Title: On the Resurrection of Lex Maritima in China

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I
INTRODUCTION

Maritime law is withering away. Other laws dismember it. By separating and isolating, they have encroached and merged maritime law institutions to enrich themselves. In this process, maritime law gradually lost its characters and particularities, which have been cultivated around for thousands of years. This inevitably leads the maritime law to a devastating ending. This phenomenon happened, especially in civil law countries. The maritime law was broken into pieces and foisted into the various codes. From the famous Ordonnance de 1681 to the Code Commerce, now is the Code des Transports in France; Handelsgesetzbuch in German; and Japanese Commercial Code in Japan. A French scholar critics the Code des Transports:

> Leaves an impression of compilation rather than codification...The Code proceeds from an error which is that of thinking that we could group all modes of transport...The histories and especially the sociology are different. Also, maritime law is not limited only to transport activities. Its scope is quite different, if only because of the weight of tradition.[1]

The Japanese government has taken the same thought in their newly reformed maritime law in 2018, which set up the 'general rules of transport' applying all modes of transport in Japanese Commercial Code.[2] This trend makes the maritime law no longer an intact integrated legal entity, which has self-contained legislation under the unique principles, but a scattered one which distribute among or affiliate to the different branches of laws. Due to this separate legal form, people start to doubt the reason for the existence of maritime law. Particularly for a country without a profound historical and cultural foundation in maritime law, China.

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[1] Philippe Delebecque, *Droit Maritime* (13th edn, Dalloz 2014) 32.
[2] See Chen Haoze and Helixin, '*Riben Shangfadian Yunshu Zongze Zuixin Xiuding zhi Pingxi*' [An Analysis of the Latest Amendments to the General Rules of Transportation of the 'Japanese Commercial Code'] (2018) 3 Chinese Journal of Maritime Law 88-97.

The Chinese government is revising the China Maritime Code. A great clamor has arisen around the issue of the legislative model. There are two views. The traditional one is that the maritime law shall condescend to the civil law, even it shall be compiled into the Chinese Civil Law Code, as lex specialis derogat legi generali.[3] This view is also banteringly called 'the civil law imperialism'. Nevertheless, the maritime law and the civil law are not so coordinated in contends and systems that meet the specific interests of groups, as the different value orientations, and may further make the maritime law gradually marginalized and nihilized. The modern one is that the maritime law shall become a separate departmental law, or the legislators shall establish an all-encompassing system related to the sea.[4] It shall not be restricted by but liberated from the general law. However, this view has been criticized by many scholars and practitioners who believe that there is no need to establish a completely new system, because the comprehensive application of civil law, maritime law, and judicial interpretation is sufficient to solve the vast majority of cases, despite the solution which from judicial practice may lack jurisprudential justification.

The controversy is for three reasons. The first is the lack of theoretical research. Maritime law is regarded constantly as an empirical knowledge, which reflects the pragmatic thought in Chinese traditional culture. Pursuing maritime law theory is deemed as 'insubstantial as a shadow'. The second is the excessive worship of common law. Chinese maritime law is deeply affected, both in the legislative history and law education, by the flexible, accessible maritime law of the United Kingdom. So most scholars oppose the civil law and its legislative technique as mechanical and rigid. Even though they know perfectly well that China is a civil law country, but reluctant to study maritime laws in various civil law countries, leave alone the ratio legis of maritime laws.[5] Legalism is in vogue. The third is the lack of historical research. There is a research gap in maritime law, especially the historical evolvement that the maritime law as a uniform, supranational, comprehensive body of law, gradually

[3] See Guo Yu, '*Haishangfa de Jingshen--Zhongguo de Shijian he Lilun*' [The Spirit of Maritime Law--China's Practice and Theory] (Peking University Press 2005).
[4] See Si Yuzhuo and Li Tiansheng, 'Lun Haifa' [On the law of the sea] (2017) 6 Chinese Journal of Law 74-96.
[5] There is no published monograph on maritime law in the civil law system in China.

been lost completely under the rising of nationalism. Accompanied by pragmatism, legalism, the historical nihilism in maritime law research prevails.

The crux of the problem is whether maritime law still has a particularity and what it is. This issue will lead us to trace the source and closely observe the ancient maritime law, the lex maritima.

