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Article 1 of the Japanese Constitution stipulates that Tenno is the "symbol of the State and of the unity of the people". Under Japanese Constitution, Tenno has deprived of political authorities, and prohibited from involving in the national politics. On the other hand, monarch's traditional merkmar includes a certain degree of governing power, which Tenno does not possess. Here arise the problem that Tenno is a monarch or not, and this problem also relates to the question of whether political system of Japan is a monarchy or a republic. This article introduces academic views on this topic, and shows brief consideration.

Keywords

Tenno, Monarch, Monarchy, Republic, Japanese Constitution

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Debates Over Whether Tenno is a Monarch or Not

Thomas Makoto Naruse[※]

Abstract

Article 1 of the Japanese Constitution stipulates that Tenno is the “symbol of the State and of the unity of the people.” Under Japanese Constitution, Tenno has been deprived of political authority, and prohibited from involving in the national politics. On the other hand, monarch’s traditional *merkmal* include a certain degree of power to govern, which Tenno does not possess. Therein arises the problem that Tenno is a monarch or not, and this problem also relates to the question of whether Japan’s political system is a monarchy or a republic. This article introduces academic views on this topic, and then shows brief consideration.

Keywords: Tenno, Monarch, Monarchy, Republic, Japanese Constitution

Introduction

Article 1 of the Japanese Constitution stipulates that Tenno is the “symbol of the State and of the unity of the people.”¹ There are various debates concerning Tenno, one of which is about whether Tenno is a monarch or not. As will be discussed later, while the monarch’s traditional *merkmal* include a certain degree of power to govern, Tenno has been deprived of political authority and does not meet this requirement. Therein arises the problem. This problem also relates to the question of whether Japan’s political system is a monarchy or a republic. This article will introduce academic views on whether Tenno is a monarch or not, and consider briefly this topic.

1. Views of Academics

(1) Elements of monarchs

Though there are some minor differences, elements of monarchs are commonly shared among academics. Professor Miyazawa lists the traditional elements of monarchs as follows: (1) is an independent institution, (2) has an important part of governing authority, at least executive power, (3) represent the nation externally, (4) has a different status than the general public and in many cases that status is hereditary, (5) that status is recognized as having traditional dignity, and (6) is given a role as a symbol of the nation.² In addition to the above, Professor Kiyomiya also points out non-responsibility.³ These merkmals are generally shared, but in recent years, there is a view that lists the element of a

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¹ Nihonkoku Kenpo[Constitution][Kenpo] art. 1 (Japan).

² Toshiyoshi Miyazawa, Kenpo (Kaitei-ban) [Constitutional Law (Revised Edition)] 9–10 (Yuhikaku 1973).

³ Shiro Kiyomiya, Kenpo I Shin-ban [Constitutional Law I New Edition] 181 (Yuhikaku 1971).

monarch as (1) an independent institution, (2) in many cases, having special status and acceding through hereditary succession, (3) has partial governing authority, and (4) has the right to represent the nation externally.⁴ These elements can be divided into two categories; (1) and (2) as factors related to special position and status, and (3) and (4) as factors related to authority.⁵ Views of academics differ according to which element they put emphasis on.

(2) The view that Tenno is not a monarch⁶

The first is the view that Tenno is not a monarch. As a recent view, Professor Serizawa argues that regarding the definition of a monarch, it is necessary to take historical attributes into account.⁷ He states that Tenno (who is a symbol, and does not possess any political power) is not a monarch⁸ because “a monarch is one who attains the position by hereditary principle and possesses the power to govern, including the right to represent the nation externally.”⁹ Professor Takasuke Kobayashi listed the attributes of a monarch as “political power, external representativeness, independent institution (*dokunin-kan*), hereditary succession, non-responsibility, and symbolism.”¹⁰ In the above, Professor Kobayashi argues that Tenno is not a monarch, because Tenno does not have political power.¹¹ Regarding Japan’s political system, Professor Kobayashi states that because Tenno is not a monarch, Japan is a republic.¹² He states that “Since popular sovereignty is an idea and a system that contradicts monarchical sovereignty, it would be incorrect to view the government system under the current Constitution as the same system of government as under the Meiji Constitution ([which was] a monarchy).”¹³

