ADOPTION IN JAPAN.

The institution of adoption may be considered as having been first brought into prominence by the Romans, although it was undoubtedly practiced at an earlier date by the ancient Jewish people and at Sparta and Athens. Indeed, if we trust to mythology, we may go still farther into the early past to where Juno adopts Hercules. But when we look for the first written laws on the subject of adoption, we find that we must depend upon the legislation of the Romans, with whom the institution was most intimately allied to the organization of the family and the State. Their system was so excellent, so admirably adapted to the requirements of any civilized nation, that in the laws of many of the European States, the portion of the Law of Person relating to adoption is founded upon their provisions, and in many instances follows them to the letter. When, a few years ago, Japan took on a new form of government, and found it necessary to construct a body of law in consonance with it, it was natural that the legislation of certain States of Europe should be followed as models as far as possible. This was done; but, owing to the peculiar position of the Japanese as an enlightened people, which had maintained a policy of isolation until the middle of the nineteenth century, there were many instances where European example was insufficient. Thus, while their Civil Code contains many articles on the subject of adoption which are taken almost word for word from certain European Codes, and have an undoubted ancestry in the *Corpus Juris Civilis*, there is also a great quantity of material relating to customs indigenous to Japan. Indeed, the combination of occidental principles with oriental customs has produced an extensive body of law. That part of the Code which is assigned to adoption is proportionately much larger than in any of its models—a fact significant of the enormous importance of this institution in Japan. In this Code, however, the attempt to incorporate the ideas of other nations has not always proved felicitous, for these ideas have emanated from a different and much narrower view of the subject. This bringing in of foreign principles is many times even strikingly in discord with the general notion of the institution as it is regarded in Japan.

The practice of adopting has probably a stronger claim to antiquity in Japan than in any other nation of the world. Certainly, it has always played a part more vital in the weaving of the social fabric than among any other people. Let us look at some of the provisions of their new law. One of the first articles prescribes that the person to adopt must be an adult and older than the person to be adopted. This is simply in accordance with the western idea that adoption is merely a means for providing a child for him who has none; a modified form of Justinian's law, by which the adopter had to be eighteen years older than the adopted, that the fiction might as closely as possible simulate nature. With the Japanese, however, in early and modern times, adoption for the purpose of children and the continuance of family is not paramount, and indeed is practiced more as a luxury than for anything else. A person adopts another merely because he desires someone who will be a companion to him while he lives and who will worship him when he dies. Then, too, perchance his ambitions for greatness have not been wholly satisfied, and if he chooses well, he still runs a chance for acquiring worldly greatness after his death; for the adopted person may win the coveted honor, in which case, strange as it may seem, it becomes his own. For honors in Japan are reflected back upon former generations instead of being transmitted to those to come, as with us.

If there be collateral relatives, they are usually preferred in adoption, but they have no legal right to prime consideration. A stranger may be taken. As to the person to be adopted, no particular age is required; an infant in arms or a person of mature years being equally eligible. Yet consent, of course, is necessary on the side of each party, and where a child who has not attained the full age of fifteen years is to be adopted, his parents must consent for him. Indeed, consent to this contract is held to be so important that the Code prescribes in a most detailed manner how it shall be gained. If, it runs, one of the two parents shall be deceased or unable to give consent, then the responsibility shall devolve upon the other, but if they are both deceased or unable to express their intent, then the grandparents of the child's house shall be considered as proper to fulfill duties and relations in this particular. Should the person to be adopted be more than fifteen completed years of age, he himself may give consent, though he cannot actually enter into the relationship unless his parents or grandparents under the above conditions, give permission. Supposing, however, that none of the relatives mentioned are alive or able to express intent, then the guardian must give consent, unless

the ward shall have reached his majority, which is full twenty years of age, when he can himself consent and need not obtain permission. If there should be a stepfather or mother surviving, the law accords to each one the rights of a true parent as to consent. And if the one to be adopted is the inmate of a Foundling Asylum, the superintendent acts.

All these prescribed formalities go to show the existence of a remarkable state of affairs, viz., that in Japan adoption in the eye of the law, holds just as important a position as marriage, upon which the very existence of society ordinarily depends; for all these requirements are precisely similar to the legal conditions necessary for marriage. No other nation ever elevated this institution to such important rank as this.