II

THE GREAT LEGACY OF LEX MARITIMA

A. The definition of lex maritima

According to William Tetley, lex maritima exists as the 'general maritime law', 'is a ius commune, is part of the lex mercatoria and is composed of the maritime customs, codes, conventions and practices from earliest times to the present, which have had no international boundaries and which exist in any particular jurisdiction unless limited or excluded by a particular statutes.'[6] This definition suggests that lex maritima is not any specific or concrete norm, but a collective concept denotes all the norms which have the same character. It is the character that makes maritime law. Jurisconsult Jean-Marie Pardessus was the first one who argued that three original features had characterized maritime law. Namely, 'universality' or 'uniformity', 'immobility', 'customary origin'. He wrote:

> ...uniformity is, I would venture to say, of its essence. Independent of the variations brought about by centuries or revolutions, and the divisions produced by national rivalries, this law, immutable amid the upheavals of societies, reached us after thirty centuries as we saw it in the first days when navigation builds relationships between people.[7]

[6] William Tetley, 'The General Maritime Law - The Lex Maritima' (1994) 20 Syracuse J Int'l L & Com 108.
[7] J. M. Pardessus, *Collection de lois maritimes antérieures au XVIII. e siècle*, vol. 1 (A l'imprimerie Royale 1828) 2.

Maritime law, like amaranth, has eternal power and never faded for centuries. However, history often repeats itself, the reproaches that Pardessus mentioned, still exists until now:

> Constantly occupied with the task of bringing everything back to general and uniform principles, these latter were often put off by the incredible variety of civil laws in different states, and sometimes in the provinces of the same state; and, although trying to explain this variety by the influence of the times of manners, government, territorial position or climate, more than once they have asked how, the nature of man is the same everywhere, the laws which regulate private interests and which set the limits of the just and the unjust, were so diverse. [8]

Then he explained the cause for the formation of this individuality:

> If the civil laws, intended to regulate the state of the people, the order of the family, the transmission of the goods, the modifications of which the right of property is susceptible, the drafting or the guarantee of the engagements and the judicial forms, are intimately linked to the nature of government, to national customs and habits, this is not the case with the laws of maritime commerce. Produced in any country by similar needs, they derive from this circumstance even a character of universality which allows them to apply to them what Cicero so well said about natural law, *Non opinione, sed naturà jus constituitur*: and as they interest the universe, in which navigators form, so to speak, a single family their spirit cannot change with territorial demarcations; they must be the same everywhere, because everywhere their hospital foresight must offer the same guarantees to foreigners as to nationals.[9]

[8] ibid 2.
[9] ibid 2-3.

B. The decay of the 'particularism' theory

I completely agree with Pardessus's view. In this essay, to revive lex maritima does not mean to bring a series of old-fashioned maritime rules back to life, but uncover the spirit which maritime law inherent. Nevertheless, Pardessus and his successors' theory of 'particularism' have decayed, no longer dominant. The reasons for this are manifold. First is the transition of jurisprudence. The legal positivism prevails over the natural law. Under the legal positivism, scholars have lost the enthusiasm and interest in what maritime law ought to be, and methodologically emphasize the application of specific articles or the solution to concrete cases, which led to the 'fragmentation' of maritime law. Second, the theory had some flaws. A Japanese scholar criticized: as for uniformity, it is just a tendency of maritime law, and cannot be used completely as a principle of interpretation in maritime law. As for immobility, if taken literally, the fact that maritime law is continuously changing is precisely against this; if from the meaning illustrated by Pardessus, maritime law is not affected by changes in national customs, practices, and politics, then it is just a comparison of general commercial law and civil law, not unique to maritime law. As for the customary origin, it is still the comparison of general commercial law and civil law, not the individuality of maritime law. [10]

This criticism is persuasive. According to Tetley's definition, lex maritima is ius commune, is part of lex mercatoria, so maritime law certainly has the same trait as commercial law. However, what if, in a scenario, commercial law was modified gravely, destroyed, or even never exists while maritime law still retains most of the rules prevailing internationally? The legislative history of Chinese maritime law has witnessed this phenomenon.

[10] See Komachiya Souzou, 'Kaishouhou no Tokushoku ni Kansuru Gakusetsushi' [History of the doctrine on the characteristics of the marine law](1973) 35 (1) Songaihoken kenkyuu 1.

III
THE HISTORY OF CHINESE MARITIME LAW LEGISLATION 1952-1992

The maritime law began drafting in 1952 and was promulgated in 1992, with a total of 23 drafts. During this period, China implemented a planned economy system, and many political movements broke out.

