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Reflection on legal transplantation theories: a socio-legal historical study of the formulation and evolution of Chinese marine insurance law

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Abstract

This paper offers a socio-legal historical analysis of the process of formulation and evolution of Chinese marine insurance law by transplanting foreign laws, with a view to grasping from the material of legal history and social reality the deeper significance of the imported law's relation to tradition, ideology and environmental context. The key argument is that this perspective reveals how transplanted law emerges as an authorless product shaped by social forces and processes. It is created by the operation of institutional arrangements of law-making, which provide the platform for the interplay of diverse traditions and interests generated by the social environment of the importing jurisdiction. This research integrates several lines of discussion of legal transplantation that lack connection, highlights the impact of the transplanting process and contributes to current theoretical debates by proposing potential interdisciplinary research for future studies of legal transplantation.

Keywords: comparative law; sociology; legal transplantation; legal historical analysis; qualitative interviews; Chinese marine insurance law

1 Introduction

With the recognition of the large-scale evolution of law through transplanting foreign laws in the 1970s, Watson first proposed that legal transplantation is socially easy (Watson 1974, 96). The notion of 'easiness' of legal transplants has faced significant and rigorous objection from legal sociologists (Abel 1982; Teubner 1998). Their primary contention lies in the belief that law is intrinsically connected to its unique social context, a perspective that traces its roots back to Montesquieu's initial formulations (Montesquieu 1802). Accordingly, a significant body of research explores how political (Kahn-Freund 1974), economic (Friedman 2011; Teubner 1998) and cultural differences between jurisdictions cause difficulties for legal transplants (Nelken and Feest 2001).

A further critique of Watson's theory arises from traditional comparative lawyers, who underscore the uniqueness of traditions of legal elites, including judges, legislators and scholars. This means that these legal elites follow their distinct patterns of legal thinking and reasoning and adopt their own ways of interpreting the law. Typically, Legrand argues the impossibility of legal transplantation by emphasising the irreducible differences of traditions of interpretative communities between the importing and the original jurisdictions. He states that law 'can only reflect localised and particularised outlooks of culturally-situated individuals as members of historically and epistemologically conditioned interpretative communities' (Legrand 1997, 114).

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Therefore, interpretations as integral components of legal propositions cannot survive the journey and be effectively transplanted into a different jurisdiction.

These two lines of research engage with legal transplantation from different perspectives, one focusing on the impact of social context, and the other concentrating on the tradition of legal elites (Nelken and Feest 2001). Subsequent developments of legal transplantation literature have gradually recognised the complexity and nuances of legal transplantation to a level unimaginable to Watson when he first proposed his thesis (Cohn 2010, 2024; Cotterrell 2006a; Ghezelbash 2023; Graziadei 2009; Twining 2004). This paper subjects these two lines of research and their contemporary developments to an empirical case study of the process of China formulating and reforming its marine insurance law by borrowing foreign laws.

The key argument is that the socio-legal historical perspective in exploring transplanting processes reveals a deeper significance of imported law's relation to culture, social processes and ideologies in the importing jurisdiction. This perspective helps to (1) connect previously separate lines of research within an empirical context; (2) highlight their limitations and advance these theories; (3) draw attention to the significance of the transplanting process, which shares similarities to research in other fields, such as the sociology of diffusion and political scientific studies on policy transfer and policy process. This, in turn, emphasises the importance of understanding the transplanting process within a broader context, inviting interdisciplinary research in future studies of legal transplantation.

The main body of this paper contains four sections. Section 2 will explain the contemporary theoretical assumptions of legal transplantation that set the context of this paper. Section 3 will explain the social enquiry design for exploring the Chinese example. Section 4, drawing on the findings of legal historical analysis and qualitative interviews, will demonstrate how the diversity of actors and their traditions are engendered and exert influence in the two instances of transplanting foreign marine insurance laws into China. Section 5 will conclude by emphasising the complexities inherent in specific instances of legal transplantation, as evidenced by the socio-legal historical analysis of law-making processes in an empirical example, as well as highlighting how this analysis contributes to our understanding of legal transplantation.

2 Multiplicity of actors, complexity of legislative arrangements and empirical study

2.1 Multiplicity of actors and diverse traditions

Traditional debates concerning the tradition of legal elites, including legislators, judges and jurists, adopted a simplistic view by failing to acknowledge the potential diversity of the traditions and views of these legal elites in one jurisdiction (Legrand 1997; Watson 1974). Sacco highlighted the problem with the notion of unity, arguing against the idea that 'in a given moment the rule contained in the constitution or in legislation, the rule formulated by scholars, the rule declared by courts, and the rule actually enforced by courts, have an identical content and are therefore the same' (Sacco 1991, 21). Instead, contemporary scholarship recognises the diversity of actors with different traditions. Sacco introduced the concept of 'legal formants' which encompass statutory rules, scholarly formulations and judicial decisions within a legal system (Gambaro and Graziadei 2023; Sacco 1991). He argued that there are various legal formants within a single jurisdiction, including those of jurists, judges and scholars, which do not necessarily align. Disharmony among these formants is indeed possible (Sacco 1991, 32). Furthermore, these legal formants are not necessarily legal matters but can include propositions related to philosophy, politics, ideologies or religion (Sacco 1991, 32). This is consistent with later developments that recognise a broader scope of actors beyond traditional legal elites when socio-legal studies have become more integrated into the studies of legal transplantation.

Typically, Cotterrell highlights the potential for various actors, who are not traditionally acknowledged as influential in legal transplantation, to nonetheless contribute to this phenomenon.

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He argues that contemporary society is disintegrating into numerous networks of social relations within and beyond states, each informed by diverse ideas, values and beliefs (Cotterrell 2006b). Business people, legal professionals and immigrants can all be importers of foreign laws (Cotterrell 2006a, 68). He further emphasises that this approach allows for a greater appreciation of the complexity of any logic of legal transplant. 'Such a logic can be developed only in relation to particular social contexts and has to focus on the complex interplay of tradition, belief, affect and instrumentality in particular empirical settings as fundamental bases of social bonds.' (Cotterrell 2006b, 126) Similarly, William Twining recognises the multiplicity of transplanters, including colonists, merchants, slaves, refugees and believers (Twining 2004, 17).

However, this line of research does not further contribute to related significant questions. When the diversity of actors and traditions exists, there needs to be further explanation as to the forces and reasons behind the formulation of each, and the outcomes in cases of disharmony among them, especially when all these traditions collectively contribute to formulating one rule by transplanting foreign laws. Similarly, Cotterrell downplays the political impact of which interest or tradition will prevail by refraining from discussing how these different interests or traditions interact in an empirical context (Cotterrell 2006a). In other words, the issue of the interplay of diverse actors within the institutional elements remains unexplored. These questions cannot be answered without exploring the socio-legal dimension. Furthermore, there have been only limited efforts to reveal tools and channels employed by actors to transplant foreign laws, with the prominent work conducted by Michele Graziadei on the frontier of knowledge (Graziadei 2009). He argues that legal transplants, as social acts performed by individuals, call for a study of the 'micro' level of engagement with legal change by individuals. The key notion is mediated action, performed by individuals making use of features of the environment as tools in order to interact in a specific setting. Language and ideology are mentioned as two mediated actions (Graziadei 2009).

