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THE SMYRNA AFFAIR.

Mr. Marcy to Mr. Hulsemann.

DEPARTMENT OF STATE,

Washington, September 26, 1853.

The President has carefully considered the note of Mr. Hulsemann, charge d'Affaires of his Majesty the Emperor of Austria, of the 29th ultimo, addressed to this Department, and the other documents relative to the much-regretted occurrences at Smyrna in June and July last, with a view to ascertain the nature of the complaints therein preferred against the American officers engaged in that affair, and for the purpose of giving such satisfaction as Austria might be entitled to receive in cases should find that these officers had not duly respected her rights.

Though differing very much from the views presented by Mr. Hulsemann on behalf of his government, the President still indulges the hope that the exposition of the principle reasons on which his own conclusions are founded will induce his Majesty's government to look at the transaction in a different light from that in which it is presented by that government.

It is the duty of the undersigned to present these reasons to Mr. Hulsemann, and he will fail in his intention if, in performing this duty, he does not evince, in friendly spirit, and avoid, so far as it can be done without impairing the full strength of the case, the introduction of topics to which either Mr. Hulsemann or his government can take exception.

To bring out conspicuously the questions to be passed upon, it seems to the undersigned that the facts should be more fully and clearly stated than they are in Mr. Hulsemann's note.

Martin Koszta, by birth a Hungarian, and of course an Austrian subject at that time, took an open and active part in the political movement of 1848-49, designed to detach Hungary from the dominion of the Emperor of Austria. At the close of that disastrous revolutionary movement, Koszta, with many others engaged in the same cause, fled from the Austrian dominions, and took refuge in Turkey. The extradition of these fugitives, Koszta among them, was demanded and pressed with great vigor by Austria, but firmly resisted by the Turkish government. They were, however, confined at Kutahia, but at length released, with the understanding or by express agreement of Austria that they should leave Turkey and go into foreign parts. Most of them, it is believed, that before they obtained their release, indicated the United States as the country of their exile. It is alleged that Koszta left Turkey in company with Kossuth—this is believed to be a mistake; and that he engaged never to return—this is regarded as doubtful. To this sentence of banishment—for such is the true character of their expulsion from Turkey—Austria gave her consent: in truth, it was the result of her efforts to procure their extradition, and was accepted by her as a substitute for it. She had agents or commissioners at Kutahia to attend to their embarkation, and to her the legal consequences of this act are the same as if it had been done directly by herself, and not by the agency of the Ottoman Porte. Koszta came to the United States and selected this country for his future home.

On the 31st of July, 1853, he made a declaration, under oath, before a proper tribunal, of his intention to become a citizen of the United States, and renounce all allegiance to any other State or sovereign.

After remaining here one year and eleven months, he returned on account, as is alleged, of private business, of a temporary character, to Turkey in an American vessel, claimed the rights of a naturalized American citizen, and offered to place himself under the protection of the United States Consul at Smyrna. The Consul at first hesitated; but afterwards, and some time before his seizure, he and the American Charge d'Affaires at Constantinople, did extend protection to him, and furnished him with a *Tekkerah*—a kind of passport or letter of safe conduct, usually given by foreign consuls in Turkey to persons to whom they extend protection, as by Turkey laws they have a right to do. It is important to observe that there is no exception taken to his conduct after his return to Turkey, and that Austria has never alleged that he was there for any political object, or for any other purpose than the transaction of private business. While waiting, as is alleged, for an opportunity to return to the United States, he was seized by a band of lawless men—freely, perhaps harshly, characterized in the despatches as "ruffians"; "Greek hirelings," "robbers"—who had not, nor did they pretend to have, any color of authority emanating from Turkey or Austria, treating him with violence and cruelty, and throwing him into the sea. Immediately thereafter he was taken up by a boat's crew, lying in wait for him; belonging to the Austrian brig of war the *Huszar*, forced on board of that vessel, and there confined in irons. It is now known, as it was then suspected, that these desperadoes were instigated to this outrage by the Austrian Consul-General at Smyrna; but it is not pretended that he acted under the civil authority of Turkey, but, on the contrary, it is admitted that, on application to the Turkish Governor at Smyrna, that magistrate refused to grant the Austrian Consul any authority to arrest Koszta.