A The characteristics of the legislation

First, gradually restore to international maritime law. At the first few preparatory meetings, legislators believed that maritime transport work is international.[11] In 1954, official documents established three principles that guided maritime law legislation, namely 'in line with the spirit of the socialist system of legislation', 'in line with China's actual situation' and 'appropriate use of international practice'.[12] The first principle indicated that 'the basic spirit of maritime law is in line with transportation planning and economical accounting and socialist labor methods, and has become an important tool used to protect the interests of the Soviet Union in the struggle against capitalist systems in maritime trade.' The second principle pointed out that, 'aiming at the four ownership systems in China during the transition period, state-owned enterprises, public-private joint ventures, and private enterprises are treated differently in terms of subject qualifications, and legislation is combined with China's material foundation, technical standards, and geographical environment.' The last principle was that 'in order to protect the interests of socialist countries, the maritime laws of major capitalist countries can be recognized for a certain period; common international practices, such as those that can protect their national interests, can also be adopted. Therefore, the Hague Rules, the

[11] The following official documents are all stored in the library of Dalian Maritime University.
[12] See Haiyunzongju, 'Caoni Haishangfa Choubeihui Diyi/erci Yubei Huiyi' [First / Second Preparatory Meeting for the Drafting of Maritime Law] (November 1952).

Brussels Rescue Convention, the Regulations for Preventing Collisions, and the York-Antwerp Rules should be adopted in the Maritime Law as much as the Soviet Union.'[13]

However, in 1963, these rules were changed into 'taking the spirit of the legislative spirit of our socialist system and relevant guidelines and policies as the principle', 'based on the practice of China's maritime trade', 'based on mainly applicable to international maritime trade' respectively.[14] The adoption of international maritime practices strengthened evidently until the 1990s. In 1965, a prestigious scholar summarized the 'essential' difference between socialist and capitalist maritime law in three aspects: the first is ownership. The ownership of ships stipulated by the maritime laws of socialist countries is basically state ownership, that is, ownership by the entire people. The second is the carrier's responsibility for transportation. Carrier's obligation of seaworthiness also applies to charter parties, and liability must never be reduced under the disguise of freedom of contract. While this obligation only applies to the contracts evidenced by bill of lading in capitalist maritime law. The third is that socialist maritime law attaches great importance to people and lives. The carrier bears unlimited liability for personal injury or death, without limitation of liability.[15] In fact, except for ownership, the rest of the differences is not that 'essential', but just differences in details. As for the ownership, it is hard to say that it is the unique institution of maritime law, but rather the object adjusted by civil law.

Second is not affected by civil law. At that time, China learned from the Soviet Union that adopted the combination system of commercial and civil laws. If maritime law is a part of commercial law, it should have been affected by civil law during the drafting process. However, no historical data can evidence that. In fact, maritime law was too technical to understand by other lay legislators. So they can only give some general suggestions. One ministry replied:

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[13] See Haiyunzongju, 'Guanyu Haishangfa Caoan Qicao Gongzuo Dier Jieduan Gongzuo Zhunbei he Buzhi' [On the preparation and layout of the second stage of the draft of the Maritime Law] (1954).
[14] See Jiaotongbu, 'Zhonghuarenmingongheguo Jiaotongbu qing Shenpi Zhonghuarenmingongheguo Haishangfa you' [Reasons for the Ministry of Communications of the People's Republic of China to apply for approval of the Maritime Law of the People's Republic of China] (1963).
[15] Wei Wenhan, '*Haishangfa Jiangzuo*' [Maritime Law Lecture], (Law Press China, 1965) 6-7.

> In general, we are not opposed to drafting the maritime law before the enactment of underlying statutes such as civil and criminal laws, but we should pay attention to the flexibility and adaptability of the provisions when drafting them. The provisions should be simplified, realistic, and combined with business requirements in order to solve problems that often occur or may occur in the business.[16]

Most ministries complained: 'the wording is so difficult to understand.'[17] This phenomenon was called 'reversed legislation', which denotes that the maritime law enacted before the civil law.[18] The preconceived notion that maritime law is the special law to civil law mistakes this view. How could the maritime law be drafted with reference to the civil law which did not exist at all? This phenomenon can only be explained that maritime law originated from an independent source that is irrelevant to civil law. By comparing the maritime law and the commercial law can verify this explanation.

