

## **Zitelmann's Theory of Private International Law and His Thoughts on the So-Called Juristic Person (summary)**

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The objective of this article is to investigate Zitelmann's theory of private international law. This theory is well known as the "universal theory," which is the ideal form of private international law. Based on the concepts of right and state, he deduced the rules of private international law from the extent of each state's competence, determined by general or customary international law, which he named "private international law over the nation" (Überstaatliches Internationales Privatrecht). If we hope to realize the ideal form of private international law, Zitelmann's theory is worth investigating, particularly on the basis of his thoughts concerning the so-called juristic person.

In Zitelmann's work, "Begriff und Wesen der sogenannten juristischen Personen" (1873), he concluded that the juristic person is the real existence, not the fictional one. In order to prove this, he analyzed the concept of right. According to him, a right cannot exist without its subject, its object, and its content; from the concept of right, the only quality needed in a subject is the ability to will. The juristic person as well as the so-called physical (or natural) person has the real will, which he believed to be the substance of a subject. This is the reason for his conclusion. In his analysis of the system of law, he constructed the concept of the juristic person. Zitelmann believed that the concept of the juristic person is subsumed in the concept of the original right. He also investigated the state as the juristic person, describing it as the natural and moral unity of the common or collective will to fulfill all the moral purposes that are fundamental to human life. Thus, he believed that the state is theoretically the most fundamental legal unity of a human being.

Based on his analysis of the juristic person, we can obtain a more profound understanding of his theory of private international law, especially why he formulated this theory on the basis of the concepts of right and state. In my understanding, this is because he intended to formulate the most general or fun-

damental rules of private international law. In his private international law over the nation, there are only rules that determine the applicable law of the original right. For example, according to the rules, the legal problems concerning a juristic person are governed not by personal law, but by the applicable law of the right, the existence of which is the main point of the dispute. This is because the concepts of the juristic person and other legal institutions are, as stated above, subsumed in the concept of the original right. In order to formulate the most general or fundamental rules of private international law, the secondary concepts need not or cannot be included. A rule including these concepts can be created only as the special rule. With regard to the concept of the state, it is the most fundamental legal unity of a human being. For the formulation of the most fundamental private international law, it is necessary to select the state as the basic unit of the legal order.

In conclusion, two points can be highlighted from the investigation. First, we should regard the rules of private international law over the nation as the most general or fundamental rules in Zitelmann's theory. Second, in his theory of private international law, right and state are the most fundamental concepts. Thus, if we want to more profoundly understand the basis of his theory, we should examine these two concepts.