

OLD AND MODERN JAPAN

THE BIRTH OF CONSTITUTIONAL GOVERNMENT.

AFTER CENTURIES OF EXCLUSIVENESS
THE JAPANESE ADOPT WESTERN
FORMS OF LAW.

This year of 1890 has brought into existence a new constitutional Government, the first upon the continent of Asia—that of Japan. Whether it will be a success or not time only can tell, but in any case it is one of the most remarkable incidents of this century, and the world may well look on and wonder what the issue will be. From all we know of Asiatic nations the natural presupposition would be that it must fail, but Japan has more than once confounded her critics, and may do so in this instance, though Asiatic soil would seem, from the teaching of all the ages, to be the last in which the tree of liberty would flourish.

The mental development of the nations of the far East is strikingly alike. China, Corea, and Japan, practically of common origin, have advanced on the same straight line, which is broken only by the retrogression of Corea. With that spirit of imitation which is so marked among Eastern traits, China, in its essential points, took its civilization from India, was in turn copied by Corea, and Corea had Japan for her pupil; but the wildest flight of Oriental imagination could never have augured for the last constitutional Government with a representative Assembly.

It has been the mistake as well as the misfortune of our Western world to look upon these far-off peoples as "half-civilized," and so the rudimentary ethnology of our schools has classed them. Judged by our own standards of culture the Japanese are half-civilized, but the semi-civilization is relative only, not absolute, and it may be open to question whether their half is not quite equal to the fraction we concede them to own in common with ourselves. In politeness, gentleness, and national courtesy we need not be ashamed to pattern after them. Their national monuments as well as their poorest homes exhibit refinement and artistic sense to high a degree. The greatest noble and the humblest coolie are inspired alike by a love of life, of nature, of art that makes them a nation of artists. Their canons of honor and duty may be to our unaccustomed eyes a bit fantastic and dramatic, but their underlying principles are sensitive and high.

Their literature is not inconsiderable. Their stage has drawn from so competent an observer as Percival Lowell the statement that it is "one of the finest the world has produced." Their morals, though lower than those of the Anglo-Saxon, are quite as pure as those of some of the Latin races. But science had little or no place in their ancient civilization. Political liberty was a meaningless term to them.

Their laws, or what stood in their place, were framed to the extinction of individual rights, to the destruction of personal liberty. Their religion, though it may have been a profound system of philosophy to the initiated, was a gross superstition to the masses. Trade was discredited, a natural result among a people who placed merchants only one grade above the *chia*, (the skinner and handlers of dead animals,) and *hinin*, (a man who is nobody—the lowest beggars.)

But all this has passed, or is passing away. Much that was strained, unnatural, unhealthy, in the national life is gone; much that was pure, sweet, clean, remains. The fittest has survived. And on this civilization, with its high aesthetic sense, strange codes of honor, and strict canons of duty; with its ignorance of liberty, its absolute government, and heaven-descended Mikado, has been ingrafted the educational system, national procedure, methods of trade, and the science of Western nations, and the fruit is the strangest of all—constitutional government.

The story of the early centuries of the Japanese Empire is so interwoven with legends and befogged with myths as to belong rather to the domain of romance than history. For the first 600 years after the Christian era the Mikados, far from being the sacred and mysterious puppets they afterward became, were the real sovereigns, first of a tribe, then of a small kingdom, and at last of a united empire. They gave the laws, led their armies, were indeed the real rulers of their people. Early in the seventh century orders of nobility were established, which laid the foundations for that wonderful system of military feudalism which deprived the Mikados of all but a semblance of power, built up those great families whose struggles, intrigues, and wars make up the history as well as the romance of Japan for more than a thousand years, and in the twelfth century developed the vicarious rule by the Shoguns, that curious dual system of government which for so long a time puzzled foreigners and gave rise to the mistaken idea that Japan had two Emperors; one spiritual, the Mikado, and one temporal, the Shogun, better known to Americans as the Tai-Kun, (Tycoon,) a title without warrant and first used to impress the Coreans.