B. The independence of maritime law to commercial law

The commercial laws are divided into two categories: general and special commercial laws. The former are codified into the civil code; the latter are separate, such as company law, negotiable instruments law, insurance law, and maritime law.

The special commercial laws were either abandoned or suspended due to the impact of economic policies. The company law never existed before 1978, because under the planned economy, there are no companies engaged in business activities, but as the state's tool for managing companies in the same industry. The negotiable instruments law began to draft in 1986. Previously, due to the state's strict financial management, vigorously promoted bank credit, restricted, or even canceled commercial

[16] Waijiaobu, 'Waijiaobu dui Haishangfa Diergao de Yijian' [Opinions of the Ministry of Foreign Affairs on the Second Draft of Maritime Law] (11 July 1956).
[17] See ibid.
[18] See Zhang xianglan, '*Haishangfa Wenti Zhuanlun*' [Monograph on Maritime Law], (Wuhan University Press, 2007) 2.

credit, the bills had no value in economic life. The insurance law was not promulgated until 1995. In 1958, the National Financial Conference held in Wuhan decided to stop the domestic insurance business immediately, and only the foreign-related insurance business was extremely limited to continue. It was not until 1979 that the insurance industry began to recover.

There was also no genuine general commercial law. As a scholar described:

> In the early 1950s, there were various economic components in China. The main objective of the contract system was to link the different economic components together and unify them under the leadership of the state-owned economy. In terms of foreign trade, after the founding of the People's Republic of China, the foreign trade control policy was implemented, and the state operated all foreign trade. During this period, China did not have trade relations with most Western countries (as well as Japan). China's trade with the Soviet Union and Eastern European countries mainly bartered. In this regard, the effect of the contract of sale is small. At the end of the 1950s, a comprehensive and highly planned economic management system was gradually established in the national economy. The commodity economy was wiped out, and the exchange relationship was replaced by comprehensively planned allocation and planned allocation. Individuals have no conditions to participate in the exchange, and the traditional contract system has no room for existence. Although there are various contracts in the form, these contracts are only a means of planned allocation and planned distribution. By the 1960s, commodity production and commodity exchange were completely denied. This situation continued into the late 1970s.[19]

While in maritime law, things are totally different. Any economic command of the government did not influence the maritime law. There was not an article about the planned economy. In the China

[19] Xie huaishi, 'Xinzhongguo de Hetong Zhidu he Hetongfa' [New China's contract system and contract law] (1988) 04 Chinese Journal of Law 58-66.

maritime code (9th draft, 1963.10), article 1 provided: 'This Law is hereby enacted in order to clarify and handle various legal relationships that occur in maritime trade, maintain the safety of navigation of maritime vessels and promote the development of maritime trade.' The law comprised all kinds of contracts related to seagoing commerce. The rights and obligations were also well defined. For instance, the contract of carriage of goods by sea, in the article 61: 'The rights and obligations of the carrier and the shipper shall be agreed upon by both parties; in case of dispute, the charter party, bill of lading or other supporting documents must be used to prove it.' This article implies that the two contract parties were able to contract out of their own will, and not intervened by state power and other parties. If were observed chronologically, all drafts of maritime laws were in a high degree of consistency.

This phenomenon is not unique to China. The same is true in the Soviet Union. As one scholar commented on the Soviet Maritime Code of 1929:

> The Soviet system is incompatible with private law as the law of trade and industries...Private law is not and cannot be Soviet Russia's strong point. The Soviet private law Codes are only so much paper in so far as intra-Soviet relations are concerned. Their technical standard is extremely low; they are simply incapable of sustaining the weight of the ordinary rules of legal interpretation and construction. The reason is not that there are no lawyers in Russia, but that a regime which is the very denial of private law cannot create private law Codes. A Maritime Code is not a self-contained legal system; it is only a small part of the law of a country. Private law maybe wanted by Soviet Russia only for her foreign trade, but can any country have two legal systems—a socialist one for her whole life and a capitalist one for her foreign trade?[20]

[20] S Dobrin, 'The Soviet Maritime Code, 1929' (1934) 16 J Comp Legis & Int'l L 3d ser 268.

This scholar raised a good question but did not answer. Even if as he wrote that a Maritime Code is not a 'self-contained' legal system, but how can he explain why maritime law is not subject to the same political and economic policies as other private laws? The focus is not on whether maritime law can be truly realized in such a country, but on the characteristics of maritime law that it reflects.

