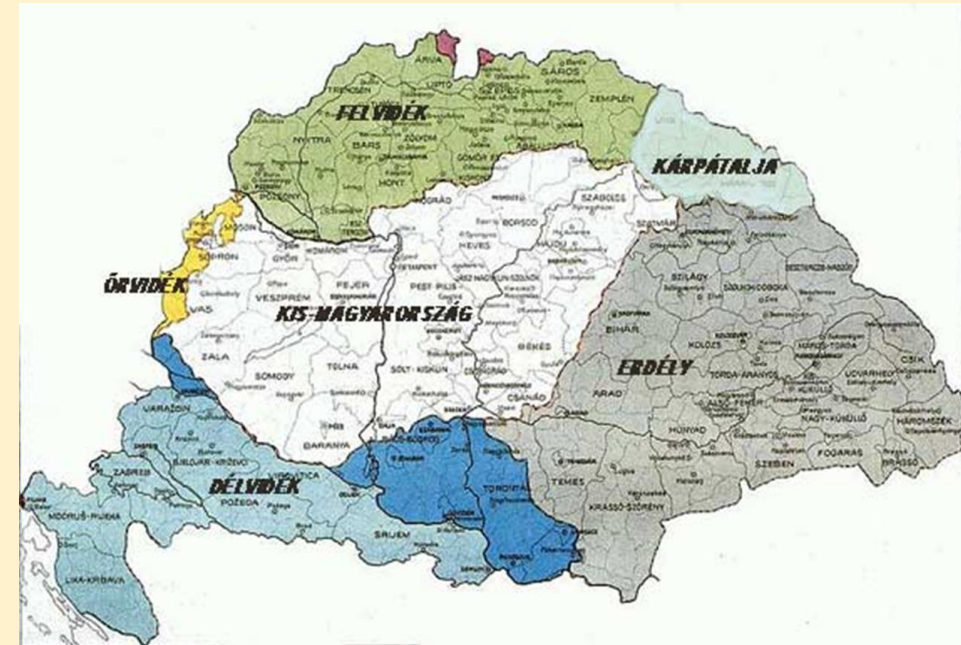


# Constitutional Development in 19<sup>th</sup> Century Europe: The Austro-Hungarian Monarchy



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# Aims:

1. Concrete case study for the "life of the law"
2. Talk about Hungary
3. Combine 1 + 2: the Austro-Hungarian Monarchy
4. To assess the 19<sup>th</sup> Century from Hungary's perspective: was Hungary a sovereign state in this period, which could interact with other international players?

**Hypothesis:** if the adherence to international law is a balancing act for states between the protection of their sovereignty (independence) and their interaction and reliance on other partners (interdependence), the Austro-Hungarian Monarchy's constituting powers were co-dependent

# Content:

**Part I:** Constitutional History of Hungary and the *Historical Constitution* (1000-1825)

**Part II:** Hungary and the Austro-Hungarian Monarchy in the 19<sup>th</sup> Century (1825-1918)

**Part III:** Sovereignty

- Internal: multi-level governance, late codification, independent domestic legal practice
- External: co-dependent on the Austrian Empire

# Part I: Constitutional History of Hungary

- 1000-1301: hereditary monarchy
- 1301-1526 (1541): elective monarchy
- 1526 (1541)-(1686) 1711: Turkish occupation, division into three parts: Hungarian Kingdom, Transylvania, Occupied territories
- 1687-1848: absolute monarchy (Habsburg)
- 1848-1849: revolution, war of independence
- 1849-1867: neo-absolutisms
- 1000-1222: „patrimonial” monarchy
  - 1222 The Golden Bull
  - 1351 Sanctity of the nobilities' land
- 1222-1405: feudal monarchy
- 1405-(1526)1687: feudal-representative monarchy
  - 1514 Tripartitum
- 1687-1848: absolute monarchy (Habsburg)
  - 1723 Pragmatica Sanctio
- 1848-1849: revolution, war of independence
  - 1848 Laws of April
- 1849-1867: neo-absolutisms
  - 1849, 1851, 1860, 1861