There are also views from the perspective of the German *Staatsrechtslehre*. In these views, after dividing the political system into a monarchy and a republic, a republic is further divided into an aristocracy and a democracy.¹⁴ On the assumption that Japan is a democracy, that article then discusses the distinction between a monarch in a monarchy, and Tenno, who is a symbol.¹⁵ According to that article, the two elements relating to a monarch are that he (or she) is “a natural person with the power to rule the nation as a constitutionally unique authority,”¹⁶ and “as a general rule, the position is assumed based on lineage and the individual remains in the position for life.”¹⁷ Since Tenno does not meet the first requirement, that article argues that “despite having Tenno as a hereditary symbol, Japan is a type of democracy.”¹⁸

⁴ Makoto Oishi, Kenpo Kougai I [Lectures on the Constitutional Law I] 120 (3rd ed. Yuhikaku 2014).

⁵ *Id.* at 120–21.

⁶ In addition to the following, see Koji Tonami, Kenpo [Constitutional Law] 68 (Gyosei 1994), for the opinion that Tenno is not a monarch in the ordinary sense in terms of authority.

⁷ Hitoshi Serizawa, *Shocho Tenno-sei wo Meguru Shomondai* [The Issues in the Regime of Emperor as a Symbol] 1 Kenpo-kenkyu 43, 49.

⁸ *Id.*

⁹ *Id.*

¹⁰ Takasuke Kobayashi, Kenpo [Constitutional Law] 37 (Nippon Hyoron-sha 1990).

¹¹ *Id.*

¹² *Id.* at 38.

¹³ *Id.*

¹⁴ Hogaku Kyokai ed, Chukai Nihonkoku Kenpo Jo-kan [Commentary on Japanese Constitutional Law Volume 1] 64 (Yuhikaku, 1953).

¹⁵ *Id.* at 64–65.

¹⁶ *Id.* at 65.

¹⁷ *Id.*

¹⁸ *Id.*

(3) The view that Tenno is a monarch

One example of the view that Tenno is a monarch is that of Professor Minobe. Professor Minobe contends that whether Tenno is a monarch or not is a problem of the definition of the concept of monarch, and points out that the development of democracy has often placed substantial restrictions on the governing authority of monarchs, further pointing out that there are monarchs who are not supreme rulers.¹⁹ He takes the positive view that contends that honor and treatment in terms of domestic and international law is merkmal, not the right to govern.²⁰ He points out that Tenno is hereditary by lineage and has a different status from the general public, that Tenno is a symbol of the nation and that his honorific title is “His Majesty (*Heika*)”, that he exchanges letters with foreign monarchs and addresses and is addressed by them on an equal footing, and that he receives foreign ambassadors and envoys.²¹ He holds that Tenno is considered to be a monarch even though he is not the supreme ruler, as he has the right to be honored as a monarch as seen above.²²

Professor Kiyomiya also states that although Tenno has governing authority only as a formality, and has only a limited right to represent the country externally, he holds that Tenno can be regarded as a monarch because Tenno meets the requirements of a monarch except for the two elements above.²³

There are other views that consider Tenno to be a monarch, but they will be discussed later.

(4) The intermediate theory

An example of an intermediate theory is the opinion of Professor Naoki Kobayashi. He argues that Tenno is not a monarch in the original sense because Tenno does not have the power to govern (especially executive power) traditionally held by monarchs, and that in the dichotomy between a monarchy and a republic, since the Japanese Constitution assumes the sovereignty of the people, Japan is therefore considered a republic.²⁴ However, Tenno has the character and authority similar to that of a monarch and is also treated as if he were a monarch, both domestically and abroad.²⁵ Customs that can be seen as monarchical behavior have been shaped, and judging comprehensively from these facts, Japan’s political system is a unique one that can be considered an intermediate form between a constitutional monarchy and a republic.²⁶ Professor Nakatani also states, “While fundamentally adopting a democratic system, we still respect our nation’s historical traditions, national sentiments, and consciousness, so we incorporated a form of monarchical system [into the democratic system] to form a completely unique national system.”²⁷

Professor Yoshida also states that Japan and Sweden are republics, depending on location of sovereignty or where the source of ruling power derives.²⁸ Today, a monarchy in which the monarch has lost his political power is understood by many scholars to be a constitutional monarchy rather than a

¹⁹ Tatsukichi Minobe, *Shin-kenpo Chikujo Kaisetsu Shinso Fukkoku-ban* [Commentary on the New Constitutional Law Reprinted Edition] 27–28 (revised by Toshiyoshi Miyazawa, Nippon Hyoron-sha 2018).

