



3-31-2022

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### Recommended Citation

Shimojo, Yoshiaki (2022) "A Study of the Origin, Acceptance, and International Spread of the 'Symbol' within the Constitution of Japan: Japan's Approach to Restoring the Separation of Authority and Power," *Japanese Society and Culture*: Vol. 4, Article 11.

DOI: 10.52882/2434-1738-04-11

Available at: <https://gensoken.toyo.ac.jp/japanese-society-and-culture/vol4/iss1/11>

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[Received 30 September 2021 / Revised 15 October 2021 / Accepted 30 October 2021]

# **A Study of the Origin, Acceptance, and International Spread of the 'Symbol' within the Constitution of Japan: Japan's Approach to Restoring the Separation of Authority and Power**

Yoshiaki Shimojo<sup>\*</sup>

## Abstract

Article 1 of the Constitution of Japan stipulates a symbolic emperor system based on popular sovereignty, stating that "The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power." In the post-war period, the symbolic emperor system of the Constitution of Japan developed in its own way through shrewd adaptation and harmonization with popular sovereignty, within the context of Japan's particular political climate.

Nineteenth-century European monarchies comprised several types of constitutional monarchy, such as the German-style "constitutional monarchy," the British-style "parliamentary monarchy," and the French-style "moderative power monarchy". Comparable to these, the symbolic emperor system formed under the Constitution of Japan in the latter half of the 20<sup>th</sup> century can be said to present a new genre of modern monarchy that we may refer to as a "symbolic monarchy."

Based on this viewpoint, this article examines the structural shift to the symbolic emperor system of the Constitution of Japan from the Meiji Emperor system based on divine decree sovereignty, and the meaning and function of the "symbol" in the Constitution of Japan. Moreover, I will consider the origins of the symbolic emperor system and its traditional Japanese characteristics by examining the origin, acceptance, and international spread of the "symbol" provision in Article 1 of the Constitution of Japan.

*Keywords: Constitution of Japan, Symbol, Symbolic Monarchy, Symbolic Emperor System, Emperor Shōwa*

## Introduction

The symbolic emperor system, implemented under the Constitution of Japan, will soon have been in place for 75 years. Article 1 of the Constitution of Japan stipulates a symbolic emperor system based on popular sovereignty, stating that "The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power."

Constitutional theory in Japan initially regarded the emperor system as inconsistent with popular sovereignty in principle, and it was thought that it would eventually disappear from the stage of world history as democratization progressed. However, the symbolic emperor system of the Constitution of Japan has developed in its own way through shrewd adaptation and harmonization with popular sovereignty, within the context of Japan's particular political climate<sup>(1)</sup>. Various opinion polls indicate that

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the symbolic emperor system is broadly established in the public consciousness of Japan <sup>(2)</sup>.

Looking back on the history of monarchy, in the 19<sup>th</sup> century Europe we find several types of constitutional monarchy, such as the German-style “constitutional monarchy,” the British-style “parliamentary monarchy,” and the French-style “moderative-power monarchy” <sup>(3)</sup>. Comparable to these, the symbolic emperor system formed under the Constitution of Japan in the latter half of the 20<sup>th</sup> century can be said to present a new genre of modern monarchy that we may refer to as a “symbolic monarchy.” According to Isao Sato, a leading scholar of monarchies, symbolic monarchy refers to “a system of monarchy that acknowledges the existence of a monarch, yet gives the monarch no authority over national affairs, such that they have only the function of symbolizing the unity of the people and the permanence of the state, both mentally and psychologically” <sup>(4)</sup>.

This article will consider the origins of the symbolic emperor system and its traditional Japanese characteristics by examining the origin, acceptance, and international spread of the “symbol” provision in Article 1 of the Constitution of Japan.

### 1. The Structural Shift to the Symbolic Emperor System

It is commonly known that the symbolic emperor system of the Constitution of Japan was established as a result of a political compromise between the Japanese government and the General Headquarters of the Allied Powers (GHQ) under the occupation of Japan that began at the end of August 1945. Due to these unique circumstances, the principle of legitimacy of the emperor system would undergo a fundamental shift in tandem with the transition from a system based on the Meiji Constitution to one based on the Constitution of Japan <sup>(5)</sup>.