The Shogunate, established by Yoritomo of the Minamoto family, passed into the hands of six clans in succession, until 1603, when Iyeyasu one of the greatest men feudal Japan produced, secured the prize to his own family, the Tokugawa, and there it remained until 1868. This singular duarchy, lasting as it did for seven centuries, is difficult to explain briefly and clearly. Above all the clans was the Mikado. His person was sacred, too holy to be viewed by ordinary mortal eyes. He dwelt with his court at Kioto, holding absolute power he never dared to use; theoretically an Emperor with absolute power, actually a feeble marionette, whose word was law to millions, but who ruled only the satellites of his palace and concubines.

In our sense of the term, the laws of Japan were few. Everything was regulated by custom, tradition, and etiquette. The unit of the feudal life was the family, and the peerage was as nicely adjusted and as inflexibly fixed as any the world has seen. Each clan occupied its own territory under its own chief or Daimio, who parceled out his lands for military service to his noble retainers or samurai, and they in turn to the common soldiers and to the farmers, and thus it passed from father to son. The Daimios saw little or nothing of, and were constantly at war with, each other. The strongest dominated the rest—the family of the Shoguns, who ruled in the name and in place of the Mikado. This was the Japan Commodore Perry found. He made his treaties with the then Shogun, and never knew the difference. It was Sir Harry Parkes, the British Minister, who first unmasked the fictitious Emperor, and insisted upon and obtained audience with the real one.

The year 1868 and the three years following saw marvelous changes. The clans of the South rose in arms against the Tokugawas, overthrew them, destroyed forever the rule by the Shoguns and restored to the throne of the Mikados the powers it had not exercised for more than seven centuries. But the Japanese were not truly a nation. The ancient system still obtained and devotion to family was still the test of loyalty. Patriotism, to-day a strong characteristic of the people, could not exist. To the thinking men, whose intelligence had planned and effected the restoration; men not of noble blood, but simple samurai; men whom the irresistible flood of thought had swept into power, it was plain that feudalism was antagonistic to a true sense of national unity and that it must be blotted out.

Already the heads of the four great clans of Satsuma, Choshu, Hizen, and Tosa had signified their acquiescence in the will of the Mikado, and their lead was followed by the lesser lords. In October, 1871, the feudal chieftains assembled in Tokio, and there voluntarily surrendered their titles, wealth, and lands to the Mikado and retired to private life. So died a system of feudalism unequalled perhaps in the world's history. The long years of peace had sapped its strength, and the men whose ancestors were famous in Japanese history for their deeds in peace and war had lost their vigor and were displaced by their own subordinates, who wrought by their agency one of the most notable revolutions of modern times. It is not true, as has been often contended, that the political changes of 1868 were due to the arrival of foreigners. This event certainly hastened the final result, but it had no influence upon the causes that led to it. The movement had its roots far down in the hearts of the Japanese people, and their tendrils extended back a century.

Mutsuhito, the young Mikado, the one hundred and twenty-third of his line, then only sixteen years of age, found himself the ruler of thirty millions of people, emerging from an isolation of over twenty centuries. It was a gigantic task that lay before the new Government, a problem which required the highest qualities of mind to solve, but the occasion created the men needed for the work—the men who have guided Japan safely through these last two decades, challenging admiration for their wisdom, moderation, and patriotism, and now winning the respect and confidence of the Western nations, as the new treaties show. A few far-sighted observers saw long ago that representative government would be the issue of the revolution of 1868, and we now know that it was planned from the very beginning.

When the present Mikado promised in his first oath that "the Government shall be conducted in accordance with public opinion and popular deliberation," it was for the first time admitted that the people had a right to a voice in the administration of Government—a right absolutely denied and unknown in the long centuries of rule and misrule in Japan that had preceded this event. But the revolution, in sweeping away feudalism, had of necessity abolished the basis upon which that feudalism rested—caste—thus throwing into the mass of the people the vast crowd of Tamurai, retainers and soldiers. Now this section of the military class had always possessed some share of the Governmental functions, and when they became of the people, they could not be excluded, and besides it was from this very class that the men who planned the restoration had sprung.