In light of the above analysis, this article aims to advance these theories by using empirical evidence to explore the existence of a multiplicity of actors, the forces that formulate these different traditions, interests and ideologies, and the means and tools employed by actors to transplant law.

2.2 Diffusion theories, transplanting process and complicated legislative arrangements

When discussing the impact of social elements over legal transplants, there has been a shift from macro-level analyses of institutional or structural differences (such as economic regimes, political ideology and social structures) (Kahn-Freund 1974; Teubner 1998) to a growing body of literature examining the micro-level impact of social elements (Twining 2005). This shift highlights the importance of actors relying on institutional or organisational frameworks to borrow foreign law. Typically, William Twining draws on social theories of diffusion to understand the complexity of the diffusion of legal ideas. He states: 'What links the study of diffusion of law with the main body of social science literature is that they are both concerned with the spread and communication of ideas.' (Twining 2005, 220) The theory of diffusion focuses on the diffusion process, the agencies, the conditions of export and import of ideas and the channels of diffusion. The diffusion process consists of at least four elements: (1) an innovation, (2) which is communicated through certain channels, (3) over time and (4) among members of a social system (Twining 2005, 220). The significance of organisational elements in the diffusion of foreign legal ideas is underscored. Nevertheless, Twining does not furnish specific details on how to explore actors' diffusion of ideas through institutions.

In terms of exploring the diffusion process, Cohn has highlighted the importance of the transplant process by arguing that legal transplantation should be perceived as a collection of interrelated events. These events should be studied chronologically to understand the outcomes of the sequence of events (Cohn 2010). Cohn proposes the notion of legal chronicles, which requires that '[s]imple accounts of transplants as single events, through which an importer system adopts

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the laws of an exporter system, should be replaced by long-term accounts of series of interacting transplant events generated by a multitude of players' (Cohn 2010, 583). This accords with Twining's view that legal transplantation should not be considered complete on specific dates but rather as a continuous and lengthy process (Twining 2004). This perspective is also consistent with legal historical analysis, which posits that the numerous events and actors involved in legal transplantation should be scrutinised in chronological order. However, Cohn clearly states the necessity of addressing two pertinent issues: first, the political and cultural forces underlying the transplant process; and second, the studies of institutional elements (Cohn 2010, 629).

Beyond legal transplantation literature, the diffusion of ideas is a subject extensively explored in political science and sociology. Reverting to the sociology of diffusion that inspires Twining, two parallel trajectories focus on the agents and functions of organisations involved in the diffusion of ideas (Greenhalgh et al. 2004; Roger 1995). Similarly, law-making theories have long constituted a significant area of political science. Contemporary literature on law-making recognises the involvement and functions of various stakeholders and non-governmental organisations in the creation of law (Martin et al. 2014). However, much of this literature predominantly examines American law-making practice (Dahl 2005; Domhoff 2021). For jurisdictions with different institutional arrangements and structures, such as China, where interest groups and the power of NGOs are absent, the applicability of this literature is limited. Western-centred theories of law-making do not account for non-Western experiences.

Political science, however, has developed policy diffusion and policy transfer theories, which essentially focus on borrowing ideas elsewhere for local changes (Weible and Sabatier 2023). Policy diffusion theory examines how social, economic and geographic features help to diffuse policies, akin to macro-level analyses of the social impact over legal transplantation (Berry and Berry 1990; Mossberger and Wolman 2003; Simmons and Elkins 2004). It focuses on structural elements. Policy transfer theory examines the process by which knowledge of policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of another jurisdiction (Dolowitz and Marsh 1996). It is process-oriented. Ghezelbash has conducted timely and significant interview-based empirical studies on the diffusion of asylum law, integrating studies on policy transfer, policy diffusion and legal transplantation (Ghezelbash 2018). His primary focus is to develop a framework to help identify the existence of diffusion of policies and measure its success (Ghezelbash 2023).

This paper argues that these theories, as well as policy process theory, are more beneficial in exploring the transplanting process to examine how actors interact within institutional frameworks to transplant foreign laws. The policy process theory focuses on the process through which multiple actors, including policy entrepreneurs, advocacy coalitions and epistemic communities, affect the law or policy-making process (Weible and Sabatier 2023). It examines the role and behaviours of actors in the diffusion process, highlighting how policy-makers, interest groups, transnational organisations and other stakeholders shape the spread of policies. Its primary concern is understanding how actors employ various methods, such as persuasion and socialisation, to spread policies by framing them in appealing ways. It investigates how institutional frameworks and organisations affect actors' abilities to promote and diffuse policies. Specifically, it stresses how institutions provide resources, cultural norms and rules, constraints and opportunities for actors to engage. It explores methods for resolving conflicts of interest in the diffusion of foreign ideas, including phased implementation, strategic framing and advocacy. Different frameworks are designed to understand this process; for instance, the Institutional Analysis and Development (IAD) framework (Ostrom 1990).

Overall, the policy transfer and policy process literature explores how actors interact within organisations to achieve policy change. It shares similar territory with legal transplantation; however, this literature has been largely lost in legal transplantation analysis. Due to the limited space, this paper will not provide a detailed application of these theories. Instead, it will mention

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elements, including means, tools, strategies and constraints, involved in the Chinese experience to demonstrate the similarities between studies in different fields.

2.3 Legal historical analysis and empirical evidence

The value of legal historical analysis has been recognised in legal transplantation studies since Watson (1983). Watson states: 'Any theory of the relationship between law and society must rest, I believe, on detailed knowledge of the history of the individual legal system.' (Watson 1983, 1122) This paper adopts legal historical analysis of the transplanting process, examining how operative institutional elements influence transplantation through archival research of legislative documents, meeting records, consultation papers and all revision texts.

Inspired by sociological studies of law, the optimal approach to revealing the diverse traditions and perspectives of actual drafters under the impact of institutional elements is through conducting qualitative interviews with them. Traditional studies of legal transplantation primarily employ a doctrinal approach to analyse positive laws (Watson 1974). However, there is a gradual recognition of the significance of adopting empirical research in studies of legal transplantation as socio-legal studies gain significance in the field of legal studies. Cotterrell argues that empirical research is preferable in studying legal transplantation (Cotterrell 2001, 78). Twining gives a similar account of the weaknesses of traditional comparative law methods in understanding legal transplantation. For Twining, comparative law has still not acquired a solid empirical base. The most important lesson to learn from diffusion theory is to understand the process of diffusion of legal ideas as a sociological enterprise. Any interest in the diffusion process should pay enough attention to providing a solid empirical base of specific legal transplantation, requiring detailed empirical research into the behaviours, ideas, attitudes and interactions of human actors in a particular context (Twining 2005, 231). Similarly, empirical studies are conducted in the fields of transfer of asylum law (Ghezelbash 2018), law and development (Pistor et al. 2003), and anthropology of law (Merry 2009); however, the power of empricial studies is not fully unleashed in the studies of legal transplantation.