The Meiji Constitution (the Constitution of the Empire of Japan) stipulates that “The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal” (Article 1), and “The Emperor shall be sacred and inviolable” (Article 3), and “The Emperor shall be the head of the Empire and shall exercise the rights of sovereignty according to the provisions of this Constitution” (Article 4). In other words, the Emperor was the sacred and inviolable head of state, belonging to an unbroken line spanning centuries, and holding the sovereign authority to control all the actions of the state, including those of the legislative, executive and judicial branches of government. In the imperial edict in the preface to the Meiji Constitution, the Meiji Emperor states, “The great rights of sovereignty of the State, We have inherited from Our Ancestors, and We shall bequeath them to Our descendants. Neither We nor they shall in future fail to wield them, in accordance with the provisions of the Constitution hereby granted.” In this way, the ultimate basis for the Emperor to rule over Japan was the “divine decree/prophesy” (*shinchoku*) given by the deity Amaterasu Ōmikami, according to which, the emperor was her direct descendant, whose grandson had descended from the heavens to rule over Japan as the first Emperor (i.e., divine decree sovereignty) <sup>(6)</sup>.

The symbolic emperor system of the Constitution of Japan was an attempt to completely reverse the structure of sovereignty that had existed under the Meiji Constitution, which had positioned the Emperor as an absolute ruler and wielder of sovereignty. The Preamble to the Constitution of Japan states that “sovereign power resides with the people,” and Article 1 states that the position of the Emperor “shall be the symbol of the State and of the unity of the People.” The Emperor’s position is in turn “[derived] from the will of the people with whom resides sovereign power,” thereby stipulating a symbolic emperor system based on popular sovereignty. Articles 41,65 and Article 76, paragraph 1 stipulate that legislative

power belongs to the National Diet, administrative power belongs to the Cabinet, and judicial power belongs to the courts, respectively.

Consequently, the Emperor's powers are limited to formal and ceremonial "acts in matters of state," and he is not permitted to hold political authority: he "shall not have powers related to government" (Article 4, paragraph 1). Based on the principle of popular sovereignty, the GHQ envisaged that sovereignty would be exercised by the "three branches of government" – the National Diet, the Cabinet, and the Judiciary - which would be the "agents (or representatives)" of the sovereign people, and that doing so would limit the role of the Emperor to a symbolic position as a "social monarch" (7).

## 2. The Meaning and Function of the "Symbol" in the Constitution of Japan

We may, then, ask how the Emperor is expected to act, being in a symbolic position yet prohibited from holding or exercising political power.

In general, the word "symbol" means "an action or medium by which something abstract, intangible, or unrelated to sensory perception is manifested in something concrete, tangible, or related to sensory perception" (8), or "something concrete and tangible that evokes something abstract or intangible" (9). For example, the dove is a symbol of peace, the heart is a symbol of love, and the cross is a symbol of Christianity. Etymologically, the word "symbol" is derived from the Greek word *symbolon*, a compound word comprised of *sym* ("together") and *ballein* ("fall into a particular state"), which refers to a sign from which one infers a particular thing<sup>(10)</sup>. When we cannot easily imagine something abstract, we perform the mental action of imagining something abstract using something concrete as a medium: this higher-order mental action is what we may refer to as a symbolic action, which may be something that only humans are capable of.

The stipulation in Article 1 of the Constitution of Japan that the Emperor "shall be the symbol of the State and of the unity of the People" is intended to have the social-psychological effect of causing a majority of people to recall or feel unity or solidarity as the nation of Japan or as the Japanese people, when they see or think about the Emperor, thereby, confirming that they are Japanese people<sup>(11)</sup>. In this sense, the relationship between that which symbolizes (i.e., the Emperor) and that which is symbolized (i.e., the Japanese state, or the people of Japan) is historical, ethnic and social, and to that extent, it does not have a legal meaning.

It naturally follows that in order for any constitution or constitutional system to be successfully implemented and operated, a certain degree of integration in terms of the state or people must be ensured. That being so, in the case of the Constitution of Japan, we may ask what the characteristics of the unifying action are, which the Emperor exerts as a symbol in relation to the state and the people.