In France, where much attention has been given to the subject of civil relations, a person not yet having accomplished his twenty-fifth year, desiring to be adopted, must, under the Code Napoleon, ask the consent of his father and his mother, or one of them if the other be deceased. If these being alive are unwilling or unable to express their intent, he is precluded from entering upon the contract. This is final. But, on the other hand, if one wishes to marry, the Code says, he must obtain his parents' consent; should there be dissension between the parents, then the father's consent alone will suffice. And furthermore, if there be no parents, then it permits the grandparents to stand in their stead. It thus prefers and favors marriage; and implies that adoption, not being a vital necessity to society, does not merit as much from its hands. In Japan, on the other hand, history shows that the great consideration paid to adoption is not a recent thing; but that in all time past it has been held to be almost as important a factor as marriage itself in the making of families. To our western way of thinking this would seem to be contrary to public policy, in that it might deter from matrimony; but this is not the case in the "Land of the Rising Sun," in consequence of their widely-different customs, and especially the lighter burdens which marriage among them inflicts. With them as with us, own children are always preferred; but should one family not be sufficiently favored, it is usually very well satisfied to recruit from the ranks of a better-stocked neighbor.

Besides the aspect of adoption as a luxury and for the equalization of families, there are many other points from which it must be regarded. A queer instance of how it was used to evade the law, is recorded in one of the volumes of "The Transactions of the Asiatic Society." In the olden time an only son was exempt

from conscription. When a young man, not the only son, approached the age at which he was subject to military service, if he were a favorite and his parents did not want him to enter the army, they looked about among their childless friends until they found a willing person, and he became an only son by adoption. This arrangement satisfied the letter of the law and endured—if all went well between the parties—until the conscription age was passed, when the adopted was disadopted and returned to his own house.

Perhaps the nearest approach to the adoption of the West, and certainly its most important function in Japan, is in the case where it is employed as a means for transferring the head-ship or *Katoku*, and the property of a house. This, the Code provides, can only be done where there is no son to succeed; for if there be a son, he is the rightful successor to the family name and riches, and to quote from Cicero, who once argued in such a case, it would be manifestly unjust for a father to disinherit his own child by giving such benefits to a stranger. Now this adoption for the institution of an heir, may be effected in two ways: First, by a will in testamentary form, made by one having the requisite legal capacity and no descendants to succeed to the *Katoku*. Second, by the appearance of the parties in the domicile of one of them, with two witnesses, before the civil-status official; when they must produce certificates of their births, a certificate of the proper civil-status official to prove the want of heir to succeed to the *Katoku*, the consent by writing of the spouse of the adopter, if there be one; if the guardian be the adopter, proof that the account of his administration is completed; and finally, the permission in writing of the parents of the person to be adopted. Either of these two methods if properly managed, will vest in the adopted all the rights necessary to succession to the *Katoku*. This being done, the succession may open upon the happening of one of two events, *i.e.*, by the death or by the *inikio*, or the abdication in favor of his successor, of the *Koshu*, the head of the house. This *inikio* is a very ancient custom, and history tells us that in past times it was much subject to abuse. Under the feudal *régime*, when a mikado arrived at the age where he was capable of governing his country, and was in any way likely to disturb the power of the shogun and the feudal lords, he was forced to exercise his theoretic privilege by abdicating in favor of his successor, who in turn went through with the same thing when the time was considered ripe. Thus, in one instance history tells us that there were five mikados alive at the same time. But the *inikio* was not

alone a royal prerogative; for the patriarch of any family—if he so desired—could avail himself of it. The result was, that a man would perform this abdication at a comparatively early age and, being thus assured of a comfortable existence, would do nothing for the rest of his life. At the present time, however, things are otherwise. The Code ordains that one must first reach the full age of sixty years or have sufficient cause, as for instance, ill health; his heir must have attained his majority and be capable of managing the affairs of the house; the abdication must be voluntary, and his wife must consent to it. When the succession does become open by the happening of one of the two mentioned events, the law provides that only one person at a time can assume the position of head of the house, and moreover, that such person cannot at the same time succeed to the headship and property of another house. Hence a person adopted for an heir, contrary to the old Roman theory, can have no claim to succeed in his original house. As heir to the *Katoku* he becomes the head of the house by succeeding to the adoptive family's name, lineage, honorary titles and whole property. And the genealogical records, hereditary property, utensils for celebrating the anniversary of ancestors, graveyard, firm-name and trade-mark, form the special right of succession to *Katoku*. Having once become the *Koshu*, he cannot again be adopted, for this would operate to undo exactly what had been done already. Yet, there is one instance where an arrogation may be lawfully practiced and a family-name extinguished by adopting a head of a house. This is where the *Koshu* of a *bunke*, or branch house, is taken to perpetuate the name of the *honke*, or main house.