The first attempt to carry out the Mikado's oath was in the formation, in the same year, (1868,) of a deliberative assembly, composed of members of the feudal class. The people had no part either in its creation or in its deliberations. Its debates were what would naturally result from such components, and were

not consonant with the plans of the Government, so the experiment was given up. In 1872 a memorial to the Throne asked for representative government. It was denied. In the same year a deliberative body, with functions somewhat similar to the last, and composed of members appointed by the Mikado, was formed. In 1875 a Council of the Governors of the provinces was summoned in Tokio that "the feelings of the people might be known and the public interest consulted," and by these means the Emperor proposed "gradually to confer upon the State a constitutional form of government, in the blessings of which it was his will that he himself as well as his subjects might participate."

In 1878 municipal and provincial assemblies were created, springing from the votes of the people. There was some friction at first, but it was soon smoothed away, and they worked harmoniously with the central Government. This local self-government was the primer in which the people spelled out the a, b, c of the grander scheme now beginning to take shape—government by the Constitution. On Oct. 12, 1881, the Mikado announced to his people his intention of granting them in 1890 a representative form of government. The nine years that have passed since then have been largely spent in preparing for this event. On Feb. 11 of last year the Constitution was promulgated, and amid great rejoicings and celebrations the Mikado solemnly surrendered the inherited imperialism of twenty-five centuries and took the following oath:

"We, the successor to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy co-extensive with the Heavens and with the Earth, We shall maintain and secure from decline the ancient form of our Government."

"In consideration of the progressive tendency of the course of human affairs and in parallel with the advance of civilization, We deem it expedient, in order to give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, to establish fundamental laws, formulated into express provisions of law, so that on the one hand Our Imperial posterity may possess an express guide for the course they are to follow, and that on the other Our subjects shall thereby be enabled to enjoy a wider range of action in giving us their support, and that the observance of our laws shall continue to the remotest ages of time. We will thereby give greater firmness to the stability of Our country and to promote the welfare of all the people within the boundaries of Our dominions, and We now establish the Imperial House Law and the Constitution. These Laws come to only an exposition of grand precepts for the conduct of the Government bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors."

"That we have been so fortunate in Our Reign in keeping with the tendency of the times as to accomplish this work, we owe to the glorious Spirits of the Imperial Founder of Our House and of Our other Imperial Ancestors."

"We now reverently make Our prayer to Them and to Our Illustrious Father, and implore the help of Their Sacred Spirits, and make to them solemn oath never, at this time or in the future, to fail to be an example to Our subjects in the observance of the Laws hereby established."

"May the Heavenly Spirits witness this, Our solemn Oath."

This oath is unique in its way, emphasizing as strongly as it does the time-honored, moss-grown fiction of the Divine descent of the Mikado from the "Imperial Founder of Our House." This was Jimmu Tanno, the first Mikado, fifth in descent from Amaterasu O Mikami, the sun goddess, and he reigned from 660 to 585 B. C.

The Constitution divides the powers between the Emperor and the Imperial Diet. Its first article declares that "The empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal." The Mikado "gives sanction to the laws and orders them to be promulgated and executed." He convokes the Diet, opens, closes, and prorogues it, and dissolves the House of Representatives. In times of "urgent necessity to maintain public safety" he may issue imperial ordinances in place of laws, but such ordinances shall be laid before the Diet at its next session, and in case of the non-concurrence of that body they are invalid, but no ordinance can "in any way alter any of the existing laws." The Emperor has supreme command of the army and navy, declares war, makes peace and concludes treaties. He "determines the organization of the different branches of the Administration and the salaries of all civil and military officers, and appoints and dismisses the same," and "orders amnesty, pardon, commutation of punishments and rehabilitation."

The Imperial Diet consists of two houses—a House of Peers and a House of Representatives. The former is composed of the following members:

1. The members of the imperial family.
2. Princes and Marquises.
3. Counts, Viscounts, and Barons who have been elected thereto by members of their respective orders.
4. Persons who have been elected, one member of each *Fu* (city) and *Ken* (prefecture), by and from among the taxpayers of the largest amount of direct national taxes on land, industry, or trade therein, and who have afterward been nominated thereto by the Emperor.