There is no doubt that maritime law does have some features not found in other laws. However, what these characteristics are and how they arise needs further investigation.

IV
THE MECHANIC OF MARITIME LAW

Many scholars have summarized the characteristics of maritime law, which are nothing more than 'high risk', 'big capital', 'originality'. These characteristics are only obtained through simple observation of maritime law, cannot be considered as unique characteristics of maritime law. They will gradually lose with the continuous progress of human science and technology. However, characteristics must be inherent and stable. If the unique quality of a substance can change over time, then this cannot be called a characteristic, but rather a state. Given this, I propose 'the theory of maritime forms', which aims at finding and explaining the eternal power inherent in maritime law. This theory consists of three parts: formation, operation, and extinction of maritime law.

A. The Formation of maritime law

A maritime natural state must be assumed first: humans can live at sea without any difficulties. This natural state, which differs from the assumptions made by Hobbs, Locke, and Rousseau, is based on the sea, not land. The aim is to reveal the particularity of maritime law compared to land law and fictionalize as far as possible the impact of the maritime environment on the law. Montesquieu has

already demonstrated the environmental impact on the law by the term 'general spirit'.[21] Savigny further pointed out:

> In the earliest times to which authentic history extends, the law will be found to have already attained a fixed character, peculiar to the people, like their language, manners and constitution. Nay, these phenomena have no separate existence, they are but the particular faculties and tendencies of an individual people, inseparably united in nature, and only wearing the semblance of distinct attributes to our view. That which binds them into one whole is the common conviction of the people, the kindred consciousness of an inward necessity, excluding all notion of an accidental and arbitrary origin.[22]

This 'national spirit' theory is based on land. Since humans live in different environments, the law of the land can be considered as a collection of different national spirits. However, there are no such diversities at sea as land. The maritime environment is relatively single. If humans live in a single environment, then their languages, customs, and even thoughts are also the same, so the laws on the sea should also be the same. In this highly unified state, a unified government is bound to be born. Due to the vast sea area, in order to manage it effectively, there will be a centralized government. Like many ancient laws, the codification of the laws on the sea manifested as 'the combination of laws, without distinction between civil and criminal.' The law which is produced in this single extreme environment can be called the 'pure maritime law', which reflects a unified maritime spirit as opposed to a diverse national spirit. Figure 1 shows the constitution of this theory.

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[21] See De Montesquieu Charles, '*Montesquieu: The spirit of the laws'* (1989 Cambridge University Press) 310.
[22] Friedrich Carl von Savigny, '*Of the vocation of our age for legislation and jurisprudence*' (Abraham Hayward tr, Littlewood and Co., 1831) 24.

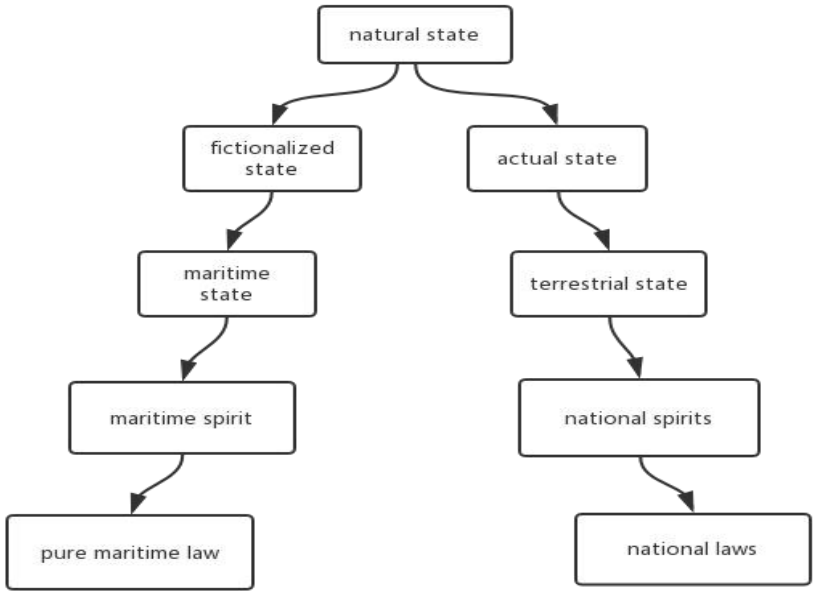

Fig.1 ‘Maritime Forms’ theory

B. The operation of the maritime law

All nations’ maritime law unconsciously ‘imitate’ or ‘participate’ the ‘pure maritime law’. Due to people cannot reach a maritime natural state, humans have been in a slow process, which manifested itself in the efforts made by people to live at sea and the results of such efforts. Specifically, the efforts are the experiences that people have accumulated in the course of continuous maritime adventures, and the results are the records of these experiences, namely maritime law. Because the objects handled by each ethnic group are the same, that is, the sea with a single attribute and maritime law also shows consistency.

