



CHARACTERISTIC FEATURES OF THE HUNGARIAN CONSTITUTION AND HUNGARIAN ADMINISTRATION

BY

PROF. STEPHEN EGYED D. C. H.

The Constitutions and Administrations of the different civilized States produce systems and arrangements more or less similar. But beyond these inevitable similarities we find certain characteristic features in the legal system of each nation that mirror its own peculiar conception of law, and which are not to be discovered in the same form in the political constitution of any other country. These national characteristics are naturally considered to be of special value by the nation to which they belong, for the national individuality of the people finds expression in them. A knowledge of these peculiar traits intensifies to an extraordinary degree national consciousness and strengthens national self-reliance. A study of them in others brings us nearer to the soul and character of other peoples. Not counting the first period of uncertainty, after the world war the development of national consciousness advanced with rapid strides in almost every country; it is therefore no wonder that this newly awakened national consciousness has devoted itself to a careful study of the national past, an exhaustive examination of national traditions, and has considered that its chief task is to increase the respect felt for those traditions, thereby investing them with new force.

I.

Last year *Hungary* celebrated the 900th anniversary of the death of her great *King, St. Stephen*. In that memorial year the undivided attention of the whole *Hungarian* nation was devoted to its first king, to him who laid the foundations of the present Hungarian State. He was who furthered the spread of western culture, won the nation over to Christianity,

established the country as a monarchy and laid down a fundamental system of State Administration.

Even to day the Hungarian nation adheres to the principles of the Constitution framed by St. Stephen. The political arrangements made by him with such peerless wisdom, viz. the establishment of a national and Christian State in the form of a monarchy and of the county system, still hold good and are the fundamental pillars of our existence as a State. In outward form these political arrangements of St. Stephen's have undergone many changes in the course of time, but the principles remain unaltered, the political conception of the great King lives on and lends, even today, a specific Hungarian character to our form of State. Purely by virtue of his extraordinary genius as a statesman St. Stephen discovered the only form of life conforming to the needs of the Hungarian nation, its historical mission and its geographical situation.

St. Stephen created a national State. The national character of the Hungarian State has been proved by its thousand years' history. We are but a little people without racial kin in the middle of Europe, yet we were able to preserve the independence of our State and its national character through a thousand years of vicissitudes and dangers. We adopted western civilization without, however, sacrificing our eastern traditions. We defended western culture and European civilization, guarding Christianity for centuries against the danger threatening from the east, against *Turk* and *Tartar*, but we steadily refused to subject ourselves to the suzerainty of western States and for centuries we fought in fact a war of independence against the attempts of Austria to crush the Hungarian nation.

Still the national character of the Hungarian State never proved a hindrance to our living in peaceful symbiosis with our fellow-citizens of non-Hungarian mother-tongue. In his "*Exhortations*" to his son St. Emeric, St. Stephen left behind him this policy of peace as his testament, and ever since our legislation has been characterised by that same policy. The provincial self-government granted to the lands attached to the Holy Crown of Hungary, the laws framed to ensure the liberty of the nationalities and other measures show the understanding spirit we have always exhibited where the *rights of*

the minorities were concerned. No matter what their mother-tongues were, the citizens of the Hungarian State, all the peoples that is to say, belonging to the Holy Crown, were ensured a peaceful home in the lands of St. Stephen.

But the State created by St. Stephen was not merely a national, it was also a Christian State; he, so to say, betrothed our country to Roman Catholic Christianity. Before he assumed the title of King, he first asked the Pope's consent, introduced then the Roman Catholic faith, and made it the State religion. No better proof is needed of the close connection between the Hungarian State and the *Roman Catholic Church* than the fact that the King was the chief patron of the Church in Hungary. This right ensured the King the status of Prince of the Church, with authority to organize ecclesiastical affairs within the bosom of the *Hungarian Catholic Church*. Today too, the Hungarian State maintains the closest connection with the Christian Churches, ensures the representatives of those Churches seats in the Upper House and on the municipal corporations, whereby they are able to exert an influence both on legislation and administration. The close connection between the Hungarian State and the Christian Churches places our national policy on the basis of Christian ethics.

By reason of its nature the Constitution of the Hungarian State is a historical Constitution. This means that the articles of our Constitution were never collected in one uniform synoptical law. Even St. Stephen did not attempt to draft a new Constitution, nor was any such framed by any of his successors. The Hungarian Constitution is not the work of any one person, but of countless generations; it was built up by the nation in the course of the centuries and most of its articles are rooted in equity. This historical character of our Constitution proves that it is most closely bound up with the special ideology and character of the Hungarian nation, in the soul of which it is firmly rooted.

