

Value-Neutrality in Private International Law (summary)

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In this paper, modern thoughts on private international law (PIL) in Japan are analyzed through comparison with the traditional universal school of thoughts on PIL, which argues that universal PIL rules exist in the real world, such as the theories of Friedrich Carl von Savigny and Ernst Zitelmann. In particular, the meanings of value-neutrality in both thoughts are compared. If PIL rules are universally valid, they should be based on value-neutrality or on the values actually accepted by every country in the world. Conversely, modern rules of PIL, including those in Japan, are not necessarily value-neutral and are often based on substantive values, such as the interests of parties or the happiness of children. Therefore, it is worth studying what is or will be effectuated by changing the basis of PIL rules from value-neutrality to substantive values.

Regarding the universal school of thoughts, it is observed that the value neutrality of universal PIL rules lies not only in their freedom from each country's substantive law policies but also in their being unaffected by any PIL policies. Such value-neutrality is realized because these universal rules are based on general theories of validity and reasonableness of the application of laws, which are external to the modern PIL field. Comparing these thoughts with those of contemporary Japanese PIL rules, it is argued that the Savigny's "Copernican change," that is, the shift of focus in PIL method from statutes and their scope of application to actual legal relationship and its governing law, made it easier to adopt PIL rules based on substantive values in national legislations. Adoption of the method from actual legal relationship induces us to focus on the interests of private parties in legal relationships when one considers PIL policies. Therefore, we should be more conscious of neglecting the other viewpoint, which regards PIL rules as those for determining the scope of each country's statutes. In addition, it is observed that modern PIL rules' value-neutrality may only be superficial. For example, though the rules of party autonomy in PIL may be seen as a value-neutral principle, this is not the case in reality. In that sense, we should be quite cautious in analyzing the meanings of modern PIL rules.

In concluding, it is observed that Japanese contemporary PIL thoughts tend to be based more on substantive values. While I do not argue against such tendency, it should be rec-

ognized that the modern PIL rules often include substantive values, regardless of whether people are conscious of this. Without such knowledge, we can never understand the true meanings of current Japanese rules of PIL, and it would be impossible to decide the best policy for PIL from scientific viewpoints.