²⁰ *Id.* at 28–29.

²¹ *Id.* at 28.

²² *Id.* at 29.

²³ Kiyomiya, *supra* note 3, at 181–82.

²⁴ Naoki Kobayashi, *Shocho, Kunshu, Genshu* [Symbol, Monarch, Head of State], 933 *Jurist* 83, 91 (1989).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Yoshitoshi Nakatani, *Genshu (Tenno no Taigai-teki Chii)* [Head of State—Tenno’s External Position], in Kenpo Enshu [Practicums on Constitutional Law] 16 (Shiro Kiyomiya & Isao Sato eds., Yuhikaku 1959).

²⁸ Yoshiaki Yoshida, *Nihonkoku Kenpo-ron* [Theory on Japanese Constitutional Law] 533 (3rd ed. Sanseido 2003).

“full monarchy.”²⁹ However, since the Japanese Constitution denies the sovereignty of Tenno, denies the right for Tenno to govern (executive authority), and does not provide Tenno with the right to represent the nation externally, Tenno is not a monarch, and Japan can be interpreted to be a republic.³⁰ Regarding the fact that Tenno satisfies some elements of a monarch such as being an independent institution and a hereditary system, although these are some of the indicators of a monarch, as long as Tenno has no political power, he is “Tenno,”³¹ not a monarch.³² Therefore, he concludes that Japan is a “Republic with Tenno.”³³

(5) Brief overview

The dominant view of academics takes the position that whether a person is a monarch or not depends on the definition of the word “monarch.”³⁴ The views that Tenno is not a monarch place emphasis on the merkmal of the traditional monarch, and argue that Tenno is not a monarch because Tenno does not have the right to govern. Behind this idea is the mindset that sees popular sovereignty and monarchy as contradictory.³⁵ There is also a sense of caution about the political impact of positioning Tenno as a monarch. Professor Yuki states that “If we also take into account the ‘ideological effect’ of words, it is difficult to continue to refer to an entity completely disconnected from power as a ‘monarch’ or ‘head of state’... it does not seem appropriate as it downplays historical significance of the words and has the effect of giving the impression that an entity that holds no power does have power.”³⁶ Debates over Tenno have had huge political significance, and the political nature of the issue also influences the problem of whether Tenno is a monarch or not. On the other hand, the view that sees Tenno as a monarch focuses on factors related to special position and status. These opposite conclusions depend on the points being emphasized. There was also the eclectic view that see the Japanese political system as unique one which is placed between constitutional monarchy and republic.³⁷

Even in the view that Tenno is a monarch, the understanding that the monarchy in the traditional sense has been dissolved is widely shared.³⁸ There is virtually no objection regarding the fact that Tenno does not fit into the traditional framework of monarch. On the other hand, even among those who argue that Tenno is not a monarch, there were references to hesitation about conceiving of Japan as republic.³⁹ Professor Takasuke Kobayashi states that there is “some reluctance”⁴⁰ to think of Japan as a republic even though it is not a presidential system.⁴¹ Due to the development of democratic politics, a monarch’s

²⁹ *Id.*

³⁰ *Id.* at 533–34.

³¹ *Id.* at 534.

³² *Id.*

³³ *Id.*

³⁴ For the view that this is a terminology problem, see Yoichi Higuchi, Kenpo I [Constitutional Law I] 129 (Seirin Shoin 1998).

³⁵ Similar views include Kobayashi, *supra* note 10, at 38.

³⁶ Yoichiro Yuki, *Kunshu to Genshu no Gainen [The Concept of Monarch and Head of State]*, in Makoto Oishi and Kenji Ishikawa eds., *Kenpo no Soten [Issues in the Constitutional Law]* 47 (Yuhikaku 2008).

³⁷ Kobayashi, *supra* note 24, at 91.