The Consul of the United State at Smyrna, as soon as he heard of the seizure of Koszta, and the Charge d'Affaires of the United States at Constantinople, afterwards interceded with the Turkish authorities, with the Austrian Consul-General at Smyrna, and the commander of the Austrian brig of war, for his release, on the ground of his American nationality. To support this claim, Koszta's original certificate of having made, under oath, in a court in New York, a declaration of intention to become an American citizen, was produced at Smyrna, and an imperfect copy of it placed in the hands of the imperial Austrian intendant at Constantinople. The application to these officers at Smyrna for his liberation, as well as that of Mr. Brown, our Charge d'Affaires, to Baron de Bruck, the Austrian Minister at Constantinople, was fruitless, and it became notorious at Smyrna that there was a settled design on the part of the Austrian officials to convey him clandestinely to Trieste—a city within the dominion of the Emperor of Austria. Opportunely, the United States sloop-of-war, the *St. Louis*, under the command of Captain Ingraham, arrived in the harbor of Smyrna before this design was executed. The commander of the *St. Louis*, from the representation of the case made to him, felt it to be his duty, as it unquestionably was, to inquire into the validity of Koszta's claim to American protection. He proceeded with deliberation and prudence; and discovered what he considered just grounds for inquiring into Koszta's claim to be discharged on the ground of his American nationality. During the pendency of this inquiry he received notice of the design to take Koszta clandestinely, before the question at issue was settled, into the dominions of the Emperor of Austria. As there was other evidence of bad faith besides the discovered design of evading the inquiry, Capt. Ingraham demanded his release, and intimated that he should resort to force if the demand was not complied with by a certain hour. Fortunately, however, no force was used. An arrangement was made by which the prisoner was delivered to the custody of the French Consul-General, to be kept by him until the United States and Austria should agree as to the manner of disposing of him.

This full statement of the facts is deemed important, as it will correct some errors and aid in presenting with more distinctness the questions to be discussed.

The undersigned will now proceed to present the views of the President upon this transaction, and his reply to these several demands.

His Imperial Majesty demands that the government of the United States shall direct Koszta to be delivered to him; that it shall disavow the conduct of the American agents in this affair, call them to a severe account, and tender satisfaction proportionate to the outrage.

In order to arrive at just conclusions, it is necessary to ascertain and clearly define Koszta's political relation with Austria and with the United States when he was seized at Smyrna. This is the first point which naturally presents itself for consideration, and perhaps the most important one in its bearings upon the merits of the case.

There is great diversity and much confusion of opinion as to the nature and obligations of allegiance. By some it is held to be an indelible political tie, and though resulting from the mere accident of birth, yet forever binding the subject to the sovereign; by others it is considered a political connexion in the nature of a civil contract, dissoluble by natural consent, but not so at the option of either party. The sounder and more prevalent doctrine, however, is, that the citizen or subject, having faithfully performed the past and present duties resulting from his relation to the sovereign power, may at any time release himself from the obligation of allegiance, freely quit the land of his birth or adoption, seek through all countries a home, and select anywhere that which offers him the fairest prospect of happiness for himself and his posterity. When the sovereign power, wherever it may be placed, does not answer the end for which it is bestowed, when it is not exerted for the general welfare of the people, or has become oppressive to individuals, this right to withdraw rests on as firm a basis, and is similar in principle to the right which legitimates resistance to tyranny.

