

THE RATIONALE FOR THE KINGSHIP IN NEPAL

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1. Nepalese King and Japanese Emperor

The Nepalese monarchical system is an exceptional theme being discussed by Japanese constitutional lawyers who had paid little attention to the Nepalese constitution and politics so far. Since the promulgation of the Japanese constitution in 1946, the Emperor has been one of the biggest constitutional puzzles among Japanese intellectuals. They have studied the Emperor by using comparative as well as historical and theoretical methods. The Emperor has been compared with the Kings (Queens) of Britain, Belgium, Norway and so on. The Nepalese King has been among them. Takeshi Ebara allotted one chapter to the Nepalese monarchy in his voluminous book, *A Comparative Constitutional Study on Monarchy* (1969). Many other studies on the Emperor also refer to the Nepalese King. For Japanese scholars, the monarchy is the most interesting part of the Nepalese constitution.

For Nepalese scholars too, the Nepalese monarchy is undoubtedly regarded as one of the most important political institutions enshrined in the constitution. Nepalese politics is much influenced by interpretations of the King's function. If He has the right to nominate the prime minister, the Houses (the House of Representatives and the National Assembly) will be weaker. If not, they will be stronger and He is likely to become a mere symbol. The King is still a big factor in Nepalese politics.

Here, I would like to verify the Nepalese King's functions according to the constitution of 1990, compare them with the Japanese Emperor's and finally point out the reason for the King in Nepal. Although both the King and the Emperor must be studied from a wider cultural point of view, I

cannot help limiting the study to a comparative study of their functions sanctioned by the respective written constitutions.

2. The King as a Symbol

The Nepalese King is, first of all, "the symbol of the Nepalese nationhood and the unity of the Nepalese people[27(2)]." A nation or a people, in most cases, has concrete things or persons symbolizing it. Mt. Sagarmatha (Everest) is a de facto symbol of Nepal. *Rhododendron arboreum*, cow and lophophorus are the national flower, the national animal and the national bird respectively according to the constitution [7(2)]. Nepal, like other states, has some de facto and legally recognized symbols. Of all these symbols, the King is the most important. He symbolizes Nepal -- the people and their state -- in His own personality.

In general, monarchs are the symbol of a state. The British King (Queen) is "the personal symbol of the state and national unity," and the Japanese Emperor is "the symbol of the state and the unity of the people [JC(Japanese Constitution) 1]." If a monarch loses such symbolism, his dignity will decline and he cannot be a monarch any more.

The Nepalese King as a symbol is the dignified part of the state and treated as a highly respected person in the constitution. The King is called "His Majesty [27(1)"; governmental transactions are conducted "in the name of His Majesty [35(4)"; the national anthem is "the Royal Salute [33(2)"; His income and property are "exempt from tax and inviolable[30]"; He has "the exclusive power" to decide the succession to the throne [28(2)]; He constitutes "Raj Parishad" for Himself [part 6]; He is questioned neither in the Houses nor in any Court [31,56(1)].

These provisions aim at protecting the King's dignity and increasing His symbolism. Such provisions are necessary to every monarchy. All monarchies such as Belgium, Spain and Denmark have such provisions in their constitutions. Because a monarch's personality itself is a symbol, it is quite natural for him to be treated more or less differently from other ordinary citizens. So far, the Nepalese King has remained as one of the typical monarchs of modern democratic states.

The Japanese Emperor is also an exceptional person in the Japanese constitution, but is different in some points from the Nepalese King. First, no national anthem is provided in the Japanese constitution. "Kimigayo (the Imperial Reign)" is said to be the national anthem, but it is nothing but a conventional national song and the words are too vague for the common

people to understand its full meaning. In contrast to this, the Nepalese national anthem is clearly provided in the constitution. It praises the King and His reign with the most dignified words and beautiful rhetoric. In Nepal, as far as I hear, there is no serious antagonism to the anthem. But in Japan, a considerable number of people are strongly against "Kimigayo" being sung at ceremonies or in school. According to them, "Kimigayo" praises Japanese militaristic imperialism and invasion of Asian countries. Therefore, Japanese progressives have criticized every attempt of the government and conservative groups to legalize "Kimigayo" as the national anthem.