# Part I: Constitutional History of Hungary II

- 1867-1918: Austro-Hungarian Monarchy
  - 1918-1919: „democratic attempt”, revolution
  - 1919: soviet attempt
  - 1920-1944: monarchy without a monarch
  - 1944-1945: totalitarian state
  - 1945-1949: „democratic attempt”
  - 1949-1989: socialist single party system
  - 1989-
- 1867-1918: Austro-Hungarian Monarchy
    - 1867 Ausgleich
  - 1918-1919: „democratic attempt”, revolution
  - 1919: soviet attempt
  - 1920-1944: monarchy without a monarch
    - Regent: Horthy
  - 1944-1945: totalitarian state
    - „nation-leader”: Szálasi
  - 1945-1949: „democratic attempt”
  - 1949-1989: socialist single party system
    - Act nr. 20 of 1949: The Constitution

# Part II: Hungary and the Austro-Hungarian Monarchy in the 19<sup>th</sup> Century

- 1792 – 1825: support against Napoleon but national protectionism
- 1825 – 1848: the reform era
- 1848 – 1849: the revolution and war of independence
- 1850 – 1860: the Bach era
- 1860 – 1865: the Schmerling era
- 1865 – 1867: reconciliation and negotiations
- 1867 – 1918: the Austro-Hungarian Monarchy

# Part II: Hungary and the Austro-Hungarian Monarchy in the 19<sup>th</sup> Century II

- 1792 – 1825: support against Napoleon but national protectionism
  - Constitutional order: Pragmatica Sanctio, Arts. I, II and III of 1723
  - Sources of law: King's decrees, laws of the feudal parliament signed and promulgated by the King, local counties decrees, customs, and only as a subsidiary means, the Roman law
- 1825 – 1848: the reform era
  - Regular sessions of parliament, improvement in infrastructure, culture, language, etc.
  - Debate between Count István Széchenyi and Lajos Kossuth
- 1848 – 1849: the revolution and war of independence
  - Constitutional order: Laws of April, Arts. I-XXXI of 1848
  - December 2, 1848: Franz Joseph succeeds the abdicating King Ferdinand on the Austrian as well as the Hungarian throne
  - March 4, 1849: Franz Joseph issues the Constitution of Olmütz as a decree of the Emperor, which suspends the Hungarian constitutional order

# Part II: Hungary and the Austro-Hungarian Monarchy in the 19<sup>th</sup> Century III

- 1850 – 1860: the Bach era
  - Constitutional order: Sylvester Decree issued on December 31, 1851 alleviated certain provisions of the Constitution of Olmütz, but did not restore the Hungarian constitutional order or mitigate the relationship between the two states
  - Source of law: on January 1, 1853, the ABGB enters into force in Hungary for all civil cases
  - Top-down Austrian reforms, bottom-up passive resistance
- 1860 – 1865: the Schmerling era
  - Constitutional order: Diploma of October issued on October 20, 1860, but is restricted by the February Decree of February 26, 1861
  - Call for a session of Parliament for 1861 with the aim of coronation
  - National Judicial Committee called into session to decide on the sources of laws
- 1865 – 1867: reconciliation and negotiations: session of parliament
- 1867 – 1918: the Austro-Hungarian Monarchy
  - February 17, 1867: appointing the members of the Hungarian ministries with Count Gyula Andrassy as prime minister
  - June 8, 1867: with the coronation of Franz Joseph the Hungarian constitutional order is reestablished



# The Laws of April (1848)

- **Preamble:** the representatives also took to what was immediately necessary for the „country’s legal detachment, its independence, its legal relationships with the territories it is inseparably connected to through the Pragmatica Sanctio,” etc.
- **Art. III:** forming an independent Hungarian ministry that is responsible to parliament
  - 10 §: one prime minister and 8 ministers ( 13-14 §§: King’s minister / internal affairs / national finances / public service and transportation devices as well as shipping / agriculture, industry and trade / religion and education / justice and pardon / military)
- **Art. V:** popular elections
- **Art. VII:** reunification with Transylvania
- **Art. VIII:** collective taxation
- **Art. IX:** elimination of all remaining feudal services
- **Art. XIV:** credit institutes
- **Art. XV:** elimination of the laws blocking the transfer of land ownership
- **Art. XVIII:** on the press