³⁸ Yoshiaki Shimojo, *Shocho Kunshusei Kenpo no 20 Seiki-teki Tenkai [The 20th Century Development of the Symbolic Monarchy Constitution]* 8 (Toshindo 2005), Isao Sato, *Kunshu-sei no Kenkyu—Hikaku Kenpo-teki Kosatsu Fukkan-ban [Study on Monarchy (Reprinted Edition)]* 366 (Nippon Hyoron-sha 2018).

³⁹ See, the views introduced in “(4) the intermediate theory” above.

⁴⁰ Kobayashi, *supra* note 10, at 38.

⁴¹ *Id.*

right to govern has become nominalized, and as a result, “in some ways, it has become difficult to make substantive distinctions.”⁴²

As pointed out in a previous article, depoliticization was one of the important aims in designing the system surrounding Tenno.⁴³ On the other hand, the Japanese Constitution maintains a hereditary, and to some degree traditional, Tenno. Although Tenno is “monarchical” as discussed above, he does not fit the traditional definition of a monarch, which is why controversy arises.⁴⁴

Today, when it comes to whether Tenno is a monarch or not, the prevailing view is to deny the usefulness of debate. For example, Professor Shibutani says, “Since no specific conclusion can be drawn from the characterization of a constitutional monarchy, this positioning has no more than a taxonomic meaning.”⁴⁵ Professor Hasebe also denies its significance, saying, “It does not lead to any difference in important legal conclusions.”⁴⁶ Professor Miyazawa also argues that there is no significant meaning in comparing monarchy and republic, taking as examples Nazi Germany and the United States on the one hand and fascist Italy and Great Britain on the other.⁴⁷ Similarly, it has been pointed out that not being a monarchy does not mean being a democracy today, and that the important point is not whether a country is a monarchy or a republic, but whether it is a democracy or not.⁴⁸ In today’s academic views, the trend is toward thinking that it depends on the elements of the definition, and that no substantive meaning is necessarily found.

2. Is Tenno a Monarch or Not?

(1) Views of Professor Sato and Professor Shimojo

So far, we have seen the theories of academics. The nature of monarchy has changed over time, and it has been pointed out that its social functions have also changed.⁴⁹ Below, I would like to discuss this issue from the perspective of Japanese constitutional law, based on the views of Professor Sato and Professor Shimojo.

Professor Sato argues that the merkmals of monarchs have changed over the course of history⁵⁰ and are “not something that is fixed and clear.”⁵¹ He points out that the role of monarchs’ executive

⁴² Miyoko Tsujimura, Kenpo [Constitutional Law] 73–74 (3rd ed. Nippon Hyoron-sha 2008). Professor Ukai’s view that monarchies and democracies exist as a mixture is also attracting attention. Nobunari Ukai, 3. *Tenno—Kenpo Kaisei no Shomondai* [3. *Tenno—Problems regarding Constitutional Amendments*], in Kenpo ni Okeru Shocho to Daihyo [Symbols and Representations in the Constitutional Law] 26 (Iwanami Shoten 1977). (See also the point made by Ukai, *id.* at 27.).

⁴³ Thomas Makoto Naruse, *Daijosai and the Separation of Religion and State*, Vol. 2 Japanese Society and Culture 31, 33–34 (2020).

⁴⁴ However, there is also a political aspect, as mentioned earlier.

⁴⁵ Hideki Shibutani, Kenpo [Japanese Constitutional Law] 63 (3rd ed. Yuhikaku 2017).

⁴⁶ Yasuo Hasebe, Kenpo [Constitutional Law] 75 (8th ed. Shinsei-sha 2022).

⁴⁷ Miyazawa, *supra* note 2, at 10.

⁴⁸ Kobayashi, *supra* note 10, at 38.

⁴⁹ Classical works that are often referred to even today include Bagehot and Loewenstein. Walter Bagehot (translated by Haruo Komatsu) *Igirisu Kensei-ron* [The English Constitution] (Chuokoron-shinsha 2011), and Karl Loewenstein (translated by Ritsuo Akimoto & Yoshiyuki Sato) *Kunshusei* [Die Monarchie in Modernen Staat] (Misuzu Shobo 1957). Although not directly dealt with in this paper, Ehara argues from the standpoint of Japanese constitutional law. Takeru Ehara, *Kunshu-sei no Hikaku Kenpogaku-teki Kenkyu* [Comparative Constitutional Study on Monarchy] (Yushindo 1969). For a work from other than the field of constitutional law, see Naotaka Kimizuka, *Rikken Kunshusei no Genzai—Nihonjin ha Shocho Tenno wo Iji Dekiruka* [Current Situation of the Constitutional Monarchy] (Shinchosha 2018).