The conflicting laws on the subject of allegiance are of a municipal character, and have no controlling operation beyond the territorial limits of the countries enacting them. All uncertainty as well as confusion on this subject is avoided by the giving due consideration to the fact that the parties to the question now under consideration are two independent nations, and neither has the right to appeal to its municipal laws for the rules to settle the matter in dispute which occurred within the jurisdiction of a third independent power.

Neither Austria decrees nor American laws can be properly invoked for aid or direction in this case, but international law furnishes the rules for a correct decision, and by the light from this source shed upon the transaction at Smyrna are its true features to be discerned.

Koszta being beyond the jurisdiction of Austria, her laws were entirely inoperative in this case, unless the Sultan of Turkey has consented to give them vigor within his dominions by treaty stipulations. The law of nations has rules of its own on the subject of allegiance, and disregards generally all restrictions imposed upon it by municipal codes.

This is rendered most evident by the proceedings of independent States in relation to extradition. No State can demand from any other, as a matter of right the surrender of a native-born or naturalized citizen or subject, an emigrant, or even a fugitive from justice, unless the demand is authorized by express treaty stipulation. International law allows no such claim, though equity may sometimes yield what right withhold. To surrender political offenders (and in this class Austria places Koszta) is not a duty; but, on the contrary, compliance with such a demand would be considered a dishonorable subserviency to a foreign power, and an act meriting the reprobation of mankind. As rendering needless all further argument on this point, the undersigned will recall to Mr. Hulsemann's recollection what took place in 1849, and 1850 in relation to the reclamation of Polish refugees in Turkey by Russia, and of Hungarian refugees (of whom Koszta was one) by Austria. This demand was made in concert, as it were, by two powerful sovereigns while their triumphant armies, which had just put an end to the revolutionary movements in Hungary, stood upon the borders of Turkey, with power to erase her name from the list of nations. She might well apprehend for herself, as the nations of Western Europe apprehended for her, that a refusal in her critical condition would put in jeopardy her existence as an independent power; but she did refuse, and the civilized world justified and commended their respective demands on higher grounds than a right of extradition under the law of nations; attempted to strengthen their claim by founding it upon the obligations of existing treaties—the same, undoubtedly, that are now urged upon the consideration of the United States—Russia and Austria, however, both submitted to the refusal, and never presumed to impute to Turkey the act of refusal as a breach of her duty or a violation of their rights.

To show that the very same claims to rights now set up in this case were overruled and repudiated in 1849 and 1850, the undersigned will refer to the contemporaneous views of eminent statesmen in regard to the conduct of the Sultan in refusing to surrender, on the demand of Austria and Russia, the Hungarian and Polish refugees, who were claimed by these powers as rebels and traitors.

Sir Stratford Canning, the British ambassador at Constantinople, entirely approved of the Sultan's course on that occasion—indeed, he advised it. In a letter to his government, dated the 3d of September, 1849, he says: "On grounds of humanity, not unmixed with considerations as affecting the Porte's character and future policy, I have not hesitated to advise a decided resistance to the demand of extradition." From another letter of this ambassador, dated the 17th of December, commenting on and commending the courageous firmness of the Sultan in refusing the demand of those powerful emperors for the surrender of these fugitives, on the same pretence as now set up by one of them to justify the seizure of Koszta, this extract is taken:

"Allow me to add, my lord, that in proportion as I admire the courageous firmness with which the Sultan and his government have determined to make this stand in the cause of humanity and of the rights of honor and dignity, against a demand alike objectionable in substance and in form, I feel a deepening anxiety for the result of their resistance, and for the degree of support which her Majesty's government and that of France may find themselves at liberty to afford, not only in the first instance, but in still grave circumstances, should the present partial rupture unfortunately assume a more serious and menacing character."

In these views the French minister resident at Constantinople fully concurred, and so did the British and French governments; and both were prepared to espouse the cause of Turkey, if her humane and honorable demands had provoked the resentment and brought down upon her the hostilities of these mighty potentates. The opinions of other distinguished men, approving of the decision of the Emperor of Turkey in refusing to surrender the Polish and Hungarian refugees, both on the ground of humanity and right, have fallen under the notice of the undersigned; but he has forbore to quote them on account of the unworthy motives ascribed therein

to the powers making the demand, and the harsh epithets by which their conduct is characterized.