Among the sources of Hungarian political law *custom* has always been of particular importance. Custom is the nation's informal method of lawgiving in which the will of the nation is able to express itself most pregnantly. For this reason it is the rules of equity that are most in harmony

with the ideology of the nation and most faithfully express its conception of law; they are therefore usually stronger and more lasting than all written forms. Already St. Stephen advised the people to obey the laws of their ancestors. The equity in force at the beginning of the XVI. century was codified in a uniform system by Stephen Verböczy. This great code of equity not only preserved the uniformity of Hungarian law at the time when the State was broken up; by means both of the clarity of the construction of its Common Law and its wide circulation it also was a factor in the revival of Hungary's existence as a State. Many of its rules are valid today, as are also certain of St. Stephen's laws.

As is but natural Hungarian Law is not free from foreign influences. St. Stephen himself when framing his measures based his principles on the Franco-Bavarian model. In the Middle-Ages feudalism made its effect felt as much as did the currents of international democracy later on. But these influences never destroyed the validity of the old laws; they merely were responsible for a certain number of reforms. The measures gradually adopted from foreign countries underwent a peculiar evolution in Hungarian soil in that they became imbued with the strong sense of Common Law that has always characterized the Hungarian nation and with the nation's love of liberty. The geographical unity of the land, the isolation of the Hungarian race, their deeply ingrained juristic sense and conservatism explain how a little people, within the ramparts of the Carpathians, on the border between east and west, was able for a thousand years to maintain its own special legal system.

The evolution of Hungarian law is characterized by a strict observation of formal *legal continuity*. The modification of our Constitution has never taken place by force, through revolution, but always by way of peaceful evolution within the framework of existing legal forms. There has never occurred a violent upheaval in the development of our constitutional life: our progress has never consisted simply of the substitution of a new Constitution for the old or the building up of a new one on its ruins; it always consisted of the maintenance of the old Constitution with modern developments. Even the great intellectual movements of the years 1789 and 1848 — which

shook the very foundations of other States — prevailed here in constitutional ways and were merely milestones on the path of our development. And even if external events were now and then responsible for a temporary break in Hungarian legal continuity, we always strove to return as soon as possible to constitutional principles. We never sought to emerge from a crisis by introducing a new Constitution, but always by a return to the old. This was what happened in 1867 after two long decades of Austrian oppression and in 1920 at the close of the world war.

Adherence to ancient institutions and the maintenance of legal continuity naturally do not mean petrification. On the contrary our historical Constitution retains its peculiar elasticity and capability of development just because there is no rigid adherence to the letter of the law, and even the fundamental laws can always be altered by the ordinary methods of legislation. Our Corpus Juris is a mighty edifice of law to which brick after brick has been added throughout the centuries. The Hungarians are said to be a nation of soldiers and jurists; and it is undoubtedly true that it was only with their weapons in the hand and relying on the strength of the law that they were able to preserve their independence amidst countless dangers. In unsettled times the Hungarian codex of laws was one of the nation's weapons against the endeavour to crush *Hungary*; it was a sustaining force in times of hardship and repression, and a unifying force in the era of partition; and the moral force of adherence to the law was always triumphant in the end over tyranny. St. Stephen made Hungary a monarchy, and ever since, without interruption, the nation has held fast to this form of State. It was this form of State that held the Hungarian nation on its feet after the conclusion of the world war, even although the march of events made the exercise of Royal authority impossible and respect for monarchistic forms of government was shaken throughout the whole of Europe. For so long as the impossibility of exercising Royal authority lasts, Admiral Nicholas Horthy de Nagybánya has been placed by the nation at the head of the State, where as Regent he exercises the rights inherent in Royal authority. A Regency is no new phenomenon in the history of Hungary, and when at a critical

moment for the Hungarian Constitution, the nation established the sphere of authority of the present Regent, it took for its model the laws of the years 1446 and 1447 in which the sphere of authority of the great Regent John Hunyadi, who defeated the Turks, was laid down. The Monarchy has therefore not been superseded by a Regency, it is merely represented by it and in form and methods this representation is simply the revival of an ancient tradition. Officially Hungary styles herself a "Kingdom" and all our State organizations and departments bear the designation "Royal". When the proper time arrives the nation will make arrangements to fill the vacant throne.

