

Freedom of Religion and the Rule of Law in Japan
International Conference "Religion and the Rule of
Law: Towards a Harmonious Relationship in the Era
of Globalization”

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- During globalization, the rule of law and religious freedom are undergoing a major transformation.
- The big question is whether to force religious minorities to adapt to the culture and ideology of the majority, or whether to include them in society as they are.
- Japan's Supreme Court has been trying to harmonize the rule of law with religious freedom.
- However, as various religions come into society, precedents that were previously **considered right and taken for granted may be deemed worthy of reconsideration.**

Kendo class case

- This paper deals with several cases regarding freedom of religion and judicial review by the courts.
- One is a case in which a student of a professional college of technology was expelled from school after **refusing to attend a physical education lecture, called Kendo**, Japanese traditional martial arts of Samurai, on the grounds of his religious beliefs.



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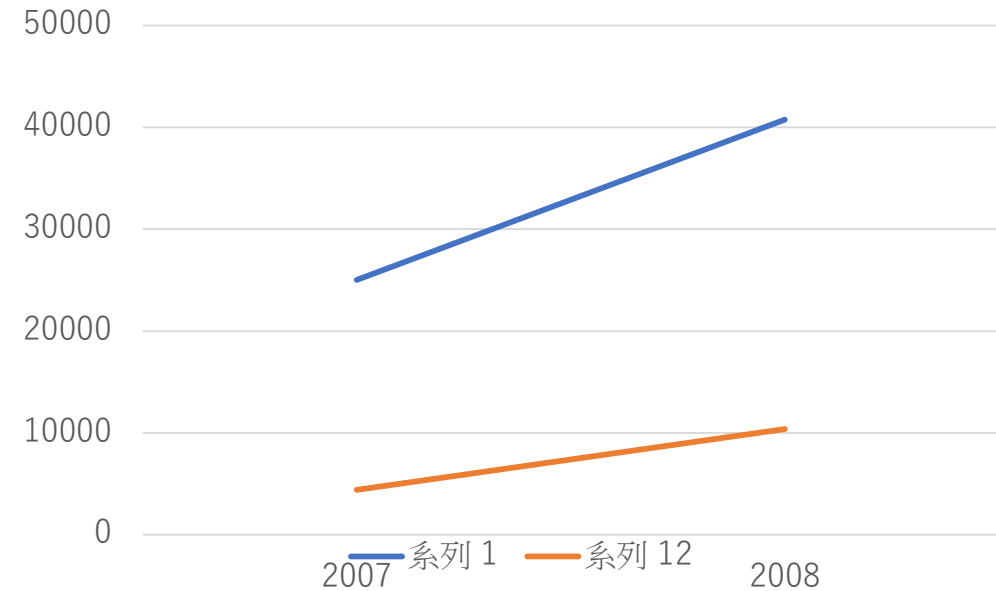
Sunday visitation case

- In Japan, public schools are closed on Sundays. However, on Sundays when the parents are off from work, the school holds a Sunday visitation day so that the parents can watch their children take classes.
- In this case, a parent is a pastor of a church and presides over services on Sundays, so the child had to be absent as well.
- The parents asked that the absence be rescinded.
- In Japan, it may be necessary to reconsider the precedents when including minorities in society.