On this issue, the Emperor, as a symbol, is sometimes likened to a mirror that reflects the reality of the unity of the state and the people as it is (i.e., passive symbolism). Isao Sato, who has adopted this position, describes the function of the "symbol" in the Constitution of Japan as follows.

... The function of the symbol, or rather the reason why a symbol is symbolic, is that the symbol expresses and makes manifest the meaning that exists within that which is symbolized. That is to say, the symbol makes manifest the meaning of that which is symbolized as a given and as it is; as such, we may say that the symbol does this faithfully without affecting that which is symbolized in any way. In this sense, I have likened symbols to a mirror, insofar as a mirror reflects a person's face

as it is. The mirror cannot change the face of the person who is being reflected by emitting some physical force from within itself .... Therefore, I put it that the Emperor can only be a symbol of the unity of state of Japan and the Japanese people insofar as he faithfully embodies that unity as it is, without exerting an influence on the state of Japan or on the Japanese people – if Japan turns red, then he embodies red Japan as it is, and if it turns white, then he embodies white Japan as it is. <sup>(12)</sup>

It should be noted here that in the case of the Constitution of Japan, the fact of the unity of the state of Japan and the Japanese people, which the Emperor reflects as a “symbol,” is in no way politically colorless and transparent; rather, it is necessarily rooted in the fundamental concept of the Constitution of Japan. That is to say, the provisions of the Constitution that establish the Emperor as a symbol are a kind of declaration of political intention that is premised on and is intended to work based on the general and shared aspects of the people’s constitutional consciousness – what we may refer to as “the general will of the people” –, such as pacifism, international cooperation, popular sovereignty (democracy), respect for fundamental human rights, and public welfare <sup>(13)</sup>.

Therefore, unlike physical symbols, such as national flags, national anthems, and national emblems, the Emperor, who is a “personified symbol,” is naturally required to have the attitude and actions that are appropriate as a symbol of the Constitution of Japan, as well as the responsibilities that accompany it. For example, if the Emperor were to publicly state his opinions supporting or criticizing the government or a particular political party, or if he were to run for a particular political party during an election, such actions would likely damage his political neutrality, and would therefore violate his position as a symbol with no “powers related to government” (Article 4, paragraph 1 of the Constitution) and bearing no political responsibility (Article 3 of the Constitution) <sup>(14)</sup>. Similarly, if the Emperor were to wear a military uniform, as stipulated under the Meiji Constitution, regardless of whether he wore it in public or in private, such an action would run counter to the pacifist principles of the Constitution.

### 3. The Three Origins of the “Symbol” Provision

Various perspectives have been put forth regarding the origin of the word “symbol” in Article 1 of the Constitution of Japan. Below, we consider this topic from three angles: the British, Japanese, and American routes.

#### The British Route

It is generally known that the draft of the Constitution of Japan was prepared in approximately nine days at the Government Section of the GHQ in early February 1946. At that time, eight subcommittees were set up to draft the new constitution of Japan, including the Subcommittee on the Provisions relating to the Emperor, Treaties and Authorities. According to George A. Nelson’s testimony in later years (then, a lieutenant in the army), who was thought to have been the originator of the symbol provision within the aforementioned subcommittee, he had in mind at that time *The English Constitution* (first published in 1867), a work by Walter Bagehot (1826 – 1877) <sup>(15)</sup>.

According to Bagehot’s classic text, the British monarchs of the latter half of the 19<sup>th</sup> century had the following characteristics. First, the king occupies a position of dignity, the effect of which cannot be calculated; if the king does not exist, the government would collapse and disappear. Second, while the people may be divided into political parties, the king must transcend this and keep a distance from

actual political disputes, thus preserving the mystery of the monarchy and distancing it from enmity or disgrace. Third, this allows the king to serve as a means to combine competing political parties and to be a “visible symbol of unity” for those with less education<sup>(16)</sup>.