The monarchy created by St. Stephen on a western model very soon took on a *Constitutional* aspect through the co-operation of the nation. With a strong hand, St. Stephen carried out the reconstruction of the State, but even in his time we find certain elements that may be regarded as the starting-point of constitutional development, for example, the participation of the nation in the election of the monarch, the Oath, the co-operation of the Royal Council in legislation, and so on. The constitutional spirit of the nation gained ground more and more and in fact led, in the "Golden Bull" of 1222, to a chartered guarantee of the nation's right to take up arms against the King, should he break the laws of the land. Since that date constitutionalism, i. e. the nation's participation in public administration, has been the most important principle of the Hungarian Constitution.

The crown received by St. Stephen from Pope Sylvester II played an important rôle, as the embodiment of King and Nation, in the laws framed by St. Stephen and in his "Exhortations" to his son St. Emeric. The Holy Crown became increasingly an object of national veneration and was soon the symbol of the whole Hungarian conception of State and Constitution. By the days of Verböczy the so called "Doctrine of the Holy Crown" was fully developed, and it may be regarded as the most pregnant expression of the constitutional organization of the Hungarian State. In terms of this "Doctrine" the Holy Crown is the ethical entity in which several parts of the nation are united in one whole, the source from which all power springs, and the framework which

unites the country and its inhabitants in one single political existence. According to the "Doctrine of the Holy Crown" the power of State belongs of right to the nation; the King, however, shares in it by virtue of his coronation. King and Nation together are the Holy Crown, the mystical embodiment of the Hungarian State and the symbol of a constitutional monarchy. The sharing of power between King and Nation finds expression in legislation and also in the exercise of the executive power. The territory of the Hungarian State consists of the "Lands of the Holy Crown"; its citizens are members of the Holy Crown, State property is the property of the Holy Crown; the latter is even the source of private property, since unowned estates revert to the Crown.

The participation of the Hungarian nation in the exercise of the executive power takes place primarily by way of *Parliament*. Since the XIII century Parliament has taken an active part in the framing of laws and it has come to be a recognized rule that without the co-operation of Parliament no law can be passed. To the sphere of authority of Parliament had always belonged the election of the King, the drafting of the Royal Diploma, the administration of the Coronation Oath, the sanctioning of taxes and recruits, the election of the Palatine as head of the executive power, etc. Since the XVII century Parliament has consisted of two chambers of legislation.

Till the middle of the XIX century the Hungarian Constitution rested on the principle of Estates. The nation forming the body of the Holy Crown, divided into three Estates of the Realm, took part in the public administration. The abolition of the privileges of the nobility and of serfdom in 1848 also put an end to this system of Estates, changing in this respect the character of the Constitution, and granting equal rights to all Hungarian citizens. Since then the Lower House of Parliament has been based on the principle of popular representation. The system of Estates which collapsed in 1848 enjoys a certain form of revival in the Upper House through the introduction of proportional corporative representation, i. e. the organization of the legitimate representation of the various branches of public life and the assurance of their influence on legislation and administration. The Upper House

was thus reorganized to correspond to a certain extent to the system of Estates by the reform of 1926. Besides this, Acts XXX of 1929 and XVIII of 1930 have ensured the representatives of the various branches of public life seats on the corporations of the different municipalities.

From the foregoing it follows that the two Houses of our Parliament rest on utterly different foundations. The Lower House puts into effect the system of popular representation and thereby enables a grouping of citizens according to their views of life and party politics and also the representation of the minorities. The other House realizes in a new, better said revised form, the idea of Estates in that it provides for the legitimate representation of the different branches of occupation, of the different classes of society, of literature, science and art. This organic whole rooted in Hungarian tradition which at the same time conforms to modern conceptions, brings the ideas of Parliamentarism, popular representation, and the Estates into one happy accord.

Of late our legislation has been occupied with three important Constitutional Bills. The first, which was promulgated as Act XIX of the year 1937, extended the Regent's sphere of authority, investing him with practically Royal powers. That Act also prescribes the procedure to be followed at the election of a new Regent and makes provision for the way the authority of the Head of the State is to be exercised in the event of the activity of the present Regent ceasing before the throne is filled. The second law, Act XXVII of 1937, reinforces the rights of the Upper House of Parliament and in most aspects of legislation restores the old equality of rights of the Upper House; it is only in respect of the Budget and Bills of a financial nature that the privileges of the Lower House are maintained. The third law, Act XIX of 1938, makes voting at Parliamentary elections secret everywhere, but also provides suitable measures to counteract the dangers attendant on secret voting; the most noteworthy of these measures being a slight limitation of the franchise rights, the introduction of plurality, and the strangling of demagogy.

(To be continued.)