
MAJOR LEGISLATION & TREATIES

Jan.-Dec., 2019

1. Constitutional Law

Cabinet Order to Change the Gengō

Background:

In 2016, Emperor Akihito announced his “individual” intention to abdicate through a video message. This was realized through the Act to Amend the Imperial House Law of 2017 (See Waseda Bulletin of Law Vol. 38). Naruhito succeeded to the throne on 1 May 2019, while the Gengō changed from 平成 Heisei to 令和 Reiwa.

Main Provisions:

Gengō Act (1979)

Act No. 43 of Syowa 54

1 The Gengō shall be proclaimed by cabinet order.

2 The Gengō shall be changed only if the succession to the Imperial Throne occurs.

Supplementary Provisions:

2 Syowa shall be counted as laid down through Section 1 of this Act.

Cabinet Order to Change the Gengō (2019)

Cabinet Order No. 143 of Heisei 31

The Gengō is changed to 令和 Reiwa.

Cabinet Notification to show the pronunciation of Gengō

Cabinet Notification No. 1 of Heisei 31

れい わ
令和 [Rei-wa]

Charter of Imperial House (1889; abolished in 1947)

Meiji 22 Feb. 11

Article 12

Following the Rescript of Meiji 1st year, the Gengō shall be decreed after the succession to the Imperial Throne occurs; it shall not be changed through a reign era.

Tōkyokurei (Decree to provide the details of the succession to the Imperial Throne of 1909; abolished in 1947)

Imperial House Order No. 1 of Meiji 42

Article 2

The Gengō shall be immediately changed after the success to the Imperial Throne. It shall be decreed after the consultation with privy councilors.

Imperial Rescript of Meiji 1st year (1868)

Proclamation No.1 of Meiji 1 Oct. 23

[omitted] Change 4th year of 慶應 Keiō to 1st year of 明治 Meiji; Reform the old system; Permanently Give One Monarch, One Era; That shall be executed by the person in charge.

Editorial Notes:

1. Gengō

In the premodern State of Japan, following the Imperial Court of Premodern Chinese Dynasties, the calendar of state affairs was decided

based on the Gengō, the regnal year. Besides, the luni-solar calendar (the last luni-solar calendar was 天保暦 Tenpō Calendar of 1844) had been used until Meiji 5, Dec. 2 (Dec. 31 1872). The Meiji Government prescribed that the next day of Meiji 5 Dec. 2 should be Meiji 6 Jan. 1 and adopted the Gregorian calendar.

The regnal year was once used in the United Kingdom. For example, Acts of Parliament Numbering and Citation Act 1962, which abolished the regnal year, is cited as such:

10 and 11 Eliz 2 c 34

(= Parliament Session of 10-11 of Queen Elizabeth II, Chapter 34 of the Statute Book)

Premodern Japan and Chinese Dynasties did not change the Gengō only if a succession to the throne occurred until the Ming Dynasty of China and the Imperial Rescript of 1868 of Japan decided the rule of One Monarch, One Gengō. After the Rescript, the late Emperor's Gengō was customarily given as the posthumous title of his. For this reason, the deceased Emperors (Mutsuhito, Yoshihito, Hirohito) are often called by his Gengō (e.g. 昭和天皇 Showa Tenno [Emperor] for 裕仁 Hirohito).

2. Gengō Act

The Meiji Constitution of 1890 excluded the Imperial House affairs from the legislature. The Emperor was able to enact the Charter of Imperial House (皇室典範) and House Orders (皇室令) by himself (Article 74 of Meiji Const.). In the constitutional monarchy, the rules on Gengō were provided by Article 12 of the Charter, following the Imperial Rescript of Meiji 1st, Article 2 of the Tōkyokurei, which proclaimed that the Gengō shall be immediately changed after the success to the Imperial Throne and shall be decreed after the consultation with privy councilors.

After World War II, the Charter of Imperial House and the Tōkyokurei was abolished on May 2, 1947, a day before the Constitution of Japan (1947) was enforced, thus eliminating the legal grounds of the Gengō. For they are incompatible with Article 41 of the Constitution of 1947, which provides that the Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State (instead of the Charter, the Diet

enacted the Imperial House Law. Curiously, both Japanese names of the Emperor-made Charter of 1889 and the Diet-enacted Law of 1947 are the same 皇室典範.). It disallowed the legal ground of the Gengō. Syowa had been customarily used for Hirohito had been Emperor after the Constitution of Japan was enacted. Some had claimed the Gengō was unconstitutional because it was a symbol of the Monarch's control of time, which contradicts the popular sovereignty of the Constitution of Japan. Political right activists upheld the legislating of the Gengō and desperately organized strong political movements, which finally realized the Gengō Act of 1979 and re-established the legal ground of that. The main provisions noted above intentionally use Gengō to raise attention to the effect of the law.

The Gengō Act consists of one article. Section 1 provides that the Gengō shall be proclaimed by cabinet order. Section 2 provides that the Gengō shall be changed only if a success to the Imperial Throne occurs.

3. Usage of the Gengō Act

Section 2 of the Supplementary Provisions of the Gengō Act provides that Syowa shall be counted as laid down through Section 1 of this Act. For Syowa was enacted on the ground of the Charter of Imperial House (1889) and Tōkyokurei (1909) in 1929, not on the Gengō Act. The first usage of the Gengō Act was on January 7, 1889, when Akihito succeeded to the Throne.