It is an incident of great significance and bearing authoritatively upon some of the most important questions now raised, that the case of Koszta (for he was one of the Hungarian refugees then demanded) was fully discussed in 1849, not only by the parties, but throughout Europe, and decided against the right of Austria to reclaim his extradition, either under the law of nations or by existing treaty stipulations. This decision deeply interested not only rulers and statesmen, but the great body of the people of every country. They investigated its merits, admitted its justice, and commended the firmness and humanity of the Sultan for his course.

It is to be regretted that this claim for the surrender of Koszta and his companions, so fully considered then and so signally overruled, should be again revived by Austria under circumstances which make the United States a reluctant party in the controversy. The claim has been repudiated by the general judgement of Europe, and this government is unable to discover any sufficient reason for dissenting from that decision.

Austria appears to have been aware that her right to seize Koszta could not be sustained by international law, and she has attempted to derive it from certain treaties, or "ancient capitulations by treaty and usage." The very slight and inexplicit manner in which this authority is adverted to in Mr. Hulsemann's note apparently indicates, if not a want of confidence in it, at least a desire not to have it scrutinized. If there really was such an authority, and it was of such an extraordinary character as it is assumed to be, it would have constituted, as Austria must have clearly seen, the main strength of her case, and she would not have referred to it in such a manner as to leave the very existence of it open to doubt or question. The paragraph referring to it is the following:

"As there can be no doubt, therefore, concerning the question of nationality, the Consul-General of the Emperor at Smyrna was without doubt perfectly justified when, in virtue of those treaties which subject Austrian subjects in Turkey to consular jurisdiction, he seized the person of Koszta within the pale of his jurisdiction."

If there be such treaties conferring such a power, with such extraordinary means of enforcing it, strange indeed it is that more prominence is not given to the fact in Mr. Hulsemann's communication. Why are the dates of these treaties withheld? What is still more important, why is not the language conveying this authority quoted? The undersigned is constrained, for reasons he will briefly assign, to question the accuracy of the interpretation which derives the right claimed in the above paragraph from any existing treaty between Austria and the Ottoman Porte.

The Austrian intendant at Constantinople, in a conference with Mr. Marsh, the American Minister Resident, spoke of such a right as derived from "ancient capitulations by treaty and usage." It is not shown or alleged that new treaty stipulations since 1849 have been entered into by Turkey and Austria. The "ancient capitulations" were relied on to support the demand in that year for the surrender of the Hungarian refugees; they were scrutinized, and no such authority as is now claimed was found in them. The French and English Ministers at Constantinople, who advised and sustained the Sultan in resisting the demand of Austria for his extradition, would not have given such advice if they could have found in existing treaties any authority for that demand, or any obligation on the part of the Sultan to yield to it. Lord Palmerston, then her Britannic Majesty's Principal Secretary of State for Foreign Affairs, carefully examined these treaties, and expressed his conclusions thereon in a letter to Sir Stratford Canning, dated 24th September, 1849.

In this letter, which contained an extract from one of these treaties—that of Bolgrad—and referred to the claims of Austria founded on them, for the surrender of these refugees, he says: "the utmost that could be demanded would be that they [the refugees] should not be allowed to reside permanently in the Turkish empire."

Coming down to a later period—to the very transaction at Smyrna—abundant reasons are found for denying that Turkey was then under any treaty obligation to deliver Koszta to Austria, or that her Consul-General had authority to seize him. On this subject it is allowable to resort to the declarations of the public men of the Porte as evidence in regard to an issue of this kind. Their explicit denial may be fairly considered as equivalent to Austria's affirmation without proof, where proof, if it existed, could be so easily adduced.