3 Social enquiry design

Qualitative research through interviews fits well into revealing the views and traditions of each type of actor. The philosophy of undertaking qualitative research asserts that truth comes from what individuals see and experience and how they interpret events, stories and conversations. In order to obtain an in-depth and nuanced description of reality, qualitative interviews find ways to interact with individuals involved in specific social settings and attain their interpretations of their experiences or observe these individuals in their environment. As the same event or term may be understood and interpreted differently, truth differs from person to person (Bryman 1988). This, indeed, recognises the complexity and diversity of reality, which corresponds to the reality shown in the Chinese story to be illustrated in the next section.

The qualitative interviews have focused on both the law-making process and the interpreting process in the post-enactment stage. Overall, the researcher carried out semi-structured interviews with twelve participants, including legislative drafters, merchants, legal academics and judges. The ethics application was approved in October 2019. The participants are based in different areas of China. It was the original intention to conduct face-to-face interviews at a location of each interviewee's choice. This empirical phase of the research duly started as planned in December 2019. However, the Covid–19 outbreak in China rendered in-person interviews impossible. They had, therefore, to be replaced by phone calls or video calls. All participants agreed with this alternative approach and there is no indication that phone/video calls in any way undermine the quality of interviews. Each participant's oral consent to participate was obtained and their rights under the current research were explained at the beginning of each interview. The interviews were

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originally undertaken in Chinese and the researcher has translated all recording transcripts into Chinese.[1]

In terms of the law-making process, there are two attempts at transplantation of foreign law into China in accordance with Chinese legislative arrangements, namely the original law-making process and the current revision of law. The first transplantation resulted in the creation of Chinese marine insurance law in chapter 12 of the Maritime Code of the Peoples' Republic of China (CMC) enacted in 1992. In order to reveal the history of the first transplanting process, the researcher first visited the East Campus Library of Dalian Maritime University in China, a unique repository of considerable archives documenting the original transplanting process. Multiple legislative stages which extended over a long period of time were identified. This research revealed the legislative plans, legislative meeting records and consultation papers from various consulted institutions at many significant legislative stages. The extended legislative process created a series of Revisions.[2] This research resulted in the discovery of printed copies of many original revision texts of the CMC chapter on marine insurance contracts.

The initial archival research showed that the transplanting process itself was significant in transplanting foreign laws into China. Each legislative stage invited drafters of different nature and produced revised draft texts. The initial legislative work to make Chinese maritime law started in 1951. The Ministry of Transport was the principal drafting ministry taking charge of the initial legislative period. Nine revisions were produced by the drafting committee under the leadership of the Ministry of Transport. However, the legislative work was suspended due to the outbreak of the Cultural Revolution in 1967. The legislative work resumed in 1981 against a changed economic and political background in China. Law-making arrangements experienced changes alongside the changes of the political economic regime of the nation. The altered law-making procedure consists of three basic stages, namely drafting the text, proposing and enacting. According to article 89 of the Constitutional Law 1982, the power to make a proposal lies with the State Council and several other institutions.[3] According to article 85 of the Constitutional Law 1982, the State Council is the Central People's Government: 'it is the executive institution of the highest state authority, it is the highest administrative institution of state'.[4] Under the guidance of the State Council, the government department which has administrative power over the relevant affairs takes responsibility for the initial drafting work, ending in formulating a detailed draft text. Again, the Ministry of Transport was appointed to draft the text. Then, the State Council subjected the draft text to careful examination, making necessary amendments. The State Council is responsible for proposing the draft text to the National People's Congress which enjoys the formal and exclusive power to enact basic laws. Following this legislative procedure, there were three distinguishable legislative stages between 1981 and 1992. These are characterised by three legislative committees, namely the 1981 Drafting Committee (the legislative period between 1981 and 1985), the State Council Drafting Committee (the legislative period between 1989 and 1991) and the 1991 Drafting Committee (the legislative period between 1991 and 1992). The final achievement of this legislative process was the enactment of the CMC in 1992.

In terms of the original law-making process, participants for qualitative interviews were carefully chosen to reflect the results shown in the archival research. First, the archival research of revision texts shows significant divergence of draft texts among different legislative stages, which requires conducting qualitative interviews with individuals or institutions involved at different stages, from different perspectives and with different functions. As each legislative stage assembled a legislative committee assigning the drafting task of each chapter to different institutes as drafters, the social enquiry interviewed participants involved in each of these committees.

[1]Printed copies available on request.

[2]The overall legislative process created about twenty Revisions. Key Revisions discussed in this article include the Revisions created in 1963, 1982, 1989, 1990 and 1991.

[3]Constitutional Law of the People's Republic of China 1982, art. 89.

[4]Constitutional Law of the People's Republic of China 1982, art. 85.

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Second, in terms of the criteria for choosing participants, in principle anyone involved in the law-making process is qualified. However, this research explores the reality by interviewing actual drafters. The original legislative process extended for about forty years. Consultation with various institutions occurred at different stages of the legislative process. However, as part of the original archival research, the comparison between the archived consultation papers and revision texts indicates that consultation feedback had very limited impact on the substantive rules in chapter 12 on marine insurance law. Interviews with actual drafters are, therefore, more informative as to the process of legal transplantation.

The first participant, DR1, was an actual drafter on both the 1981 and 1991 drafting committees.[5] He was an associate law professor specialising in maritime law when appointed. The 1981 Drafting Committee assigned the task of producing the initial draft text of the chapter on marine insurance law to the People's Insurance Company of China (PICC). However, the actual drafter of the chapter on marine insurance law from the PICC, Li Jiahua, is deceased. Therefore, DR1 was interviewed to recall this legislative process and the views of the PICC. The second participant, DR2, was a member of the State Council Drafting Committee.[6] He was one of the two actual drafters of the chapter on marine insurance law at this legislative stage. His position was as an authoritative legislative drafter when working as the drafter for the chapter on marine insurance law. The third participant, DR3, was an actual drafter in the 1991 Drafting Committee.[7] He was a lecturer specialising in maritime law when appointed. He was one of the two drafters of the chapter on marine insurance contracts.

The only exception is DR4, who was a consultant during the 1991–92 drafting period.[8] He was a marine insurer working in the PICC. Both DR1 and DR3 as actual drafters in the 1991 Drafting Committee stressed the significant impact of a specific PICC practitioner, DR4, in formulating the substantive law in the chapter on marine insurance contracts at this very stage of transplanting law.