Where an adoption is brought about for reason of convenience or pleasure—as for instance, where a family has several children of the same sex and wishes others of the opposite sex—very little restriction is placed upon the parties. Girls, as a usual thing, are not adopted, although they may be; for if there are sons, they will probably marry and bring daughters to the family. But, should all the children be girls, it is obvious why a son should be adopted; for if the girls marry, they take the names of their husbands, and their own family-name becomes extinct. What is to be done in such an untoward state of affairs as that of all the children being girls? The best course is to combine in some suitable young man the double relationship of son with all rights to the succession of the family, and of husband to one of the daughters. Toward this result, however, the most careful steps must be taken; for should the young man be so ill-advised as to

be adopted into the family first, he can never marry the daughter, since it is declared in the Code that adoption is paramount to consanguinity, not only between the adopted and the adoptive father and mother, but also between their blood relatives. Hence, if the adoption is performed first, the young man is placed in a position where he will be informed—as some young men in Christendom have been—that the young lady "can never be anything but a sister to him." But, with due foresight, the marriage will be brought about first, in which case all goes well. The husband may then be adopted by the family, and the daughter taken back with him. We say, in this case, all goes well; but this is only so if he be carefully and diplomatically handled. If he is not, there may be a hitch in proceedings. The adopter may find himself in a position like to that of the Mohammedan, who divorces his wife the fatal third time and then relents, as is often the case, and wants her back. In order that he may lawfully take her again, he must get someone to marry her and divorce her. Should, however, this intermediary husband decide, after the marriage, that the consideration is not sufficient, he may astonish the first husband by informing him that he is well content with the present state of affairs, and does not care to carry negotiations any further.

One of the main peculiarities of the Japanese system is the facility with which the adoption may be dissolved. This may be brought about by the consent thereto of the adopter and the adopted. But should the latter have been adopted before the full age of fifteen years and not yet have become *sui juris*, his consent to the dissolution is obtained through the person who had the power to consent for him originally, and if he is still within the age where he would have to obtain permission to enter into adoption, he is held to procure a similar permission to withdraw. Having made out the necessary writing, setting forth the mutual consent, the parties proceed with this, together with the document of adoption and the permission in writing, when requisite, or a writing proving such permission unobtainable, to the presence of the civil-status official; whereupon, if there be no good reason to oppose, the documents are duly filed and the relationship ceases.

As a consequence of such easy-going provisions as these, the parties to an adoption are apt to consider it as a light matter; for should they prove to be uncongenial, all they have to do is to agree as to that fact, and they are both free to try again. And try again they often do. This, however, causes multiplied embarrassment in society; for when a person enters into the adoptive

family, he must take its name, and should he leave it and be again adopted, he must again make a change; so, although he may be known by one name to-day, as likely as not he will have a new one to-morrow, and before he has completed his earthly career it is possible for him to have had as many names as there were separate families in his community.

Without mutual consent of the parties to the dissolution of the adoption, the relationship cannot be broken, except there have been outrages, threats, desertion or grave insults between the adopted and the ascendants of the adoptive house, punishment for crimes, punishment for major imprisonment for a year or more for the offense of theft or swindling, or for prodigality. The right of action in the matter is, however, personal to the adopter and the adopted, and should either be deceased, then the right is extinguished. Should the adopted have succeeded to the headship of the house by the *inikio* of the *Koshu*, there can be no dissolution of the adoption, since the former *Koshu* is considered as dead and the adopted stands alone as head of the house.

Such are the chief characteristics of the existing law of adoption in Japan. It is a combination of old and new, of native and foreign, oriental and occidental customs and principles; all have been employed by Japanese jurists in erecting their present institution. Their old-time conception of the relationship was, without question, unique, and the incorporation of Western ideas into their system, has not rendered it less peculiar but has rather tended to emphasize its peculiarity. Truly, the Japanese law of adoption is one of the most interesting creations of the civilized mind.

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