In a despatch to this government of the 4th of August 1853, Mr. Marsh, the American Minister Resident at Constantinople, says: "I have had several conversations on this subject with the Minister of Foreign Affairs and with Aali Pasha, Governor of Smyrna, at the time the affair took place. These distinguished persons are very far

from expressing any dissatisfaction with the course pursued by us. They sustain the view the location has taken of the legal character of the question, and Aali Pasha informs me that a few years since the Austrian Government refused to surrender to the Porte Turkish rebels who had fled into Austria, on the very ground now taken by the Porte—namely, that the treaties did not provide for the extradition of political offenders."

Mr. Brown, the Charge d'Affaires ad interim of the United States at Constantinople, writes that in an interview with Chelil Effendi, also a Turkish officer of high rank and great experience, in which the affair at Smyrna was discussed, he observed that "the Austrian government does not possess the power by treaty to arrest any one on Ottoman soil for political offences." There is now, however, something more decisive from Turkey than the opinion of her public men in opposition to this treaty-claim of Austria. The government of the Porte has pronounced a judgement in relation to the seizure of Koszta, which Austria herself is bound to respect. It has protested against the conduct of the Austrian agents in that affair as unlawful and a violation of its sovereignty; but not one word of complaint, not a murmur of dissatisfaction, from Turkey against the conduct of the functionaries of the United States at Smyrna has yet reached this government. This is certainly an anomalous case: Austria arraigns the United States for violating the rights of Turkey in the Koszta affair; Turkey, the offended party, exonerates the United States, and protests against Austria, our accuser, for the very same offence.

These considerations have led the undersigned, as he believes they will lead all others who duly reflect on them, to the confident conclusion that there exist no treaties between Austria and Turkey which could justify or in any way countenance the seizure or imprisonment of Koszta by the Austrian functionaries.

But if Austria really has such authority; by treaties as she now claims, it confessedly extends only to "Austrian subjects." It could not, therefore, be applied to Koszta unless he was such a subject at the time he was seized. If the question of his nationality is to be settled by international law, the only code which furnishes the rules by which this question is to be determined, there is no good reason for adjudging him to have been, when seized at Smyrna, an Austrian subject. But settle this question, as Austria would have it settled, by an appeal to her own civil code, the result will be the same.

By the consent and procurement of the Emperor of Austria, Koszta had been sent into perpetual banishment. The Emperor was a party to the expulsion of the Hungarian refugees from Turkey. The sovereign by such an act deprives his subjects to whom it is applied of all their rights under his government. He places them where he cannot, if he would, afford them protection. By such an act he releases the subjects thus banished from the bond of allegiance. Any other result would make the political connexion between the subject and the sovereign a state of unmitigated vassalage, in which all the duties and no rights would be on one side, and all the rights and no duties would be on the other. Koszta must be regarded as having been banished by Austria; for he was one of the Hungarian refugees whom she procured to be expelled from Turkey in 1851. They were released from confinement at Kutahia on condition of submitting to perpetual banishment, and she had two perpetual banishments who claim, or who obtained there an active share in the arrangements." Koszta could never thereafter be rightfully demanded as an Austrian subject.

The proposition that Koszta at Smyrna was not an "Austrian subject" can be sustained on another ground. By a decree of the Emperor of Austria of the 24th of March, 1832, Austrian subjects leaving the dominions of the Emperor without permission of the magistrate and a release of Austrian citizenship, and with an intention never to return, become "unlawful emigrants," and lose all their civil and political rights at home.—(Ency. Amer. Tit. Emigration, 2 Kent's Com., 50, 51.)