Legal transplantation includes not only the transplanting process but also interpretation as a process of indigenisation. In the post-enactment stage, judges interpret and apply the imported law in their judicial activities. Interview questions with Chinese judges focused mainly on their legal reasoning methods and traditions in interpreting and applying chapter 12. There are at least three variables that may influence judges' experience in applying the imported law, namely, judicial hierarchy (judges from specialised maritime courts as courts of first instance, from courts of appeal and from the Supreme People's Court (SPC)), educational background (whether or not the judge has special training as a maritime lawyer) and judicial tenure.[9]

Overall, five judges representative of such variables were interviewed. Among them, three judges (SJ1, SJ2 and SJ3) are from Civil Division IV of the SPC that specifically decides maritime disputes and sits as the final court of appeal for marine insurance disputes.[10] SJ1 has retired from the SPC. He adjudicated marine insurance disputes in the SPC for almost thirty years. He was the first generation of Chinese judges who adjudicated marine insurance disputes after the Division of Transport-related Disputes (the predecessor of Civil Division IV of the SPC) was first established in 1987 in the SPC.[11] He used to be a visiting scholar to many universities based in the UK where he had direct access to English law. In contrast, SJ2 and SJ3 are representative of the second

[5]Interview with DR1, a drafter in both the 1981 Drafting Committee and the 1991 Drafting Committee (Dalian, 11 January 2020). All participants are anonymised.

[6]Interview with DR2, an authoritative legislative drafter (Telephone call, 23 February 2020).

[7]Interview with DR3, a maritime law scholar (Telephone call, 12 May 2020).

[8]Interview with DR4, an insurer (Telephone call, 18 February 2020).

[9]Since 1985, China has established eleven specialised maritime courts as courts of first instance to hear maritime-related disputes.

[10]Interview with SJ1, a SPC judge (Telephone call, 7 June 2020). Interview with SJ2, a SPC judge (Telephone call, 6 March 2020). Interview with SJ3, a SPC judge (Telephone call, 25 June 2020).

[11]The Division of Transport-related Disputes was established in 1987 and it was merged with the Division of Economic Dispute concerning Foreign Affairs and renamed as Civil Division IV of the SPC in 2000.

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generation of judges from the SPC who started working in specialised maritime courts around 2000, when the CMC had operated in China for a period of time. SJ2 and SJ3 both worked in a specialised maritime court for some years prior to their appointment to the SPC. Interviews with SJ2 and SJ3 provide insight into the traditions and mindset of judges from specialised maritime courts as well as from the SPC. Two participants were from the same Court of Appeal, LJ1 and LJ2.[12] In contrast to the judges from Civil Division IV of the SPC that exclusively adjudicates maritime disputes, LJ1 and LJ2 are generalists. Neither of them has working experience in specialised maritime courts.

After only thirty years' implementation of the imported law in chapter 12, China initiated an overhaul of the CMC in 2018. The second attempt at transplanting foreign law into China is in process. Chinese maritime law scholars are appointed to produce the initial draft of the revision text of the CMC. MS2 is the leader of the drafting team for the chapter on marine insurance contracts.[13] He was interviewed to explore how Chinese maritime law scholars' outlooks and traditions affect the second phase of transplantation of English law. In order to provide a better view of Chinese maritime law scholars' traditions and mindset, an interview was also conducted with MS1, who is a first-generation Chinese maritime law scholar and studied marine insurance law around the time of the transplantation of English law in the original legislative period. MS1 is involved in the revising process by way of giving comments on the draft text.[14] In August 2024, the revision text drafted by the team led by MS2 was approved, with minor amendments, by the National State Council for submission to the National People's Congress for final review. Since the interview with MS2 took place four years ago, the author has maintained contact with MS2 and followed any updates regarding the revision text. It can be confirmed that the political and social conditions underlying the revision process, as well as the drafters' interpretation of the social environment, remain unchanged. There have been no significant changes in the social or political context that necessitated major alterations to the revision text throughout the revision process.

4 An illustration from the Chinese case study

4.1 The Ministry of Transport representative of the political ideology of the state

In terms of the initial transplanting process, during the legislative period prior to the Cultural Revolution, the Ministry of Transport was the principal drafting ministry. The Ministry of Transport is a government department. People from the Ministry of Transport are ministerial officers and politicians. They were not official legislators in the Chinese legal system but were granted actual drafting powers in making the CMC. Their acquisition of drafting power was derived from their position and political power in regulating shipping affairs in the nation. Their view was that the law must represent the political ideology of the nation and implement the political economic regime that China had adopted. This determined the source of foreign law to be transplanted. They were not concerned with how to transplant the foreign law in concrete terms but were in charge of setting the general attitudes in transplanting foreign law.

The original law-making motivation was proclaimed by the Ministry of Transport as the adoption of international rules into China to fill the domestic legal vacuum in order to protect Chinese sovereignty over its international shipping fleet. The Ministry of Transport claimed that it sought to align Chinese law with international conventions addressing the shipping business. However, it also suggested:

[12]Interview with LJ1, a judge from the Court of Appeal (Shenyang, 17 January 2020). Interview with LJ2, a judge from the Court of Appeal (Shenyang, 17 January 2020).

[13]Interview with MS2, a maritime law scholar (Telephone call, 2 December 2020).

[14]Interview with MS1, a maritime law scholar (Telephone call, 11 December 2020).

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'It is not the time to ratify these international conventions as many of them represent the interests of capitalist countries. However, the international community has reached consensus on many controversial issues that are incorporated into these conventions. It is better to adopt these rules.'[15]

To resolve this dilemma, the Ministry of Transport claimed that Soviet law was largely reflective of international practice in the area of shipping law. Transplanting Soviet law was a means of transplanting international standards into China. The Explanatory Note of the Third Revision states: 'The Union of Soviet Socialist Republics (USSR) ratified some of these conventions. For those not ratified, the USSR still introduced some of these rules into Soviet law.'[16] Therefore, instead of direct reference to international conventions, the Ministry of Transport chose to adopt Soviet law. The Ministry of Transport admitted that reference to Soviet maritime law as the main source for Chinese maritime law was the only option under the special historical circumstances, stating: 'We lack experience in addressing legal affairs in a socialist country and we struggle to combat capitalist countries in relation to shipping affairs.'[17]

As a result of transplanting rules from Soviet maritime law, the 1963 Revision resembled the 1929 Soviet Maritime Code in both its structure and its substantive contents.[18] As regards the substantive contents, the chapter on marine insurance contracts in the 1963 Revision was remarkably similar to Soviet law. As regards structure, the 1929 Soviet Maritime Code is a comprehensive code that includes many aspects of maritime affairs so that marine insurance law constitutes only one chapter of the entire code.[19] This structure of arranging marine insurance law as a dedicated chapter of a comprehensive code of maritime law was followed by all revisions up to the 1963 Revision and the final version of the CMC which was enacted as law.

The outbreak of the Cultural Revolution in 1967 caused the suspension of the legislative process. When the legislative work resumed in 1981, China had just started establishing a socialist market economy. Politically, reliance on the USSR gradually decreased. The Ministry of Transport's legislative plan and views reflected the changed social conditions. The political perspective in transplanting foreign law altered. China was relieved from the exclusive transplantation of Soviet law. On 20 February 1981, the Ministry of Transport delivered a new drafting plan that reflected the changed social and economic conditions.[20] It was stated: 'The establishment of a comprehensive legal system for, and protection of rights in, international trade and shipping requires expediting the enactment of Chinese maritime law [. . .] The drafting work should follow the policies of "self-reliance, equality, and mutual benefits".'[21] The new drafting committee (the 1981 Drafting Committee) under the leadership of the Ministry of Transport adopted new aims in making law. The deputy chair of the 1981 Drafting Committee stated that their work followed three principles (Zhu 2003, 15). First, the CMC sought to facilitate the Chinese 'Socialist Market Economy'. Second,

[15]China Ocean Shipping Company, *The Ministry of Transport's Reports on the Issue of the Proposal of Chinese Maritime Law* (No 1531, 1963), 2.