Secondly, the Japanese Emperor has almost no power even over His own household, except purely private matters. The Nepalese King has "the exclusive power" to decide the succession to the throne and constitutes the Raj Parishad by himself and presides over it. Although the King is expected to hear advice of the Raj Parishad, He has a great amount of freedom over matters pertaining to His household. The Japanese Emperor has no such freedom. He abides by the decisions of the government and the Imperial House Law which the Diet makes and can amend as it likes. According to the Law, the Emperor has no say over the succession to His throne. It is already decided by the Law. The Imperial Household Council is summoned and presided not by Him but by the prime minister. The Emperor and His Family are even prohibited adoption and are obliged to ask the Council for permission before they choose a bride. These provisions which deny the freedom of the Emperor and His Family, are undoubtedly against human rights. But if the Emperor is an exception to democracy, the negation of human rights of the Imperial Family will more or less be unavoidable. It may be a necessary evil. Even so, democrats and human rights activists insist the abolition of the Emperor system, because the exception inevitably endangers Japanese democracy and human rights in general.

The Japanese Emperor, without any political power, is more symbolic than the Nepalese King who does have some political power. Both of them are symbols. But I suppose that the former is the weakest while the latter is the strongest of all the monarchs in modern democratic countries.

3. The King and the Parliament

The Nepalese King has some other functions than just symbolizing the nation. The Japanese Emperor is a pure symbol under the sovereign people (or the Diet). Japan is, in a strict sense, a republic, with the Emperor as one of its constitutional organs. The Nepalese King cannot be simply

interpreted to be under the sovereign people. He may possibly be interpreted from three dimensions, namely being either *under* the Houses, or *in* the Parliament, or *above* the Houses.

1) THE KING *under* THE HOUSES

The Nepalese constitution says, "the sovereignty of Nepal is vested in the Nepalese people [3]." That is to say, as a rule "the power of His Majesty under this Constitution shall be exercised upon the recommendation and advice, and with the consent of the Council of Ministers [35(2)]," and "the responsibility of issuing general directions, controlling and regulating the administration of the Kingdom of Nepal shall [...] lie in the Council of Ministers [35(3)]." The King must listen to the Council of Ministers (the cabinet), which is liable to the House of Representatives elected by the people. The King has many powers such as appointment of the prime minister and other ministers [36,37], summons and dissolution of the House of Representatives [53], assent to bills [71] and appointment of judges [87]. Among them, there are some powers without the proviso, "upon the recommendation and advice, and with the consent of the Council of Ministers." However, the popular sovereignty provided in article 3 demands that the King always listen to the Council when He exercises His powers as a constitutional organ. Following the advice of the prime minister is politically wise as well as obligatory to the King.

This parliamentaristic monarchism is realized almost fully in the Japanese constitution. The Emperor "shall not have powers related to government [JC4]." He performs only twelve "acts in matters of state" such as appointment of the prime minister and the chief judge of the Supreme Court, promulgation of amendments of the constitution, laws and treaties, convocation of the Diet, dissolution of the House of Representatives and so on [JC7]. All His twelve acts are completely nominal or ceremonial, because He cannot perform them without "the advice and approval of the Cabinet." He has no political power and is, in return, totally free from political responsibility.

This is a very natural and logical outcome of popular sovereignty. The Emperor cannot say "no" to any advice of the Cabinet. He is legally obliged to follow even such an advice as abolition of the Emperor system. The Cabinet makes Him perform acts and takes all the responsibility of His acts.

The Nepalese King can do some acts without the advice of the Council of Ministers. But if He performs them only by himself, He will have to take

political responsibility for them. I think it is not to His own advantage. Many monarchs in the world are giving up real political powers as democracy proceeds.

2) THE KING *in* PARLIAMENT

The Nepalese constitution states that the Parliament "shall consist of His Majesty and two Houses [44]." He nominates 10 members to the National Assembly [46]; He summons, prorogues and dissolves the House of Representatives [53]. He introduces "a Finance Bill or a Bill concerning the Royal Nepal Army or the Armed Police Force [68]"; He has other important rights such as assenting to bills [69] and promulgation of ordinances [72]. The King shares the legislative power with the two Houses.

Moreover, "the executive power of the Kingdom of Nepal shall [...] be vested in His Majesty and the Council of Ministers [35(1)]." The King shares the executive power with the Council of Ministers. Of course, He is expected to listen to the Council, but it does not mean that he does not have executive power. The King is rather an orthodox monarch not only reigning but also ruling with the assistance of the cabinet.

However, the King does not share the judicial power with the Judiciary. He nominates the chief justice and other judges of the Supreme Court on the recommendation of the Judicial Council, but does not intervene directly in the delivery of justice. He did not do it officially, though He possibly did in practice, even under the constitution of 1962 in which He was almost an absolute monarch. I suppose the reason may be that the King as a Chhetri(warrior) has for long entrusted the delivery of justice to Brahmins (priests).

