventions, etc.), the international personality of Hungary not only can, but must, act separately, because with respect to them there is no union with Austria, and therefore their joint action cannot even be juridically constructed, except on the grounds of some (*ad hoc*) convention between them.

But, even where joint action is necessary, it is not the action of *one* empire (which, having no substance, is hardly capable of action of any sort), but the joint action of two. Being bound to such joint action in certain matters, the union of these two constitutes one great power; for what is power, but potentiality of action—in our case of joint action? But it is not necessary to invest that great power with a juridical personality of its own; the fact that it represents a permanent obligation of two personalities to act jointly in matters of peace and war, answers to all requirements, theoretical and practical.

We can easily see now the chief source of the erroneous views generally prevailing about the legal status of Hungary. Hungary usually appears in joint international action with Austria; they have a common representation. These facts are apt, by themselves, to spread a false impression, which could be prevented only if the forms of such joint action and common representation

would clearly indicate—as they ought to do—the two sovereignties, which, though acting in conjunction, are possessed each of its own personality.

Unhappily, not even now can we point to a complete concord between what appears to the eyes of foreigners and what the relations between Hungary and Austria legally are. A wholesale reform of certain misleading forms in foreign (and, to some extent, military) matters has not yet been effected, though it has begun and will no doubt be completed in due time.

I should not like to be misunderstood. Hungary's strong insistence on her national independence does not, in the least, imply a will, or a wish, to break away from Austria. We mean to be true to the reigning dynasty—no nation within its dominions is more absolutely reliable in that respect; we mean loyally to fulfil our compact of mutual defence with Austria; in a word, what our forefathers agreed to, as being obligations freely accepted by Hungary, we mean to adhere to, as honest men should. All we want is that equal faith should be kept with us, that those equally binding enactments of the Pragmatic Sanction, which make Hungary secure of her independence as a sovereign nation, as a kingdom, "*nulli alio regno vel populo subditum*," as the law of 1791 puts it, should be fulfilled with equal loyalty.

To such complete national existence Hungary has as good a right as any nation on earth, not on grounds of formal legality only, but because her people are conscious of having creditably fulfilled their mission as a bulwark of Western civilization and of liberty. We do not see that this mission is ended; nor do we see how it could be fulfilled, should that organic force of our peculiar national mentality and constitution be missing, should that force which stands unshaken after trials before which stronger empires have fallen into dust, give way to artificial combinations and mechanical contrivances.

We are then only faithful to the supreme law of our destinies when upholding the banner of national independence with unflinching firmness of resolve.

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THE ENGLISH DRAMA OF TO-DAY.

BY HENRY A. BEERS.

THE past fifteen or twenty years have witnessed one more concerted effort to "elevate the English stage," and this time with a fair prospect of results. There is a stir of expectation: the new drama is announced and already in part arrived. It would be premature to proclaim success as yet; but thus much may be affirmed, that the dramatic output of the last quarter-century outweighs that of any other quarter-century since 1700. Here, for instance, are the titles of a dozen contemporary plays which it would be hard to match with any equal number produced during an equal period of time since the failure of Congreve's latest and most brilliant comedy, "The Way of the World," marked the close of the Restoration drama: W. S. Gilbert's "Pygmalion and Galatea"; Sydney Grundy's "An Old Jew"; Henry Arthur Jones's "Judah" and "The Liars"; Arthur Wing Pinero's "The Second Mrs. Tanqueray" and "The Benefit of the Doubt"; George Bernard Shaw's "Candida" and "Arms and the Man"; Oscar Wilde's "Salome" and "Lady Windermere's Fan"; Stephen Phillips's "Ulysses"; and W. Butler Yeats's "The Land of Heart's Desire." (I have gone back a few years to include Mr. Gilbert's piece, first given at the Haymarket in 1871.)

Every one of these dramas has been performed with acceptance, every one of them is a contribution to literature, worthy the attention of cultivated readers. I do not say that any one of them is a masterpiece, or that collectively they will hold the stage as Goldsmith's and Sheridan's are still holding it a century and a quarter after their first production. But I will venture to say that, taken together, they constitute a more solid and varied group of dramatic works than that favorite little bunch of "classical" comedies, and offer a securer ground of hope for the future of the