The House of Representatives is composed of 300 members, representing various districts fixed by law, and are elected by the people. Every male Japanese of thirty years of age who has paid his income tax for three years and direct national taxes to the amount of fifteen *yen* for one year in the district for which he stands is eligible for election as a member of the lower house. Certain named Government officials, "priests and teachers of religion of all kinds," lunatics, idiots, undischarged bankrupts, persons deprived of public rights, and persons who have been in confinement, sentenced to penal servitude, or punished for gambling (unless three years shall have elapsed since their discharge) are excepted.

The Diet meets annually and sits three months, but this term may be prolonged or an extra session called in cases of necessity. Every law requires its consent. It can initiate legislation, and votes upon all projects of law submitted by the Government. When either house rejects a bill it shall not be brought in again during that session. When the lower house is dissolved by imperial order a new election shall be held "and a new house convoked within five months from the day of dissolution." One-third of the members makes a quorum in either house, and all measures, save amendments to the Constitution, are carried by a majority vote. "The deliberations of both houses shall be held in public. They may, however, upon demand of the Government or by resolution of the House, be held in secret sitting." Members of the Diet cannot "be held responsible out of the respective houses for any opinion uttered or for any vote given in either house"; they are also free from arrest during the session. "Ministers of State and Delegates of the Government may at any time take seats and speak in either house."

It is in Chapter 2 of the Constitution, which defines the rights and duties of subjects, that we find the most un-Asiatic of provisions. The Japanese subject shall have entire liberty of abode. He cannot "be arrested, detained, tried, or punished, unless according to law," and "the house of no Japanese subject shall be entered or searched without his consent," except as the law provides. The secrecy of letters shall be sacred. He is to exercise freedom of religion, and "within the limits of the law enjoy liberty of speech, writing, publication, public meeting, and association." The rights of property shall remain inviolate. He shall not be deprived of his right of being tried by judges.

The members of the Cabinet are named by the Mikado, "and shall give their advice to the Emperor and be responsible for it."

Judges are appointed according to law, and shall not be removed "unless by way of criminal sentence or disciplinary punishment."

The annual budget originates in the House of Representatives, and any expenditure in excess of the amounts voted must be subsequently approved by the Diet. The appropriations for the expenses of the imperial household shall every year be paid out of the Treasury in amount as at present fixed and cannot be reduced by the Diet; indeed, its consent to this expenditure is not needed except to increase it. Article 68 of Chapter 6 is somewhat ambiguous:

"Those already fixed expenditures based by the Constitution upon powers appertaining to the Emperor, and such expenditures as may have arisen by the effect of law, or that appertain to the legal obligations of the Government, shall be neither rejected nor reduced by the Imperial Diet without the concurrence of the Government," which means that the Diet has no control over the salaries of the civil and military officers or over the funds for the maintenance of the army and navy on a peace footing. When no budget has been voted the Government may carry out that of the preceding year; so that, in the all-important matter of public expenditure, the Diet has really little to do, and the Government is, in a great measure, independent of a hostile Diet.

When it becomes necessary to amend the Constitution, "a project to that effect shall be submitted to the Imperial Diet by imperial order," and two-thirds of the whole number of members of either house must be present before debate on the subject can be opened, and a two-thirds majority is required to make the amendments.

The qualifications for suffrage are the same as those for membership in the lower house, except that the age is twenty-five years instead of thirty years, as it is in that case.

The costs of elections are paid out of the public treasury. All nominated members of the upper and all members of the lower house are to receive 800 *yen* (about \$600) a year and traveling expenses.

This is the outline of the Constitution. It was framed by Count Ito Hirobumi, a statesman of the highest ability and the foremost man of Japan for many years past.

At the same time the Constitution was granted the Mikado promulgated four imperial ordinances to carry its provisions into effect—the ordinances concerning the House of Peers, the Law of the Houses, the Law of Election for Members of the House of Representatives, and the Law of Finance.

The rejoicing on the birthday of the Constitution can well be imagined. For the first time in all Japanese history the gentle and popular Haruka, the Empress, appeared in the state carriage seated beside the Emperor. The interest this event excited was only a degree less intense than that produced by the Constitution itself, and their greeting was sincere—"Bankai! Ryoheikwa Kanzei!"—"Long live their Majesties."