In addition, according to the recollection of Richard A. Poole (then, a naval ensign) who was in charge of the chapter of the Constitution on “the Emperor” in the abovementioned Subcommittee on the Provisions relating to the Emperor, Treaties and Authorities, the word “symbol” was adopted from the 1931 Statute of Westminster, which stipulates the free association between the member states of the Commonwealth of Nations<sup>(17)</sup>. The preamble to the Statute states that “the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and ... they are united by a common allegiance to the Crown.” This demonstrates that members of the GHQ drafting committees, whether Nelson or Poole, used the British constitutional monarchy as a model in drafting the Constitution of Japan.

### The Japanese Route

We must also remember that even in prewar Japan, from the Taisho democracy period onward, there were those advocating a view of the Emperor and the imperial family as “symbols of the unity of the people.” Regarding this point, Inazō Nitobe (1862 – 1933) asserts in his famous 1900 English-language work, *Bushido: The Soul of Japan*, “of English royalty—that it ‘is not only the image of authority, but the author and symbol of national unity,’ as I believe it to be, doubly and trebly may this be affirmed of royalty in Japan”<sup>(18)</sup>. Nitobe also argues in his 1931 book, *Japan: Some Phases of her Problems and Development*, in an expression reminiscent of Article 1 of the Constitution of Japan, that, “the Emperor is thus the representative of the nation and the symbol of its unity”<sup>(19)</sup>.

Next, the works of historical expert Sōkichi Tsuda (1873 – 1961) are notable in this regard. In *Bungaku ni Arawaretaru Kokumin Shisō no Kenkyū (An Enquiry into the Japanese Mind as Mirrored in Literature)* published from 1916, even at this early stage, Tsuda defines the Emperor and the imperial family variously as, “a symbol of the state, possessing eternal life,” “a symbol of the independence and unity of the state,” and “a living symbol of the national spirit,” as follows:

Thus, the imperial family is eternal with the state, and even in times when Japan was to a great extent politically divided as in the Warring States period, we are proud of the existence of the imperial family and will continue to retain such pride forever. Therefore, in modern terms, the imperial family may be described as a symbol of the state, possessing eternal life, a symbol of the independence and unity of the state, and a symbol of the national spirit. ... The imperial family was not involved in politics, and thus it was able to adapt well to and tolerate the political forms and social organizations that changed according to the times, always remaining an unchanging symbol of the state and a living symbol of the national spirit.<sup>(20)</sup>

In addition, in January 1946, the year after the war end, when the Constitution of Japan had not yet been drafted, Tsuda published an essay entitled “*Kenkoku no Jijō to Banseiikkei no Shisō*” (“The Circumstances of the Founding of the Nation and the Concept of Unbroken Imperial Lineage”) in the April issue of the magazine *Sekai*, published by Iwanami Shoten. In the essay, he developed what are referred to as the “our emperor theory” (*warera no tennō-ron*) and “our imperial family theory” (*warera*

*no kōshitsu-ron*) and caused significant controversy in doing so. He argued that the imperial family's *raison d'être* in the still-developing postwar "democratic state" was to occupy a position at "the center of unity among the people and a living symbol of the national spirit," as follows:

... In modern times, the people themselves are to be responsible for the governance of the state, and this is the political idea of what we refer to as democracy. This idea, and the positioning of the imperial family as the rulers of the nation, are based not on the imperial family occupying a position that is in opposition to the people and looked on by the people from the outside, but is instead within the people and embodies the will of the people, bringing about harmony by governing in such a sense. From the point of view of the people, this can be done by bringing about a thorough implementation of democracy. If the people preside over the state in its entirety, the imperial family will naturally exist within the people and become as one with the people. Specifically, the significance of the existence of the imperial family lies in their being at the center of the unity of the people and existing as a living symbol of the national spirit. <sup>(21)</sup>

#### The American Route

Finally, turning our attention to the American route, let us start by discussing the influence of Joseph Clark Grew (1880 – 1965), who was the United States (US) Ambassador to Japan during the outbreak of war between the US and Japan; he was also deeply involved in the preparation of the Potsdam Declaration as the US Under Secretary of State at the end of the war. He returned to the US immediately after the start of the war between Japan and the United States, where he gave lectures at various locations across the country, discussing issues relating to the retention of the emperor system in Japan after the war. Based on the idea that, after the war, the US and Japan could return to the cooperative relations of the 1920s, Grew expressed the view that "the emperor system could play an important role in Japan's peaceful and constructive development, and in enabling the Japanese people to move in a direction that is compatible with the security of the United States" <sup>(22)</sup>. Regarding this point, Grew wrote the following in a letter dated September 30, 1943, to Stanley Hornbeck, Chief of the US State Department Division of Far Eastern Affairs:

When it comes to the emperor system – while this is clearly distinguishable from the current individual Emperor – it is clear in my mind that it should be retained. This is because, as a symbol, just as the emperor system previously served as an object of militaristic worship, so may it also serve as a cornerstone for healthy and peaceful internal growth. <sup>(23)</sup>

Besides Grew, among the staff of the GHQ, Bonner Frank Fellers (1896-1973), a contemporary Brigadier General in the US Army, likely had the same view of the Emperor and the imperial family as Nitobe and Tsuda. As one of the "Bataan Boys," he was one of General Douglas MacArthur's most trusted aides and had visited Japan about five times before the war. Having graduated from Earlham College, a Quaker-founded university, he had a deep knowledge of Japanese culture through the research of Lafcadio Hearn (aka, Yakumo Koizumi). He had been friends since before the war with Michi Kawai, the founder of Keisen Jogakuen (a Christian school for girls that would develop into Keisen University), who was also a student of Inazō Nitobe, the first Japanese Quaker, and often met her in occupied Japan <sup>(24)</sup>.

On October 2, 1945, the pro-Japanese Fellers submitted to MacArthur the following research report on the Emperor's responsibility for the war, evidencing the unique views of the Emperor and the Japanese, with his extensive knowledge of Japan.

Unlike Christians, the Japanese have no God with whom to commune. The Emperor is the living symbol of the race in whom lies the virtues of their ancestors. He is the incarnation of national spirit, incapable of wrong or misdeeds. ... It is a fundamental American concept that the people of any nation have the inherent right to choose their own government. Were the Japanese people given this opportunity, they would select the Emperor as the symbolic head of the state. <sup>(25)</sup>

MacArthur received the report, and stated the following in a confidential telegram to Dwight Eisenhower, Chief of Staff of the US Army, dated January 25, 1946, indicating the impact of the report as follows:

He [The Emperor] is a symbol which unites all Japanese. Destroy him and the nation will disintegrate. Practically all Japanese venerate him as the social Head of the State and believe rightly or wrongly that the Potsdam Agreements [referring to the Potsdam Declaration (author's addition)] were intended to maintain him as the Emperor of Japan. <sup>(26)</sup>

As is generally known, the first principle of "MacArthur Notes" of February 3 of the same year, with regard to the Emperor's status, stipulated that the "Emperor is at the Head of the State." It was ten days earlier, however, that MacArthur had placed the Emperor in a dignified position as "a symbol which unites all Japanese" and "the social head of the state."

In connection with this, the previously mentioned Richard A. Poole, who was charged with drafting the clauses relating to the Emperor at the GHQ, later stated the following in an interview in 1992, regarding the meaning of "symbol" in the Constitution of Japan and the position and role of a symbolic emperor:

It is easy to associate the word 'symbol' with material objects such as flags and coats of arms, but in English it also has a strong spiritual meaning. Japanese constitutional scholars seem to be very particular about where the expression 'symbol' in Article 1 of the current Constitution came from. It is a word that any American would immediately understand to mean 'of high status and including spiritual elements.' I thought 'symbol' was a good expression of this. <sup>(27)</sup>

What we basically wanted to do regarding the Emperor was this: We wanted to establish the position of the Emperor as having an important function as a monarch under the Constitution, despite it not having any political power. In other words, we thought that it should not be merely a decoration. <sup>(28)</sup>

Thus, although the Japanese constitutional theory on the Emperor's position generally tends to downplay the constitutional role of a symbolic emperor, arguing that the Emperor is nothing more than a symbol, the drafters of the clauses on the Emperor at the GHQ were already attributing great significance

to the “symbol” at that time <sup>(29)</sup>.