[16]The Ministry of Transport, *Explanatory Note of the Chinese Maritime Code (Third Revision (草稿))*. This is an archived document filed in Room 104 (Law School Library) of the East Campus Library of Dalian Maritime University. The original text is translated into English by the researcher.

[17]China Ocean Shipping Company, *The Ministry of Transport's Reports on the Issue of the Proposal of Chinese Maritime Law* (No 1531, 1963), 2.

[18]The 1963 Revision is the last revision text created in this legislative period.

[19]The 1963 Revision contains eleven chapters, including, for instance, chapter 2 on vessels, chapter 3 on crew, chapter 4 on carriage of goods by sea, chapter 10 on marine insurance. See *Explanatory Note of Chinese Maritime Code (Ninth Revision (草稿)*). This is an archived document filed in Room 104 (Law School Library) of the East Campus Library of Dalian Maritime University. The 1929 Soviet Maritime Code contains fifteen chapters, including chapter 2 on vessels, chapter 3 on crews, chapter 4 on international and coastal carriage of goods by sea, chapter 12 on marine insurance contracts, etc. See Legal Office of the Ministry of Transport of People's Republic of China (1957) *Soviet Maritime Code.* Beijing: Law Press China.

[20]China Ocean Shipping Company (1981) *Reports on Enacting Chinese Maritime Law,* No 81.

[21]Ibid., 1–3.

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the CMC should adhere to social needs and, therefore, it should reflect the practice of Chinese maritime-related transactions. Third, the CMC must be forward-looking, internationalised and innovative. As a result, Soviet law was no longer deemed to be the requisite foreign law to be transplanted. Instead, actual drafters applied their own traditions in terms of the choice of foreign law, as will be explained in later sections.

To sum up, at this stage, the main actors were governmental departments, particularly the Ministry of Transport. The institutional element of the country adopting a socialist regime provided them with political powers, opportunities and resources to put through their proposals for making Chinese maritime law. Their original firm view of transplanting Soviet law and their later flexibility for transferable law were shaped by the prevailing political ideology and the political economic regimes adopted by the nation.

4.2 The People's Insurance Company of China representative of the views of marine insurers as merchants

The Ministry of Transport established a 1981 Drafting Committee. However, the actual drafting work on the chapter on marine insurance law was granted to the PICC. DR1 explained: 'The chapter on marine insurance contract was drafted by the PICC. The PICC was the expert on insurance business. The Committee itself mainly did the compiling work of each chapter.'[22]

One of the most prominent features of a socialist country is that the means of production should be owned by the whole people but be run by the central government. A socialist country pursues a planned economy by establishing state-owned companies to participate in economic activities under the control of the central government. These state-owned companies should be prioritised in development.[23] The PICC was created in 1949 by the central government as a state-owned company. The PICC extended its business to cover marine insurance risks in 1951.[24] It also received the administrative function regulating domestic insurance business. Even after the commencement of the developing socialist market economy, the PICC remained the sole insurance company and its administrative function until late 1990s.[25]

Once released from the injunction to adopt Soviet law, the PICC's admiration of English law became apparent. The influence of the PICC was the primary reason for the transplantation of English law, driven by commercial reasons. From the 1980s, the PICC's connection with the London market drastically increased. The PICC renewed the policies created between the 1960s and the 1970s when China's primary maritime trade partners were socialist countries. The cargo policy was renewed in 1981. In 1986, revisions were made to the 1972 PICC Hull Policy with reference to the model contracts drafted by the United Nations Conference on Trade and Development (UNCTAD) and the standard clauses introduced in 1983 in the London market, namely the Institute Time Clauses Hull (1/1/83).[26] The consultant involved in the 1991 Drafting Committee from the PICC, DR4, was the main drafter of the 1986 PICC Hull Policy. He recalled:

'I attended the conferences held by the United Nations. You know, our previous policies were too short. So, we redrafted our hull policy by learning from the model suggested by the United Nations and the new English policy, the 1983 policy.'[27]

[22]Interview with DR1, a drafter in both the 1981 Drafting Committee and the 1991 Drafting Committee (Dalian, 11 January 2020).

[23]Constitutional Law of the People's Republic of China 1954, art 6 states: 'The state sector of economy is a socialist sector, owned by the whole people. [. . .] The state ensures priority for the development of the state sector of the economy.'

[24]The Insurance Institute of China & China Insurance News (2005) *Bicentenary Chinese Insurance (1805–2005),* Beijing: The Contemporary World Publishing House, 159.

[25]The China Banking and Insurance Regulatory Commission was set up in 1998 as the superintendent of the market.

[26]*UNCTAD Model Clauses on Marine Hull and Cargo Insurance*, published in the United Nations Conference on Trade and Development in Geneva in 1989, available at https://unctad.org/topic/enterprise-development/insurance/Insurance-Marine.

[27]Interview with DR4, an insurer (Telephone call, 18 February 2020).

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The 1980s also saw considerable communication and interaction between the PICC and the London market. DR4 said: 'We were sent to the London Market to learn how they did their business.'[28]

The legislative strategy was to transplant the international standard into the CMC. Marine insurance law does not have an international standard in the form of a unified set of rules that is applied by different jurisdictions. However, the PICC believed that English law represented the international standard in the area of marine insurance law. The interviewee, DR4, stated: 'Big risks are normally reinsured. This nature of insurance determines that every national law should be in line with international practice. English law contributes greatly to making this international standard.'[29] Although this statement from marine insurance practitioners may exaggerate the position of English law, it nevertheless portrays the great influence of English law in the PICC. As the overall aim was to facilitate participation in international trade, following the rules of the most influential insurance market at that time was much emphasised in the legislative process.

The PICC's views affected the Chinese transplanting story primarily in two aspects. First, marine insurance practitioners maintained their own views of what to transplant from English law. English law in force during the Chinese legislative period was the Marine Insurance Act 1906 (1906 Act). This certainly became a significant source of law when the PICC drafted the chapter on marine insurance contracts. More importantly, as merchants were actual drafters, they relied on materials that they recognised as more representative of English marine insurance law. For marine insurance practitioners, marine insurance contracts constitute an important source of soft law which gives priority to market views. The PICC transplanted many standard policy clauses prevalent in the London market, predominantly clauses from the Institute Clauses into the CMC. As a result, the PICC transplanted both English hard and soft law.