# (Art. II of 1867: *diploma inaugurale*)

1 §:

we maintain and make others do the same regarding the

- the order of inheritance of the throne
- the coronation
- the rights, the constitution, the legal independence, freedom and territorial integrity of Hungary and its partner-states

# Ausgleich: Art. XII of 1867

- Mutually accepted starting point is the Pragmatica Sanctio (specifically Art. I, II and III of 1723), which is also called here a „basic contract”
- Contracting partners: Hungary and its partner-states + the other states and regions under His Majesty’s rule (which are hereby granted constitutionality)
- Joint affairs (derived from the P.S.) are those that ensure the dual purpose of:
  - 1. independence in terms of public administration and internal governance (3 §)
  - 2. protecting the Empire’s security and that it remains one
- The monarch is though shared according to the P.S. but the costs of the royal court are not considered joint (7 §) – personal union
- It falls within the duties of a joint minister for foreign affairs (with the consent and approval of both ministries) to represent the empire in diplomatic and trade affairs as well as regarding international treaties (8 §)
- His Majesty collectively commands all armed forces if need be (11 §)
- Finances are joint up to the point that it is necessary to support the joint areas defined above (16 §)

# Ausgleich: Art. XII of 1867 II

- Cost-sharing: based on an agreement to be arrived at through two committees for a fixed period of time (18 – 22 §§) – Art. XIV of 1867 1-2 §§
- On 2 conditions:
  - 1. Hungary's constitutional order be maintained
  - 2. the constitutional orders of all other states and regions be established and maintained
- Joint ministry does not fall under the supervision of either ministries (27 §)
- The two contracting parties are completely equal (28 §)
- The appointment of the *delegatio* from the parliaments of both contracting parties, who sit separately for the duration of their 1-year term to discuss (in writing) all affairs that by their nature need to be discussed (29-30, 34, 44 §§)
- Members of the joint ministry are responsible towards the *delegatio* (50-51 §§)
- Affairs of joint interest: state debt (53-55 §§), future loans (56 §), trade (58 §), establishment of a custom- and trade alliance (61 § - Art. XVI of 1867), train lines (65 §), monetary system (66 §)

# Part III: Sovereignty

## Internal Sovereignty

- Art. XII of 1867 3§: (as derived from the Pragmatica Sanctio) „Hungary’s constitutional independence in terms of public administration and internal governance is to be upheld without harm.”
- Absolutely independent domestic legislation and legal development
- Slow codification process in all areas
  - Criminal Code Art. V of 1878, Criminal Procedure Art. XXXIII of 1896, Civil Code Art. I of 1911, Civil Procedure Act. II of 1952

## External Sovereignty

- Ausgleich is though based on complete equality and parity, it is a cooperation between two states
- Towards international allies and enemies, the Austro-Hungarian Monarchy is one legal entity
- There is a joint ministry of foreign affairs for diplomatic and trade relations as well as to deal with international treaties
- The head of state commands the armies of both states together, etc.

# Part III: Sovereignty and International Law

## Internal Sovereignty

- Its protection is the number one concern for modern (nation) states in the 19<sup>th</sup> century:

## External Sovereignty

- States cannot exist on their own, they are, and especially in the 19<sup>th</sup> century and following the Congress of Vienna, have to interact with other states, whether allies or enemies

INDEPENDENCE

INTERDEPENDENCE

CO-DEPENDENCE

# Concluding Remarks

- Domestic constitutional development in Hungary and within the Habsburg territories in the 19th century was dependent on international relations and international law
- The Austro-Hungarian Monarchy was a win-win situation for both parties:
  - The Austrian Empire had its internal sovereignty (independence) but was seen as a negotiating partner after 1867 as the Austro-Hungarian Monarchy (interdependence through co-dependence)
  - The Hungarian Monarchy reestablished its internal sovereignty (independence) but was only accounted for as a part of the Austro-Hungarian Monarchy (interdependence through co-dependence)
  - It is hard to determine whether the Austrian Empire would have maintained its position as a Great Power without the Ausgleich all the way to WW I solely based on the authority of the Habsburg house...

# Thank you for your attention!

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