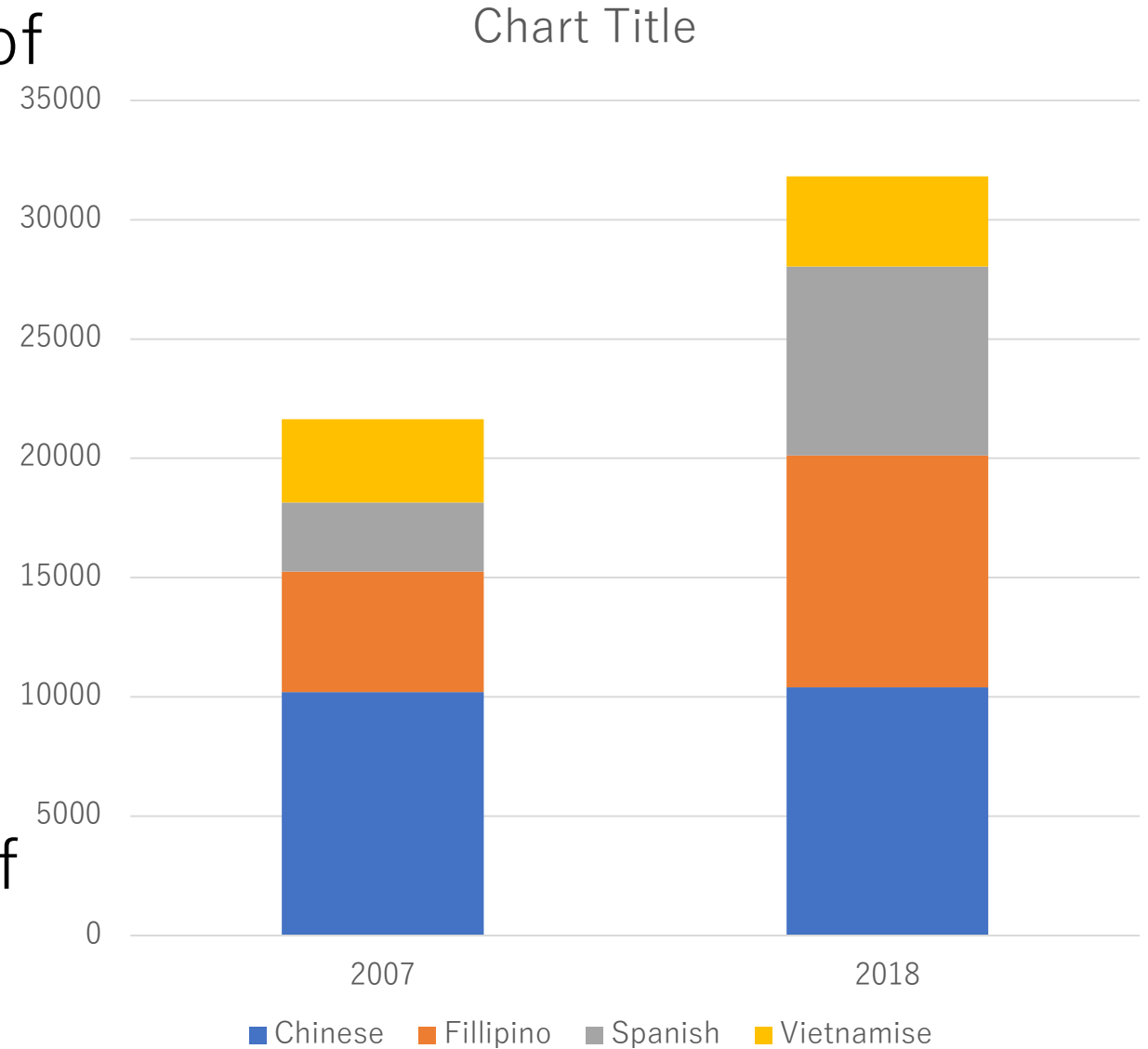


Data of MEXT

- According to the Ministry of Education, Culture, Sports, Science and Technology (MEXT), from 2007 to 2018, the number of children of foreign nationality in elementary, junior high and high schools who need Japanese language education has increased from 25,000 to 40,755.
- The number of Japanese children in elementary, junior high and high schools who also need Japanese language education has increased from 4383 to 10371.



- Of the children in special need of Japanese language education, 79.5% are foreign nationals and 74.4% are Japanese nationals who are receiving special guidance such as Japanese language instruction.
- The mother tongues of the foreign national children who need Japanese language instruction are Portuguese, Chinese, Filipino, Spanish, and Vietnamese, in that order, out of the total 40,755.



- The Sunday visitation case and the Kendo refusal case show that **religious neutrality requires the majority to deliberate on the religious freedom of the minority**, and this data shows that this deliberation needs to **be done even more carefully than it was at the time of these cases.**

Famous decision, Tsu Jichinsai case

- In addition, under the purpose and effect standard set forth in the Tsu Jichinsai case , the court will determine whether the act in question constitutes a religious activity **in the eyes of the general public.**
- The Jichinsai is a ceremony to pray for safety before the construction of a building begins. It is meant to obtain permission to use the land from the Ujigami (local deity) who protects the land, to pray for the safety of the construction, and to pray for the prosperity of the people who will live there.