Koszta had left Austria without permission, and with the obvious and avowed intention never to return; he was therefore, within the strict meaning of the imperial decree, "an unlawful emigrant." He had incurred and paid the penalty of that offence by the loss of his civil and political rights. If he had property it had escheated, and he was reduced to a state worse than absolute slavery; for aliens have, by right, the benefit of the laws of their protection, in whatever country they may be. Stripped by this imperial decree of civil and political rights, Koszta had, in Austria, no redress for personal wrongs, and abroad he had no claim to protection from the government that would still hold him as a subject. He was, in regard to Austria, an outlaw. What right can a sovereign have to the allegiance of a person reduced by him to such a miserable condition? It seems to have been the very object of the Austrian decree to dissolve

the previous political connexion between the "unlawful emigrant" and the Emperor. In Koszta's case it was dissolved. Some importance seems to be attached to Koszta's own opinion of his citizenship. The note of Mr. Hulsemann conveys the impression, though it does not contain the express avowal, that he acknowledged himself to be a subject of the Emperor of Austria. The passage, when closely examined, shows that the alleged acknowledgment is only an inference from undisclosed premises. The language of the note on this subject is the following: "The very declaration of that refugee on board of the *Huszar*, in the presence of the American Consul and the commander of the *St. Louis*, shows that he still considered himself as a subject of the Emperor." The declaration referred to in support of this inference is not given, but is undoubtedly the response Koszta is reported to have made when interrogated as to his being an American citizen: "I am a Hungarian, and will live and die a Hungarian." Mr. Brown, the Charge d'Affaires ad interim of the United States at Constantinople, who was not at Smyrna at any time during the transaction in relation to Koszta, stated in a letter to Baron de Bruck something like the foregoing declaration; as Mr. Hulsemann states, when Koszta was examined, and made the declaration imparted to him, says, in writing to the Minister Resident of the United States: "I am astonished to see by Mr. Brown's letter that Koszta declared himself on our first interview a Hungarian. I did not hear him say so."

It may well be doubted whether Koszta ever used any such language. Should it, however, be admitted that he did make that or a similar declaration, it cannot be fairly understood to imply an acknowledgment that he was then a subject of the Emperor of Austria. To apprehend rightly what he meant by such a declaration, it is proper to consider his situation, his known sentiments, and his antecedents. In his mind no two things could probably be more distinct from each other than Austria and Hungary. One was an object of his aversion—the other an object of his love. His affections clustered around the land of his birth, and were the more intense because he thought that country had been cruelly wronged, and he knew it was unfortunate. In his visions of the future he saw a happier destiny for Hungary. He saw her standing proudly among the independent nations of the earth, under a clement government emanating from the will of the people, and dedicating its constitutional authority to their general welfare. In the fallen condition of Hungary he thought it false to disown her, and glorious to claim her for the land of his birth. His situation when this declaration is supposed to have been made is also to be regarded in interpreting his words. He was in the hands of Austrian agents, loaded with fetters, and warned of his own doom by the knowledge of the sad fate of so many of his unfortunate companions. In this forlorn condition he could not have intended, by the language ascribed to him, to acknowledge any unbroken tie which then bound him to the Emperor of Austria.

The undersigned is brought, by a fair application of sound principles of law, and by a careful consideration of the facts, to this important conclusion—that those who acted in behalf of Austria had no right whatever to seize and imprison Martin Koszta.

It will be conceded that the civil authorities of Turkey during the whole period of the occurrences at Smyrna was dormant, and in no way called into action. Under these circumstances—Austria without any authority—Turkey exercising none—and the American functionaries, as Austria asserts, having no right in behalf of their government to interfere in the affair, (a proposition which will be hereafter contested)—what, then, was the condition of the parties at the commencement of the outrage, and through its whole progress? They were all, in this view of the case, without the immediate presence and controlling direction of civil or international law in regard to the treatment of Koszta. The Greek hirelings, Koszta's victims, and the Austrian and American agents, were, upon this supposition, all in the same condition at Smyrna in respect to rights and duties, so far as regards that transaction, as they would have been in if it had occurred in their presence in some unappropriated region lying far beyond the confines of any sovereign State whatever; they were the liege subjects of the law of nature, moral agents, bound each and all alike to observe the precepts of that law; and especially that which is confirmed by divine sanction, and enjoins upon all men everywhere, when not acting under legal restraints, to do unto others whatsoever they would that others should do unto them; they were bound to do no wrong, and to the extent of their means to prevent wrong from being done; to protect the weak from being oppressed by the strong, and to relieve the distressed. In the case supposed, Koszta was seized without any rightful authority. He was suffering grievous wrong—any one that could might re-

laid that, on application to the Turkish Governor at Smyrna, that magistrate refused to grant the Austrian Consul any authority to arrest Koszta.