The second influence of the PICC in the Chinese transplanting story lies in setting the tone of the necessity of transplanting English law. Drafters involved in the subsequent transplanting stages all accepted the PICC's idea of the importance of the London market and, accordingly, the importance of English law in making Chinese law. The idea of borrowing from English law which represented the international standard in marine insurance law was accepted by other drafters. For instance, as DR1 said, 'Our marine insurance law aimed to integrate with international standards. English marine insurance law was exactly the international standard.'[30] During the interviews, all participants confirmed the fact of transplantation from English law. DR3 stated: 'Of course, we gave English law more consideration in formulating our law.'[31] DR2 answered: 'We certainly referred to English marine insurance law, the 1906 Act, in drafting the chapter on marine insurance law.'[32] DR1 affirmed: 'The main reference material in making chapter 12 was the 1906 Act'.[33] DR4's response was quite strong. He described this influence as inevitable.[34]

To sum up, the emergence of the state as a socialist entity determined the dynamics of legal transplantation, particularly through the substantial influence wielded by merchants from state-owned companies in determining which foreign laws to transplant. This time, the dominant figures were merchants who leveraged the resources and tools provided by institutional elements. The PICC's acquisition of the position of actual drafters for marine insurance law was derived from its expertise in insurance and its status as a state-owned company in a socialist country with administrative power over the domestic insurance market. The drafters from the PICC developed the tradition of transferring English law due to their commercial-driven connections with the

[28]Ibid.

[29]Ibid.

[30]Interview with DR1, a drafter in both the 1981 Drafting Committee and the 1991 Drafting Committee (Dalian, 11 January 2020). DR2 and DR4 gave similar answers.

[31]Interview with DR3, a maritime law scholar (Telephone call, 12 May 2020).

[32]Interview with DR2, an authoritative legislative drafter (Telephone call, 23 February 2020).

[33]Interview with DR1, a drafter in both the 1981 Drafting Committee and the 1991 Drafting Committee (Dalian, 11 January 2020).

[34]Interview with DR4, an insurer (Telephone call, 18 February 2020).

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London market, where the international network fostered an admiration of English law. They effectively utilised the aim of internationalising and modernising Chinese marine insurance law and the insurance market as a tool to successfully persuade all actors of the importance of English law. However, they were also constrained by the extent to which English law could be adopted in a socialist country, given that the rules originated from a capitalist system. There were also degrees of variation and modifications in transplanting English law by participants involved in subsequent stages.

4.3 Authoritative legislative drafters to resolve inter-ministerial conflicts

Drafters in this legislative stage are authoritative legislative drafters assembled by the State Council which is granted the power to create an initial draft in making basic laws. The body of authoritative legislative drafters in the Chinese law-making system is created to resolve the fierce conflicts of inter-ministerial interests involved in law-making activities. The law-making power in China is fragmented between numerous institutions. The legislative process is normally started by the principal drafting ministry that has enormous influence over the detailed content of the legislation. Then, their draft text is submitted to the State Council, when it is subject to compromises agreed with other ministries. The dominant problem of the fragmented legislative structure is the lack of inter-ministerial co-ordination in drafting legislative proposals. Therefore, in 1982, Premier Zhao Ziyang established the Bureau of Legislation under the State Council General Office to tackle the issue of inter-ministerial disputes.[35] The primary function of this legislative stage under the leadership of the Bureau of Legislation is to harmonise inter-ministerial interests.

In drafting Chinese maritime law, the Ministry of Transport submitted its work to the State Council in January 1985. In January 1989, the legislative plan for the CMC was approved. Therefore, the Bureau of Legislation of the State Council set up a drafting committee (the State Council Drafting Committee), consisting of five people. Four of the drafters in the drafting committee were from within the Bureau of Legislation, being authoritative legislative drafters in the State Council. The remaining drafter was an officer from the Ministry of Transport as the representative of the principal drafting ministry. The reviewing work for the chapter on marine insurance was assigned to two of the five drafters, one of which is DR2.[36]

Drafters implemented their traditions and their functions in making law. In exercising their primary function, the drafting committee distributed the revision text to various institutions and governmental departments to obtain feedback. As a result, some rules drafted by the PICC were modified or deleted to reconcile different institutional interests.[37]

In terms of the drafters' views about English law, they further transplanted more rules from the 1906 Act into the draft text. However, they followed their own traditions in deciding the requisite rules for a statute. DR2 stated:

'We followed Chinese legislative tradition in drafting the text. We added rules concerning the contents of a marine insurance contract, the payment of premiums, etc. Based on our understanding of contract law theory, we thought that every type of contract should include these provisions.'[38]

Their addition brought the overall provisions up to forty in the chapter on marine insurance law. However, their view was inconsistent with the views of the PICC. It is recorded in the

[35]In 1986, Zhao Ziyang increased the Bureau of Legislation's power. Its director was promoted from the rank of a bureau chief to a rank just above a vice-minister and just below a minister. The Bureau was also placed under the direct control of the State Council Standing Committee.

[36]Interview with DR2, an authoritative legislative drafter (Telephone call, 23 February 2020).

[37]For instance, the PICC followed and advanced English law of subrogation to adopt an even more stringent rule for the assured compared to the English equivalent. However, this rule was modified by drafters at the State Council legislative stage in a way that is much more favourable to the assured – even more protective than English law. This modification was made in response to the feedback collected from many institutions and government departments.

[38]Interview with DR2, an authoritative legislative drafter (Telephone call, 23 February 2020).

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consultation papers that the PICC objected to the transplantation of these rules into the CMC because they are market practices which can be incorporated into insurance contracts.

However, drafters admitted their lack of expertise on marine insurance, resulting in relying extensively on the PICC's ideas on some issues. DR2 stated:

> 'Neither of our drafters practiced in the marine insurance business. Therefore, when dealing with provisions relating to marine insurance professional knowledge, like the open cover, we surely respected professional knowledge and practice. We surely prioritised the ideas of the PICC. At the end of the day, it is the PICC that uses the legal rules, they are practicing marine insurance business.'[39]

These drafters' legislative work was also affected by the conventional practice of seeking foreign experts' ideas in making Chinese law. After the completion of the 1989 Revision, the State Council Drafting Committee visited England and the US to obtain feedback from maritime law experts. The committee talked with the London Court of International Arbitration (LCIA),[40] Lloyd's of London,[41] the University of Southampton,[42] law firms,[43] and the chairman of the International Maritime Organization (IMO).[44] Numerous suggestions were provided by these foreign individuals or institutions and accordingly accepted by drafters.[45]

To sum up, at this stage, authoritative legislative drafters were the principal actors. These drafters followed a different set of traditions and views, formed by the civil law tradition and their institutional function. They transplanted many definitions based on their understanding of what was necessary for a statute in a civil law jurisdiction. They had unique access to foreign expertise through international trips, which provided them with more options for transferable laws. Their institutional role was to harmonise conflicting interests among different governmental departments. Their legislative power and function enabled them, after several rounds of extensive consultation with numerous departments, to modify rules to satisfy as many interests as possible. As a result, the PICC's draft text experienced considerable changes at this stage due to the role that authoritative legislative drafters were expected to play. However, these authoritative legislative drafters were also constrained in exercising their power due to limited expertise in insurance law, sometimes ending up relying on the PICC's input.