#### 4. Acceptance of the “Symbol” Provisions and Emperor Shōwa

Regarding the establishment of the Constitution of Japan, there are still those who currently argue for the so-called “enforced constitution theory,” namely, that the Constitution of Japan is invalid because it was enacted under coercion from the pressure and threat of the US occupation forces. Certainly, the word “symbol” first appeared in the process of establishing the Constitution of Japan in the GHQ Draft, which was presented to the Japanese side on February 13, 1946. Article 1 of that draft stipulates that “The Emperor shall be the symbol of the state and of the Unity of the people, deriving his position from the sovereign will of the People, and from no other source.” Here, we can recognize something akin to a prototype of Article 1 in the Emperor clause of the Constitution of Japan.

However, if we examine the subsequent response to the presentation of the draft on the Japanese side, especially from Emperor Shōwa (Emperor Hirohito), historical facts emerge that cannot be explained simply in terms of “enforcing” or “coercion” by the occupation forces. For example, Shigeru Yoshida, in *Kaisō Jūnen* (“Ten Years’ Reminiscences”), recalls the period over which the government draft (“Outline of a Draft for a Revised Constitution” (March 6 Draft)) was drafted, from the end of February to the beginning of March, 1946, as follows:

The outline was published in the newspapers on the following day, [March] 7, and given that its content was so radical at that time, it naturally came as a considerable shock to the public. During this time, the part that was most problematic for the Cabinet was the word ‘symbol’ that was used to express the position of the Emperor. While there was a great deal of debate among the cabinet ministers over this, Prime Minister Shidehara sought an audience with His Majesty and reported on the circumstances of the controversy over the negotiations with the General Headquarters regarding the details of amendments to the Constitution. When [Shidehara] enquired about His Majesty’s will in this regard, His Majesty himself stated that it was ‘acceptable to be a symbol.’ Encouraged by this news, all the ministers decided to accept the word ‘symbol.’ Thus, it could be said that this matter was resolved entirely by imperial decision. <sup>(30)</sup>

In addition, according to the records of contemporary postwar conservative politician Kenzō Matsumura, at this time, MacArthur turned to Prime Minister Shidehara, requesting that “If Article 1 [of the Meiji Constitution] is left as it is, I do not know what the ‘countries to the north [i.e., the Soviet Union (author’s note)],’ or ‘the countries to the south [i.e., Australia (Author’s note)],’ let alone the United States, will say. ... It is currently necessary to change Article 1 to such an extent that it stipulates a British-style ‘national symbol.’” <sup>(31)</sup> Prime Minister Shidehara reported this to Emperor Shōwa, who is quoted as saying the following in response:

Can we not accept this, if the other party says that it is so? May we not change Article 1 to be a ‘symbol’ like Britain? The heart of [this issue] is the heart of the people. That was the spirit of our ancestors. For the line of Emperors unbroken for ages eternal to rule, this too is to rule with the hearts of the people at the heart. Therefore, I believe that it is good to become a ‘symbol of the state’ in the British style and to entrust politics to the people. <sup>(32)</sup>

Furthermore, a US source (“Political Reorganization of Japan” edited by the Government Section of the GHQ) records the following regarding Prime Minister Shidehara’s report to the Emperor on the morning of February 22, 1946:

As a last resort, the Prime Minister, accompanied by Yoshida and Narahashi, asked for the Emperor’s opinion. Hirohito did not hesitate. He advised them that he would fully support Shidehara with the most radical reforms, even to the extent that the Emperor himself would be deprived of all political power. <sup>(33)</sup>

In any case, it should be noted that Emperor Shōwa as a constitutional monarch under the Meiji Constitution, in response to these reports from ministers, recognized the “symbol” provision proposed by the GHQ as being compatible with Japan’s national character (or national polity: *kokutai*), and guided the Shidehara Cabinet in the direction of accepting the GHQ’s proposal. In later years, at an Imperial Household Agency press conference held at the Nasu Imperial Villa on August 23, 1977, Emperor Shōwa gave an explanation as to why he had agreed with the adoption of the “symbol” provisions of Article 1, citing the example of warlords financially supporting the imperial family in matters of national finance during the Warring States period.