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- Then, when evaluating the act in question from the perspective of the general public, the court examines the intention of the actor, the purpose, the existence and degree of religious awareness, and the effect on **the general public**.
- Therefore, the conclusion of constitutionality or unconstitutionality is drawn on **the vague grounds of "ordinary people" and social conventions**.

- The courts will be required to read into the "**general public**" **a consideration for the religious freedom of minority groups.**
- The principle of separation of church and state and the freedom of religion sometimes raise the issue of whether a legal obligation imposed in general can be exempted in consideration of the burden it imposes on **a minority of a particular faith.**

- If the government exempts only a minority of people of a particular faith from a general legal obligation, it can also be assessed as **violating religious neutrality because the exemption of the obligation may be evaluated as the effect of favoring a particular religion.**

- When the principle of separation of church and state conflicts with freedom of religion, the question of whether it is permissible to exempt burdens on a particular religion has been debated in Japanese constitutional law.
- If we interpret Article 20 of the Constitution as **loosely** separating the state from religion, it could mean that the government, on the basis of religious neutrality, is **constitutionally allowed to exempt only a minority from general obligations, taking into account the religious freedom of the minority.**

- These Japanese court decisions might have been influenced by **Employment Division, Department of Human Resources of Oregon v. Smith in 1990.**

Legislative facts and judicial review

- In examining whether a law in question in a dispute violates the Constitution, the Japanese Supreme Court relies on the **social and economic facts that support the law. It is called legislative fact.**
- If the social context that supports the law has changed since the time the law was enacted, **the court may find the law unconstitutional.**

Unconstitutional decision on the Nationality Act.

- This is a case in which the court recognized the significant changes in socioeconomic facts as one of the factors to be examined when reviewing the constitutionality of a law.
- Although this case examined the Nationality Act and equality and did not touch on religious neutrality, it is possible that **the Supreme Court would also consider social changes as one of the factors to be reviewed when examining religious neutrality.**

Conclusion

- It is a great challenge to culture, society, and law to accept religious minorities into society as what they are.
- **We must be wary of unintentionally enforcing the common sense of the majority on the minority.**
- **Strict separation of church and state may, in some cases, lead to the imposition of certain burdens on the religious freedom of minorities in public education, in the name of religious neutrality.**

- If the principle of separation of church and state is considered as **a relaxed one** , it would not violate the principle of separation of church and state even if the obligation is exempted when the burden is too heavy in consideration of the religious freedom of minorities.

- **Constitutional law scholars in Japan have criticized the Supreme Court for its moderate separation of church and state.**
- **There have been a concern that the criticism of the Supreme Court by scholars may lead to the integration of the religious freedom of minority groups into that of the majority, without taking into consideration the religious freedom of minority groups.**

- Constitutional scholars need to argue that the "general public" or "socially accepted norms" used by the Supreme Court is assumed to be a general public
- in which **the majority contemplates the religious freedom of the minority**, and
- that the content of social conventions is that society should aim to **take into account the religious freedom of the minority**.

- One of the grounds on which constitutional scholars have criticized the Supreme Court's moderate separation of church and state was because **they were seriously concerned about the ambiguity of the content of these general public and social conventions, and the fact that the conclusions could be changed in any way.**

- After the Kobe Kendo case on 1996 and the Sunday visitation case in 1985, **the culture and values of society have changed greatly. The socio-economic facts that support the law have changed.**
- After these cases, the number of school children who cannot speak or read Japanese is increasing, and schools must take these students into consideration.
- **Rather than integrating minorities into the majority, it is necessary to respect and include the minority way of life.**

- The Supreme Court should **be commended** for stating that the religious neutrality of public education is not violated when a school **investigates to determine if there is a reasonable connection between a student's refusal to take Kendo and the student's explained religious beliefs.**