⁵⁰ Sato, *supra* note 38, at 367.

⁵¹ *Id.*

authority and external representation has been reduced and that the emphasis has shifted to symbols.⁵² It is supposed that, as a historical development, substantial authority was no longer a requirement, once constitutional monarchy developed and then parliamentary monarchy developed.⁵³ In this way, nominal and ceremonial authority were sufficient for the concept of monarch, and a monarch came to have symbolic character both internally and externally.⁵⁴ Since Tenno is hereditary, and has authority as a symbol, which includes certain authority in diplomatic relations, Tenno can also be called a monarch.⁵⁵ However, it is noteworthy that this may “show the extreme form”⁵⁶ of monarchy in its historical development.⁵⁷

Professor Shimojo understands the development of the history of monarchy as a history of despotic monarchy, constitutional monarchy, and parliamentary monarchy, to nominalization of a monarch’s status and authority.⁵⁸ He understands that the monarchy in its traditional sense has already been dissolved⁵⁹ and points out the hereditary system, honor, and symbolism as the unique features of monarchs of today.⁶⁰ He proposes the concept of “informative power monarchy,”⁶¹ which captures symbolic monarchy from functional aspects, referring to Sweden’s approach.⁶² In other words, the “right to receive a report from a minister” or “the right to request an explanation,” as pointed out by Loewenstein, are positioned as authority in terms of national political information.⁶³ In the Swedish Constitution, Sweden’s king is considered a symbolic monarch and holds the position of head of state, but he has lost most of his political authority, except for authority over national political information.⁶⁴ Going from that, Tenno can be interpreted as a “monarchy with information rights” because of the existence of the *naiso* (ministerial reporting) system, and because the Constitution states that Tenno is a symbol.⁶⁵

The above views of both professors are based on the historical development of monarchy, and do not place emphasis on the element of power among the elements of monarchy today. Professor Shimojo points out that the monarch’s loss of power brought about alignment and harmonization with democracy.⁶⁶ This kind of “monarch without power” is viewed as “extreme form”⁶⁷ of monarchs today.

(2) Brief consideration

Based on the above discussion, I would like to briefly consider whether Tenno is a monarch. Regarding the definition, Professor Serizawa claims that it is necessary to take into account the attributes of monarchs in history,⁶⁸ but as Professor Miyazawa points out, monarchy is a historical concept, and

⁵² *Id.* at 54–55.

⁵³ *Id.* at 367.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Shimojo, *supra* note 38, at 5.

⁵⁹ *Id.* at 8.

⁶⁰ *Id.* at 5.

⁶¹ *Id.* at 146.

⁶² *Id.* at 144–48.

⁶³ *Id.* at 144–45.

⁶⁴ *Id.* at 145–46.

⁶⁵ *Id.* at 147–48. However, it should be noted that *naiso* is not necessarily official, nor is it something that Tenno has authority over.

⁶⁶ *Id.*, at 14.

⁶⁷ Sato, *supra* note 38, at 367.

⁶⁸ Serizawa, *supra* note 7, at 49.

its merkmals “can only be listed historically and empirically.”⁶⁹ The role of the monarch has undergone major changes, and today it is also pointed out that it is compatible with democracy.⁷⁰ In the past, political power held an important position in the definition, but today the political power of the monarch has been largely lost, and it has also lost its importance as a merkmal.⁷¹ Considering this, since a “monarch without power” can be established, it is difficult to say that it is legitimate not to view Tenno as a monarch and to view the Japanese political system as a republic. Regarding this point, Professor Oishi distinguishes the traditional (classical) monarch and the modern monarch, whose authority has become nominal under the system of constitutional monarchy.⁷² For a modern monarch, he contends that emphasis should be placed on factors related to special position and status, rather than constitutional authority, and he conceives Tenno as a modern monarch.⁷³ Even though Tenno can be classified as a monarch in this way, it is also difficult to understand the necessity of trying to create a new classification in which to place Tenno. Since the role of monarchs has diversified and it is possible to classify them as monarchs without political power under popular sovereignty, Tenno should be understood as such.