4.4 Legal academics as the dominant body in the 1991 Drafting Committee

The draft revision created by the State Council Legislative Committee was returned to the Ministry of Transport for final revision. The Ministry of Transport established a 1991 Drafting Committee which consisted of five maritime law scholars from universities. Chinese maritime law scholars were appointed as the actual drafters.

The first generation of Chinese maritime law scholars learned English marine insurance law at about the same time as the original legislative process of the CMC. MS1, a first-generation maritime law scholar, gave a general comment that 'English law's influence over us is great. We study English law in academic research. The influence of English law is now still enormous'.[46] MS1 explained:

[39]Ibid.

[40]The meeting was held on 23 May 1990. Records of these meetings can be seen in documents archived in Room 104 (Law School Library) of the East Campus Library of Dalian Maritime University.

[41]The meeting was held on 25 May 1990.

[42]The meeting was held on 24 May 1990.

[43]The drafting committee talked with David Steel and many others.

[44]The chairman then was Francesco Berlingieri. The meeting was held on 29 May 1990.

[45]For instance, the rule on insurable interest was deleted from their drafts because of the discouragement from foreign experts.

[46]Interview with MS1, a maritime law scholar (Telephone call, 11 December 2020).

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'When I was a master's student, I was not very familiar with marine insurance law. Later, we obtained our marine insurance law knowledge mainly from two sources. Firstly, we learned from Yang Liangyi's books that contain many English marine insurance law cases. Secondly, we invited the PICC experts to introduce marine insurance law. They know English law through their business with the London market. Therefore, we gradually had our knowledge of marine insurance law.'[47]

In other words, the marine insurance knowledge of the first generation is a reinterpretation of English law by the PICC or by arbitrators (Yang Liangyi is an arbitrator from Hong Kong). This is corroborated by drafters' further transplantation of English law into the CMC at this legislative stage. DR3, one of the main drafters at this stage, is a maritime law scholar. Drafters further transplanted from the 1906 Act at this legislative stage. DR3 stated: 'When we started making the draft, we also borrowed some rules from the 1906 Act.'[48] However, at this legislative stage, the most controversial chapter was chapter 4 on carriage of goods by sea, which attracted the major attention of drafters. DR3 stated:

'We did not pay much attention to the marine insurance chapter. During the drafting process, we did not have much time to deal with marine insurance law. The main problem surrounded the provisions about the relationship between the cargo owners and shipowners, chapter four on the carriage of goods by sea. The most important work was to reconcile the interests of the cargo owners and shipowners in the carriage of goods by sea.'[49]

As a result, the chapter on marine insurance law was not given substantial review and changes. Moreover, legal academics' influence was limited by institutional powers. DR3 described:

'The PICC was the only insurance company. They had administrative functions, and they enjoyed a monopoly in the market. In 1991, we already noticed that this chapter was drafted too favourably to the insurers. We were unable to force the PICC to change the draft due to their administrative position.'[50]

To sum up, at this stage, legal academics were the actual drafters for the first time. Their initial exposure to English law occurred through lectures and training provided by the PICC. They accordingly further transplanted English law once they acquired legislative power. However, institutional factors imposed limitations. Their involvement in the very final stage of the process, along with time and material limitations, meant that they only transplanted few rules from English law. They also faced limitations in knowledge and power, making it challenging to counteract the PICC, which leveraged political and knowledge advantages to retain rules favourable to insurers. This forms a direct contrast to the current revising process of the CMC where Chinese second-generation maritime law scholars are making a significant impact in legal transplantation due to realignment of various state-owned institutions, which will be explained later. This research shows that the impact of jurists varies depending on the changes to institutional structure at relevant historical periods and the economic and political dynamics within society.

4.5 Chinese judges

After the enactment of the CMC, the traditions and outlooks of Chinese judges determine the interpretation and application of the imported law. Shortly after the enactment of the CMC, China

[47]Ibid.

[48]Interview with DR3, a maritime law scholar (Telephone call, 12 May 2020).

[49]Ibid.

[50]Ibid.

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promulgated the Insurance Law of the People's Republic of China 1995, which was established by following insurance law doctrines in civil law traditions (Sun 2016, 109). This statute differs from English old law in the 1906 Act in many substantial aspects. Civil law traditions and English law choose completely different approaches when dealing with two prominent aspects of insurance law, namely the duty of disclosure and the evaluation of changes of risks.[51] As many Chinese judges are trained under civil law traditions, interviews show that they follow civil law traditions in resolving insurance disputes and interpreting the imported English law.

Chinese judges are also aware of the market differences between China and England, leading to their interpretation of the imported law commensurate with this awareness. SJ3 said:

> 'We consider the Chinese social realities when interpreting the law. The social realities are different in China and the UK. We will not copy English interpretative methods in understanding this imported foreign law; instead, we will come up with an approach that corresponds to our reality.'[52]

Since the development of the socialist market economy starting in the 1980s, the process of privatisation has witnessed the number of small shipowners and small cargo owners increasing drastically. Therefore, small business owners seeking the protection of insurance coverage have increased commensurately in China. This affects the Chinese judges' perception of Chinese market reality. SJ3 said:

'Nowadays, judges all know that Chinese assureds almost have no negotiating power, apart from giant companies. These small assureds know nothing about insurance. Apart from a few big shipping companies, China now has so many small assureds. This is the Chinese reality that you need to recognise.'[53]

Therefore, Chinese judges, in light of Chinese market reality, are more prone to protect the interests of the assured who are assumed to be less advantaged than the insurer. Chinese judges are aware that the 1906 Act is more lenient and friendly to the insurer. As a result, they are reluctant to apply the imported English law in China in an identical manner to how it would have been applied under English law.

Chinese judges obtain the juridical authority to interpret the imported law. Their tradition, which is culturally and socially shaped, fundamentally differs from that of the actual drafters, reflecting civil law legal thinking and the social realities of the Chinese insurance market. Judges exercise their judicial power by publishing sample cases and official judicial interpretations to spread their perspectives on the imported law.[54] However, they are restricted by institutional elements as their unique legal tradition does not necessarily signal the cessation of borrowing foreign law for domestic legal evolution. Instead, it triggers a process of second transplantation, with the transplant agents in favour of English law exercising their legislative power to further transplant English law until the imported law can be accepted by domestic interpreters. The distribution of legislative and interpretative power among different legal traditions propels a continuing process of legal transplantation without a distinct point of completion. This ongoing dynamic is evident in the current revision process of the CMC.

[51]Take the duty of disclosure as an example. By following the civil law tradition, Chinese general insurance law adopts the duty of disclosure upon inquiry, in article 52 of the Insurance Law of the People's Republic of China 2015. In contrast, English law adopts the duty of voluntary disclosure in section 18 of the Marine Insurance Act 1906.

[52]Interview with SJ3, a SPC judge (Telephone call, 25 June 2020).

[53]Ibid.

[54]For instance, the *Provisions of the Supreme People's Court on Several Issues about the Trial of Cases Concerning Marine Insurance Disputes* was published in 2007.