In short, here, the King is neither *under* nor *above* the Houses but *in* the Parliament (and the Executive responsible to it). In other words Nepal is a constitutional monarchy which stands midway between monarchical sovereignty and popular sovereignty. The king *in* parliament or constitutional monarchy is the political system which has grown typically with the British constitution. The British King has by constitutional conventions delegated most of His power to the prime minister, while in the common law He still has prerogative power. The Nepalese King, in articles 35 and 44, is almost the same constitutional monarch as the British King is. Nepal has been influenced by Britain since the 19th century, especially in the Rana period. For the Nepalese ruling elite, I suppose, British monarchy has been a model ruling system to be followed. Kings in parliament vary

from nearly absolute kings to those almost under popular sovereignty. Throughout history, many kings in parliament, including Nepalese Kings, have evolved from the former to the latter. As the Nepalese monarchy evolves further and the King keeps himself from exercising political power, He will become a pure symbol just like the Japanese Emperor.

3) THE KING *above* THE HOUSES

The Nepalese constitution has some articles, according to which the King is *above* the Houses. First, the King can nominate the prime minister. As a rule, He nominates the leader of the majority party for the prime minister [36(1)]. But when no party can command majority in the House of Representatives, there may be some *de facto* room for His initiative in the selection of the prime minister. The British King has this power and has used it several times in the past. The Nepalese King also has this power and has probably exercised it once or twice under the new constitution. As questions or discussions about the King are prohibited, we cannot know closely how He nominated prime ministers in these cases. If He can, as a matter of fact, choose the prime minister, in case the Houses cannot, it will mean that the King is, in the end, *above* the Houses.

Secondly, the King can demand information on matters of state from the prime minister, and "may make recommendations to, or appreciation of, or admonitions to, the Council of Ministers on matters of national importance [43(2)]." To the Houses, He can address and send messages [54]. He has the right of assent to bills. This is not a nominal right. He can send back those bills to the Houses for which He thinks further deliberations are necessary [71]. The King's powers, mentioned above, are sanctioned by the written constitution which was supposed to yield them to the Houses or the Council of Ministers. But in the practice of His powers, He can be in fact *above* them.

Thirdly, the King has the decisive power -- the emergency power [part 18]. When He concludes an emergency has arisen, He "may, by Proclamation, declare or order a State of Emergency," suspend most fundamental rights and issue orders necessary to meet the exigencies [115]. This is an extremely powerful right. If the real sovereign is, as C. Schmitt pointed out, the person who can rule a country in an exceptional exigency, the King is the real sovereign in Nepal.

Lastly, the King enjoys "the exclusive power" to decide the succession to the throne, and big privileges relating to Royal Family and its property [part 5]. In these matters the King is out of control by the Houses.

At least in the provisions referred above, the Nepalese King can be interpreted to be *above* the Houses.

The Japanese Emperor has no such political powers or freedoms that the Nepalese King enjoys. His "acts in matters of state" are only nominal and limited to those listed in the constitution. Of course, in practice, it is not easy to distinguish nominal or ceremonial acts from political acts. For example, the Emperor has conventionally attended the Diet on its opening day to deliver an "Okotoba" (speech). His speech is only nominal and almost without party affiliation, and the Cabinet is totally responsible to it. But even so, many constitutional scholars think that "Okotoba" in the Diet is unconstitutional, because it is not sanctioned by the constitution and His attendance at the Diet itself has some political meaning. According to the Japanese constitution, the Emperor is merely one of the state organs under the Diet. Therefore, they insist that the Diet, "the highest organ of state power [JC41]," can and should rule over Him.

The Nepalese King, in contrast, is not necessarily *under* the Houses, and has some powers and privileges immune from their control. This greatly affects the practice of parliamentary democracy in Nepal.

4. The Reason for the King in Nepal

The Nepalese King and the Japanese Emperor are no less good examples than the British King for our study of constitutional monarchy in modern democracy. We can make the reason for modern monarchs clearer by contrasting the Nepalese King, a model of the strongest monarch, with the Japanese Emperor, a model of the weakest monarch.

Both the King and the Emperor are symbols of states and peoples. The biggest reason for monarchs in modern democratic states is their symbolizing function. A president or a prime minister elected directly or indirectly by the people can be a symbol of the nation, but in stability and dignity, he is inferior to a monarch. And, if a president is the symbol too, he can enjoy spiritual authority in addition to political power. Such a president is, on the one hand, likely to become a totalitarian dictator like Hitler or Stalin. On the other hand, if the president is defeated in political struggle, not only the political power but also the spiritual authority (symbolism) carried by him will be damaged and the unity and stability of the nation will

be weakened. Therefore, it is political wisdom to separate spiritual authority from political power and give the former to a monarch and the latter to some state organs. As for Japan, an island state of ethnically homogenous people, national unity is almost naturally given. Some scholars insist that because Japan does not need any monarch for integration, she should abolish the Emperor system to become a republic. Their republicanism is not a majority opinion in Japan, yet. For Nepal, a multi-ethnic and multi-cultural state, a monarch is much more necessary for national unity than for Japan.