Article 1 [of the Constitution of Japan], that article fits the spirit of the Japanese national polity, so I thought it was good. I believe national polity is a suitable term for how the Japanese imperial family has maintained its long unbroken line since ancient times with the trust of the people. As proof of this, history shows that during the period of decline of the imperial family, the warlords of the Warring States period, Motonari Mouri, and Nobunaga Oda respected the imperial family and offered huge fortunes to the imperial family in sympathy for their plight. The Japanese people revered the imperial family, and the imperial family in turn considered the people to be their own children who they cherished. The traditions of those generations have formed what we are today. <sup>(34)</sup>

Kijūrō Shidehara himself, who had reported to the Emperor during the negotiations, in his memoir *Gaikō Gojūnen* (“Fifty Years of Diplomacy”) published in 1951, touches on the drafting process of the Constitution of Japan, explaining that he thought the expression “symbol ... was an eminently appropriate word” in the light of the 1931 Statute of Westminster, as follows:

In the new constitution, the characters *shōchō* (“symbol”) were used to describe the Emperor as the symbol of Japan. I thought that was an eminently appropriate word. The word ‘symbol’ was used in the British Statute of Westminster, which is not particularly old because it came into force after the Commonwealth. The Statute states that the King is a symbol of the sovereignty of the nations of the Commonwealth ... i.e., Canada, Australia, South Africa and other countries. That was the key point that I got from that. <sup>(35)</sup>

When it comes to the issue of the symbol provisions being presented by the GHQ, the memoir recounts that Jōji Matsumoto, the Minister of State, said, “it felt strange that there were some literary expressions appeared in the Constitution.” However, this anecdote seems to be the only example of

an expression of doubt at this point. The recollections given in *Gaikō Gojūnen* are of great interest as they suggest that not only Emperor Shōwa but also the Japanese government of the time had a positive understanding of “symbol.”

#### 5. The International Spread of the “Symbol”

In terms of comparative constitutional law, it is worth noting that since the 1970s, when Japan achieved a high level of economic growth, there has been a notable trend in the constitutions of various countries to specify that the head of state, whether the king or the president, is a “symbol of the state and of the unity of the people” or a “symbol of the permanence of the state”<sup>(36)</sup>.

Numerous examples of such provisions are available. For example, the 1978 Constitution of Spain states that “the king is the head of state and a symbol of the unity and permanence of the state” (Article 56, paragraph 1), the 1990 Constitution of the Kingdom of Nepal states that “His Majesty is the symbol of the Nepalese nationality and the unity of the Nepalese people” (Article 27), the 1992 Constitution of Morocco (approved by referendum) states that “the king is a symbol of the unity of the Kingdom of Morocco,” and the 1993 Constitution of the Kingdom of Cambodia states that “The King of Cambodia shall be a symbol of unity and eternity of the nation” (Article 8). While the 1974 Swedish Constitution contains no explicit statement on this matter, governmental memoranda characterize the king in the position of head of state as “a representative of the unity of the people and a symbol of the nation (*symbol för landet*)”<sup>(37)</sup>.

Similar provisions can also be found in the constitutions of republics. For example, the 1972 Constitution of the Philippines stipulates that “the President of the Republic shall be the symbolic head of state” (Article 7, section 1). In addition, the 1973 Constitution of the Republic of Sudan (Article 82), the 1972 Constitution of Vanuatu (Article 31), and the 1995 Constitution of the Central African Republic (Article 21) all state that the president is a “symbol of national unity”<sup>(38)</sup>.

The provisions relating to symbols that appear in the constitutions of the countries shown above can be seen as confirming not only the tenacity and success of the symbolic emperor system in the Constitution of Japan, but also demonstrating its international spread. In this sense, the symbol provision of Article 1 of the Constitution of Japan can be described as a valued source of a universal aspect of “constitutional culture” and is perhaps unique in this regard.

#### 6. Japan’s Approach to Restoring the Separation of Authority and Power

In his well-known work *The Japanese and the Jews* (first published in 1960), Isaiah BenDasan assesses the Jews as being “politically inept,” stating in contrast that “the Japanese are political geniuses.” He attempts to find a basis for this in the system of separating authority from power, which was formed in the Kamakura Shogunate era; in other words, he is referring to the “coexistence of the imperial court and the shogunate.” BenDasan’s argument regarding this is roughly as described below<sup>(39)</sup>.