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4.6 Chinese maritime law scholars in revising the CMC

In the original legislative period, the PICC was considered to possess the requisite expertise to draft the text because of its dominant market position and consequent experience, and its administrative function. However, in the new age, the Ministry of Transport considered maritime law scholars as the experts for making maritime law. Maritime law scholars from Dalian Maritime University (DMU) are appointed as the drafters for revising the chapter on marine insurance law. This appointment is associated with a change of institutional arrangement. The PICC is deprived of any administrative function. Instead, the China Banking and Insurance Regulatory Commission was set up in 1998 as the superintendent of the market. DMU, as a public university, is affiliated to the Ministry of Transport. This shows that realignment of institutional arrangements affects the identity of actual drafters.

As explained, Chinese judges are unwilling to apply English law in light of Chinese market reality and their civil law traditions. However, Chinese maritime law scholars, again, take more recent English law as a paradigm to revise chapter 12. This is fundamentally determined by Chinese maritime law scholars' learning background. These drafters from the DMU are second-generation maritime law scholars who started studying marine insurance law roughly after the enactment of the CMC. MS2, as a leader in revising the chapter on marine insurance contracts and a member of this second generation of Chinese maritime law scholars, gave an account of admiring English law similar to the first generation. He said:

> English law's influence is tremendous and is in our blood. You cannot avoid it. English law is the origin. Apart from English law, where else will you learn? When I first started learning marine insurance law, I read the Arnould books. English marine insurance law knowledge is engraved in my mind. These English legal concepts have already existed in the CMC.[55]

More importantly, they recognise the significance of the London reinsurance market and the importance of the international integrity of marine insurance business. They accept that the London market enjoys global prominence in the reinsurance business, endowing English law with the status of 'international standard' for marine insurance law. The fidelity of maritime law scholars to the idea of bringing Chinese law in line with the international standard then further reinforces their interest in and focus on English marine insurance law. The first generation of maritime law scholars involved in the law-making process agreed on English law's global prominence. A second-generation scholar also agrees. MS2 said:

> 'Shipping law has a very high level of international integrity and convergence. During the revision of the CMC, we are adhering to the idea of making the law integrate with international rules. This is widely accepted during the revision process. English law is still the international standard. We all agree that English law still has significant international influence.'[56]

These factors make a collaborative contribution to the second attempt to transplant English law. As a result, the current revision text of chapter 12 created by Chinese maritime law scholars contains many rules from the Insurance Act 2015 that reflect more recent English law.

To sum up, legal academics are the dominant figures in the revising process due to the realignment of departmental structure, administrative power and the growing respect for

[55]Interview with MS2, a maritime law scholar (Telephone call, 2 December 2020). The book series mentioned by MS2 is the treatise in the area of marine insurance law. It has published many editions, the latest being Gilman (2021): Gilman (2021) *Arnould: Law of Marine Insurance and Average*, 20th edition. London: Sweet & Maxwell.

[56]Interview with MS2, a maritime law scholar (Telephone call, 2 December 2020).

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academic expertise. This second generation continues the tradition of reference to English law for domestic legal change, grounded in their historical educational background, the perceived importance of the London insurance market and the general respect for English law's high quality. It is also crucial to recognise that the incorporation of English law is intricately tied to economic factors, encompassing market interdependence and the distinctive characteristics of the international shipping industry. Their tradition is socially and economically formed.

5 Conclusion

The formulation and evolution of Chinese marine insurance law experienced multiple transplanting periods within a time span of more than six decades, witnessing significant and continuous social contextual transformation. It invited the participation and contribution of various types of actors with different traditions and beliefs.

Legal transplantation is undoubtedly not socially simple, as evidenced by the Chinese empirical example. The transplanted law emerges as an authorless product shaped by social forces and processes. It is created by the operation of institutional arrangements of law-making, which provide the platform for the interplay of diverse traditions and interests generated by the social environment of the importing jurisdiction.

This paper demonstrates the strong analytical power of the socio-legal historical perspective, which reveals the deeper significance of the imported law's relation to the social, political and cultural context manifesting in the transplanting process. The level of complexity involved in this transplanting process cannot be envisaged by Watson. However, this does not suggest the complete fallacy of Watson's thesis but shows its limited explanatory power when confronted with complex reality. Legal transplantation still frequently happens based on prestige or admiration, as noticed by Watson (1983).

Contemporary theorists have drawn a more complicated picture of legal transplantation since Watson (Cohn 2010, 2024; Cotterrell 2006a; Ghezelbash 2023; Graziadei 2009; Nelken and Feest 2001; Twining 2004; Sacco 1991). This paper argues that this literature can be further developed to create a better picture of the phenomenon of legal transplantation. First, current theories acknowledge the co-existence and potential disharmony of various legal traditions within a jurisdiction (Sacco 1991). However, there is a lack of analysis of the social forces that create the multiplicity of ideas and traditions. Further analysis is needed to understand how political, economic and historical contexts inevitably create multiple types of legal elites, each with their own tradition.

Second, there is little discussion of the complexity arising from the interactions of multiple actors within the institutional framework and broader social context. The significance of jurisprudential intricacies in the law-making process in modern societies is underestimated. This paper argues that diverse types of actors exert a collaborative contribution to the formulation of law based on law-making structures and arrangements. The ultimate legal product mirrors the political and economic influence wielded by diverse institutions within society. As the law-making process unfolds through various legislative stages and involves multiple institutions, the impact of a diverse array of actors and their traditions on legal transplantation becomes evident. As a result, there is no author of the set of rules transplanted from foreign laws, which indicates the law-as-process position (Freidman 2005). Looking into the transplanting process helps to reveal such dynamics of legal transplantation.

Third, the socio-legal historical analysis, which has more explanatory power of legal transplantation than traditional doctrinal historical analysis of comparative legal studies, helps to reshape and reposition analysis of legal transplantation in the broader context. Learning from sociology and political science will significantly benefit studies of legal transplantation, although the scope of this paper does not permit an extensive application of these theories to the field.

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Therefore, the adoption of the socio-legal historical perspective aids in bridging separate lines of research by exploring how actors with different traditions utilise institutional elements to transplant foreign laws. This approach also elucidates the potential connection between studies of legal transplantation and the wider sociological and political scientific studies on policy or law-making, thereby inviting further interdisciplinary research.A detailed examination of the transplanting process offers valuable insights for any attempt to evaluate legal transplants. It is acknowledged that different law-making arrangements impact the means, approaches and level and source of power of various stakeholders. This paper reconstructs the notion of 'law-maker', explaining that the law is essentially authorless due to the involvement of diverse drafters. If certain groups or specific powerful individuals seek to achieve the success of legal transplantation by pushing through their ideas and interests within the law, then a detailed knowledge of how the law-making powers function within a specific jurisdiction becomes highly necessary. However, the revelation of the transplanting process does not necessarily address the issue of evaluation of the success or failure of legal transplants, nor does it provide direct guidance on how to improve success or achieve specific transplanting objectives. Evaluation is normative analysis, which is a separate, complicated and well-developed area with contributions from many scholars (Arvind 2010; Ghezelbash 2018; Jupp 2014; Örücü 2002; Pistor et al. 2003).

Competing interests. None.

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