The Consul of the United State at Smyrna, as soon as he heard of the seizure of Koszta, and the Charge d'Affaires of the United States at Constantinople, afterwards interceded with the Turkish authorities, with the Austrian Consul-General at Smyrna, and the commander of the Austrian brig of war, for his release, on the ground of his American nationality. To support this claim, Koszta's original certificate of having made, under oath, in a court in New York, a declaration of intention to become an American citizen, was produced at Smyrna, and an imperfect copy of it placed in the hands of the imperial Austrian intendant at Constantinople. The application to these officers at Smyrna for his liberation, as well as that of Mr. Brown, our Charge d'Affaires, to Baron de Bruck, the Austrian Minister at Constantinople, was fruitless, and it became notorious at Smyrna that there was a settled design on the part of the Austrian officials to convey him clandestinely to Trieste—a city within the dominion of the Emperor of Austria. Opportunely, the United States sloop-of-war, the *St. Louis*, under the command of Captain Ingraham, arrived in the harbor of Smyrna before this design was executed. The commander of the *St. Louis*, from the representation of the case made to him, felt it to be his duty, as it unquestionably was, to inquire into the validity of Koszta's claim to American protection. He proceeded with deliberation and prudence; and discovered what he considered just grounds for inquiring into Koszta's claim to be discharged on the ground of his American nationality. During the pendency of this inquiry he received notice of the design to take Koszta clandestinely, before the question at issue was settled, into the dominions of the Emperor of Austria. As there was other evidence of bad faith besides the discovered design of evading the inquiry, Capt. Ingraham demanded his release, and intimated that he should resort to force if the demand was not complied with by a certain hour. Fortunately, however, no force was used. An arrangement was made by which the prisoner was delivered to the custody of the French Consul-General, to be kept by him until the United States and Austria should agree as to the manner of disposing of him.

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In order to arrive at just conclusions, it is necessary to ascertain and clearly define Koszta's political relation with Austria and with the United States when he was seized at Smyrna. This is the first point which naturally presents itself for consideration, and perhaps the most important one in its bearings upon the merits of the case.

There is great diversity and much confusion of opinion as to the nature and obligations of allegiance. By some it is held to be an indelible political tie, and though resulting from the mere accident of birth, yet forever binding the subject to the sovereign; by others it is considered a political connexion in the nature of a civil contract, dissoluble by natural consent, but not so at the option of either party. The sounder and more prevalent doctrine, however, is, that the citizen or subject, having faithfully performed the past and present duties resulting from his relation to the sovereign power, may at any time release himself from the obligation of allegiance, freely quit the land of his birth or adoption, seek through all countries a home, and select anywhere that which offers him the fairest prospect of happiness for himself and his posterity. When the sovereign power, wherever it may be placed, does not answer the end for which it is bestowed, when it is not exerted for the general welfare of the people, or has become oppressive to individuals, this right to withdraw rests on as firm a basis, and is similar in principle to the right which legitimates resistance to tyranny.

The conflicting laws on the subject of allegiance are of a municipal character, and have no controlling operation beyond the territorial limits of the countries enacting them. All uncertainty as well as confusion on this subject is avoided by the giving due consideration to the fact that the parties to the question now under consideration are two independent nations, and neither has the right to appeal to its municipal laws for the rules to settle the matter in dispute which occurred within the jurisdiction of a third independent power.