With that in mind, I would like to briefly go over the nature of the monarchy as defined by the Japanese Constitution. First, it is a monarchy under popular sovereignty, as indicated by the Preamble and Article 1 of the Constitution.⁷⁴ Next, there is its non-political nature, which was emphasized in the enactment process of the Constitution.⁷⁵ A direct example of this is Article 4 of the Constitution, which stipulates acts in matters of state,⁷⁶ and those acts are considered to be of a “formalistic and ceremonial act.”⁷⁷ Tenno’s acts of state include those of a diplomatic nature, those related to national politics, and those that have an honorific nature, but they are considered to be nominal and ceremonial, and require the advice and approval of the Cabinet in order to be carried out.⁷⁸ Another point is the non-religious nature of Tenno.⁷⁹ In the Imperial House Law, religious elements such as seen in the *Daijosai* were intentionally removed and the religious aspects of Tenno are confined to the private realm.⁸⁰ Finally, there is thorough democratic control, which is related to popular sovereignty,⁸¹ which is seen in expanding the decision-making power of the Diet over the Imperial House Law which was an independent law of the Imperial Household under the Meiji Constitution,⁸² limiting acts in matters of state and putting them under the control of the Cabinet,⁸³ as well as restrictions on imperial property and the decision-making power of the Diet over such property.⁸⁴ Although Tenno is constitutionally understood to be a monarch, it is important to note that he is subject to numerous restrictions.

⁶⁹ Miyazawa, *supra* note 2, at 10.

⁷⁰ Shimojo, *supra* note 38, at 14.

⁷¹ As a view which introduces Professor Sato’s view stating the historical fluidity of the elements of monarchy and putting emphasis on elements other than political power, Koji Sato ed., Kenpo I—Sorono/Touchi Kiko [Constitutional Law I: General Principles/Government Structure] 259 (Seibundo 1986) (section written by Akira Momochi).

⁷² Oishi, *supra* note 4, at 121.

⁷³ *Id.*

⁷⁴ Kenpo preamble, Kenpo art. 1.

⁷⁵ Naruse, *supra* note 43, at 33–34, and materials referred to in that article.

⁷⁶ Kenpo art. 4.

⁷⁷ Ashibe Nobuyoshi, Kenpo [Constitutional Law] 47 (revised by Kazuyuki Takahashi, 6th ed. Iwanami Shoten 2015).

⁷⁸ Kenpo art. 3, 6, and 7.

⁷⁹ Kenpo art. 20, Naruse, *supra* note 43, at 32–34.

⁸⁰ *Id.* at 36–37. Nevertheless, it has become a constitutional issue. *See generally, Id.*

⁸¹ Kenpo art. 1.

⁸² Kenpo art. 2.

⁸³ Kenpo art. 3, 4, 6, and 7.

⁸⁴ Kenpo art. 8 and 88.

Conclusion

Regarding Tenno, there are various constitutional issues, including limiting the right of succession to males in the male line, and the conflict between the succession ceremony and the separation of church and state. Constitutional issues concerning Tenno often involve the problem of how to treat tradition. As monarchs are connected to tradition, the question of whether Tenno is a monarch may be helpful when considering these issues. In interpreting the various systems surrounding Tenno, it may be possible to make the interpretation clearer by taking into account the background that “the Constitution recognizes Tenno as a monarch.” In this sense, conceiving Tenno as monarch can serve as a guideline for interpreting the Constitution. As pointed out above, Tenno is an entity that can be understood as a monarch. Then, the next question would be what kind of monarch Japan’s Constitution envisions.

The aim of this article was to introduce academics’ views on whether Tenno is a monarch or not, and to show brief consideration. As discussed above, this article points out that Tenno is a monarch, and shows the unique features of Japan’s “monarchy.” Currently, the problem of the range of persons who have the right of imperial succession has become a major social conundrum. For such discussions, reconsidering whether Tenno is a monarch or not can cast another light on the issue.