In other words, a monarch is the symbol of nationalism. Where national identity or unity is in danger, he or she is utilized as the focal point of a national centripetal motion. In the Tokugawa era, when Japan was a stable and closed feudalistic state without serious threats from outside, the Emperor was almost forgotten. But in the middle of the 19th century when Japan began to face the threat of western colonialism and to seek stronger national integration, the Emperor was utilized as the most effective symbol of Japanese nationalism. He was given both the spiritual authority as a living god and the political power as a sovereign. This Emperor system was extraordinarily effective as a device for nation-building, but since we failed to see the enormous danger of giving spiritual authority and political power to a monarch, it bred militarism and ultra-statism(fascism). The Great Japan Empire invaded many countries in the Asian and Pacific region, hurt or killed tens of millions of people and, at last, wrecked itself. A monarch is really a useful but dangerous organ which can be used for sound nationalism as well as for ultra-statism.

But, at least for today's Nepal, a monarch can do more good than harm. Nepalese national unity or identity is often in danger because of her heterogeneity of ethnic groups, languages, religions and so on. For example, where each ethnic group demands self-determination, democracy or majority rule is almost meaningless. Can language problems be solved by vote? If we take recourse to democracy, the result will be known before voting -- that is, the largest group will win and, still worse, it will be almost irreversible by another vote. If democracy were justice, in any case, the result would be totally justified and minority groups would be forced to give up the right to use their own language in school or office. The same can be said about almost all other problems. Each ethnic group has its own culture. If ethnic groups insist on their right to self-determination, they will cause many conflicts unable to be solved by vote, begin sooner or later using bullets instead of ballots and tear their own nation to pieces. If they have a king common to all ethnic groups, he can be a symbol of national interests,

something more commonly accepted than their particular interests. They may look up to him and remember that there is a nation.

A monarch is also important in such a state where people do not have a long experience of democracy, and immature political parties are too self-centered and likely to ignore national interests. There are many cases showing that kings represented people while political parties sought after their own interests. Or, when the parliament cannot select the prime minister for some reason, the king takes the necessary initiative in the selection from a neutral standpoint representing the whole nation. Thus, in a state like Nepal, a king can perform an important function as a neutral mediator to solve political conflicts of antagonistic interest groups and serve the national interests.

For the Nepalese independence too, the King is important. Nepal is sandwiched between two giants, India and China. If Nepal does not have a strong identity, her independence will be lost easily. Especially, Terai, the southern belt area along the border line, may possibly be swallowed into India if Nepal loses the national identity, because Terai is geographically just neighboring to, and has close economic and cultural relationship with, India. The border line is, needless to say, an artificial separator drawn by the two modern nation-states. It is really unnatural. But, if Nepalese people want to be a nation, they must strengthen their national identity for their independence. For that purpose, Nepal had better maintain a clear and concrete national symbol. And the King serves the purpose very well.

The King is to Nepalese advantage, now. Nepal enjoys much more stability and peace than many other developing republican states. One of the reasons is that Nepal is a monarchy. But, at the same time, there is some possibility that the Nepalese King is exploited for the purpose of ultra-nationalism or statism. For example, an ethnic group or a political party may possibly pursue its own interests in the name of the King suppressing other groups' or parties' interests. Or, the King or the Royal Family may possibly sacrifice people for their own selfish interests. Although the possibility is not very big in today's democratic Nepal, we should not forget that there have been many tyrants, absolute monarchs and dictators in history. We must always be cautious about the potential danger of monarchy.

Anyway, the biggest reason for modern monarchs is to be the symbol of a nation and strengthen the unity of the people. For Japan, an island state more naturally and strongly integrated than any other state, a monarch is not necessary. Without the Emperor, Japan may probably maintain her identity

as an independent state. For Nepal, I think that constitutional monarchy is preferable for the time being. Without the King, the unity of Nepal is much more difficult. But it is not good, both for the people and the King, that He exercises political power by Himself. He as a constitutional monarch in a modern democratic state, better transfer as much political power as possible to other constitutional organs and become the pure symbol of the Nepalese people.

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