Whether in modernity or antiquity, whether east or west, it is a fact that some kind of religious ritual is indispensable for ruling a nation. However, if ritual powers and administrative powers are not separated, a dictatorship will inevitably arise. Both the Jewish prophet Zechariah, and Dante, the author of *The Divine Comedy*, warned against this danger, but both warnings amounted to nothing more than dreams.

Before the modern separation of the three powers can be implemented, a separation of two powers (i.e., ritual and administrative powers) must first be established. It is meaningless to formally establish

a separation of the three powers in locales where the separation of the two powers is lacking. This ideal political system based on the separation of the two powers was only to be found in Japan in a form of the system based on the “coexistence of the imperial court and the shogunate,” which is not in evidence anywhere else in the world. Caesar, Cromwell, Napoleon, and Nobunaga Oda all tried to assume both authority and power, but all ultimately failed. The founder of the Kamakura Shogunate, Minamoto no Yoritomo, took the separation of ritual and administration as a matter of course; he was the first politician in history to adopt such a stance by keeping the shogunate as a strictly practical administrative organization, leaving the ritual functions to the imperial court. BenDasan praises the system of “coexistence of the imperial court and the shogunate” that began with Yoritomo as follows:

The governments of medieval Europe, with their mixing of rituals, administrative justice, and court life, cannot in fact be called ‘governments.’ By comparison, the shogunate, or rather Yoritomo’s government, was a marvel. It was likely a model for the world at that time. This is by no means a conclusion that I have reached in isolation. All foreigners who know the history of Japan even a little will have the same strong feelings. <sup>(40)</sup>

By establishing a dual structure in which only ritual or honorific power was given to the imperial court, and actual political power was held by the shogunate, the Japanese style of political governance gained a firm stability. The pre-Meiji emperor system survived for a long time because the Emperor never held actual political power, except in ancient Japanese history. The Japanese had already realized Japan’s unique system of governance over more than 700 years, separating the “symbol” of the emperor from the supreme holder of political power.

In connection with this, we may recall Walter Bagehot’s *The English Constitution*, as mentioned earlier, insofar as his analysis of the British constitutional system of the Victorian era identifies its traditional strengths or merits as being comprised of two elements: the “dignified parts,” which are “those which excite and preserve the reverence of the population” and the “efficient parts,” which are “those by which [the state], in fact, works and rules” <sup>(41)</sup>. Beyond this, he characterizes the basic structure of the British constitutional monarchy in the latter half of the 19<sup>th</sup> century as an ingenious mixture of the “dignified parts” that the king reigns over, and the “efficient parts” that are governed by a Cabinet led by a prime minister.

As is by now clear, at the time of its establishment, the Constitution of Japan was not intended to abolish the emperor system itself, nor was its purpose to unify both authority and power under the Emperor as in the Meiji Constitution. In conclusion, the symbolic emperor system based on popular sovereignty under the Constitution of Japan is intended to strictly separate the “authority” of the symbolic emperor from the “power” of popular sovereignty, while also allowing both to coexist in harmony<sup>(42)</sup>.

#### Preference

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- (2) For example, Hideya Kawanishi, *Emperor Akihito and Postwar Japan* (Yosensha: Tokyo, 2016), pp. 2-6
- (3) Regarding the development schema of Western monarchies, see Yoshiaki Shimojō, “The Symbolic Monarchy in the 1974 Constitution of the Kingdom of Sweden : A Study on the Formation of ‘Informative-power Monarchy’ and its Constitutional Structure ” in *Review of Social Science and Legal Policy*, edited by the Japanese Association of Law and Political Science, Vol. 54, No. 2 (August 2018), pp. 43-47
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#### Note

This article was originally published in as “‘Shōchō’ no yurai, juyō oyobi fukyō o megutte: Nihon tokuyū ‘niken bunritsu-sei’ no saisei” (A Study on the Origins, Acceptance and International Prevalence of the Symbolic Tenno Clause in the Japanese Constitution: A Rebirth of the Separation of Dignity and Power Peculiar to Japan) (Japanese-language) in *Law and Politics Review*, No. 3 (March 2017) edited by the Kansai Law and Politics Association. This is an English translation with significant abridgements and revisions.