This article deals with the second usage of 2019. On April 1, 2019, the Abe Cabinet approved the new Gengō in a cabinet meeting and promulgated the cabinet order. Chief Cabinet Secretary Suga Yoshihide announced the new Gengō officially.

The new Gengō is 令和 Reiwa. Gengō are often quoted from 漢籍 (classical Chinese books) while Reiwa is from Manyōshū, which is the oldest collection of Japanese waka completed in the 8th century. Prime Minister Abe has taken pride in quoting 国書 (classical Japanese books). The Cabinet exploits every stage of new Gengō establishment for its populist propaganda.

The detailed decision process of the new Gengō: First, Chief Cabinet Secretary Suga asked a couple of professors for new Gengō drafts, which were reported to the Prime Minister by early March, 2020. Prime Minister

Abe was not pleased with those, and professors were required to reconsider. The government officially requested professors to draft a new Gengō on May 14. On May 27, the government narrowed down the drafts to six, including “Reiwa”, and senior officials were of the same opinion that Reiwa was the best of the six. At 9:30, April 1, the advisory committee of the experts on the Gengō was held at the Prime Minister’s Office, and comments were asked for from 9 persons, including media owners and scholars. After that, the government asked for the comments from the speaker and vice-speaker of the Lower and Upper House. At about 11:00, Abe Cabinet approved the new Gengō, and the Chief Cabinet Secretary held the press conference. The drafts are strictly kept secret through the process. In the committee above, the member’s cell phones are seized, and even a member of staff attended a person who went to the restroom. The vice-speaker of the Representatives, Akamatsu Hirotaka (Constitutional Democratic; Aichi-5th) protested against that as it makes the democracy vulnerable to the executive restraining the legislative. It led the Chief Cabinet Secretary to offer an apology.

4. Three problems of the Gengō

This article points out three problems: the Gengō system itself, the process of deciding the Gengō, and the new Gengō itself.

First, the Gengō system, which symbolize the rule of time by the monarch, is inappropriate for the popular sovereignty of the Constitution of Japan. In addition, as Higuchi Yoichi pointed out, the One Monarch, One Gengō system has a close connection with the direct rule of the Emperor, which was asserted on January 3, 1868 (the restoration of Imperial rule), and the Imperial sovereignty that the Meiji Constitution of 1890 confirmed. The continuous use of the One Monarch, One Gengō system obscures the popular sovereignty of the Constitution and the break with the Meiji Constitution.

Second, the Gengō Act leaves a cabinet order to decide the new Gengō. It means that the Cabinet decides the Gengō and that the leadership of the majority party decides it in fact. Arikura Ryokichi advanced that the Gengō should be decided by a statute for its impact to the life of the people when the Gengō Act was enacted. His theory was meant to exclude inappropriate Gengō drafts for the popular sovereignty. At least, deciding Gengō through

a statute would require the minority opinions of the National Diet to be heard and it would make the process more transparent. This scheme is meaningful especially when we recall that the Liberal Democratic Party, which has occupied the majority of the Diet, doubts the legitimacy of the popular sovereignty Constitution of 1947.

Third, what is the meaning of “Reiwa”? The Ministry of Foreign Affairs translates it as “Beautiful Harmony”. But it is a coined word, piecing fragmentary words of the Man’yōshū together. “令和 Reiwa”, an idiom in two Chinese characters, which does not exist in Japanese or Chinese language. Man’yōshū is the oldest extant collection of Japanese waka and Reiwa is extracted from one of its forewords written in classical Chinese. Here is the relevant part [bold added].

天平二年正月十三日、萃于帥老之宅、申宴会也。于時、初春令月、氛淑風和、梅披鏡前之粉、蘭薰珮後之香

Tenpyō 2, January 13 [February 2, 730], assembled at the house of the head [of Dazaifu, Kyushu region government, Fukuoka Pref. today], held a banquet; It was in new spring, the **bright** [fair, joyful] month; the air was clear, the wind was **gentle** [calm, mild]; Plum flowers blossomed [like a woman with] white powder in front of a mirror; Fragrance of the orchids wafted from sachets.

Prime Minister Abe boasts about extracting “Reiwa” from the classical Japanese book, however, the relevant part is not a waka, but in the classical Chinese language. This part itself is made based on classical Chinese poetry. Plum trees and orchids are native to China. It is interesting to note that the quote is a homage to Chinese classics.

Besides, the Kanji “令 Rei” is well known as “Order, Command, Rule”. In fact, the Tokugawa Shogunate rejected a suggestion by Kyoto Imperial Court to change the Gengō to 令徳 Rei-toku in 1864. For it can be interpreted as “To Rule Tokugawa”, though 令徳 Reitoku is commonly used to mean virtue. As for “和 Wa”, it means “peace, cooperation, harmony”. But in the early 昭和 Showa period, which also used “和 wa”, Imperial Japan actually had invaded foreign countries to provoke World War II. Its acute regret and grief are reflected in the Constitution of Japan of 1947. We firmly expect that Japan will not rearm to “command peace”.