However, in this process, the exploration of the sea by different peoples naturally brings their customs and habits. In other words, the understanding of the sea by different peoples is limited to their national spirit. Therefore, the national spirit and maritime spirit will inevitably conflict. This conflict

has waxed and waned in the process of constant movement. Figure 2 demonstrates the primary mode of this conflict.

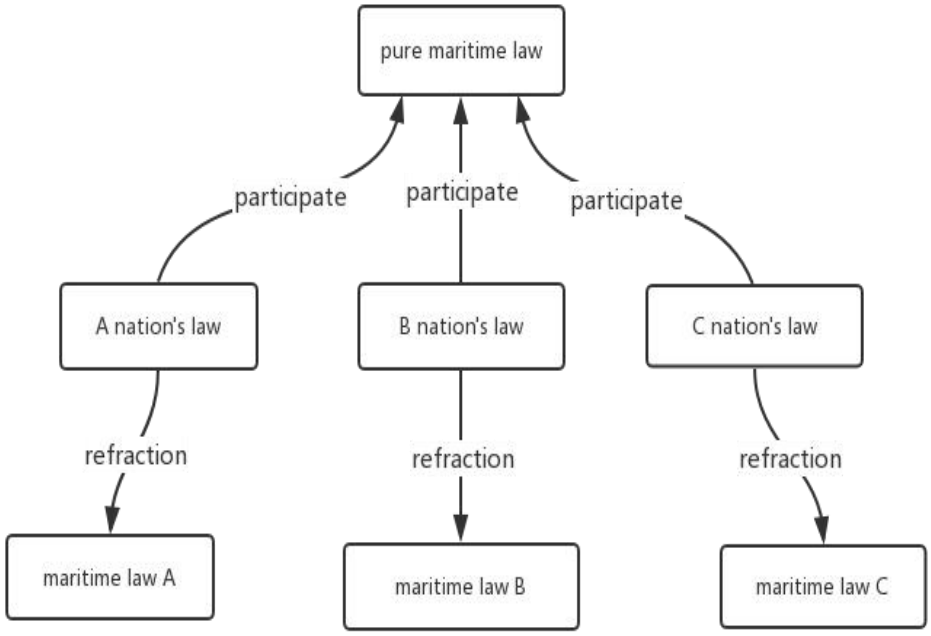

Fig.2 The conflict between maritime spirit and national spirit

From a static perspective, if the maritime spirit is affected by national spirit, it can be divided into three levels. On the first level, the maritime spirit is hardly affected by the national spirit. This kind of maritime law is the closest to 'pure maritime law'. This type of law existed during the archaic and medieval times was generally codified by coastal states and port cities. This maritime law had an independent legal form, and many unique institutions of maritime law emerged during this period. On the second level, the maritime spirit is greatly affected by the national spirit, which is where modern maritime law is. At this time, maritime law did not have independence in legal form and subordinated to other laws. Some of its unique institutions have been assimilated by other laws and lost their particularities. On the third level, the maritime spirit is completely replaced by the national spirit. This

situation existed in ancient China. Due to the natural rejection of farming civilization, the maritime spirit was basically obliterated, so that not any maritime law appeared.

From a dynamic perspective, this movement began with people's exploration of the sea. Humans continuously accumulate experience and form habits in the course of maritime adventures. In this process, the national spirit does not play a role because it cannot adapt to the unique environment at sea. Only those people who engaged in maritime activities can develop maritime spirit. When they bring maritime spirit back to land, the question of how national spirit dealing with maritime spirit arises. There are three solutions for legislators. First, the maritime spirit is completely independent of the national spirit. Second, the maritime spirit is subordinate to the national spirit. Third, treat the maritime spirit as non-existent at all. These three attitudes will affect the legislation on maritime law, that is, the extent to which legislators will reform maritime law. If the maritime law is more reformed by terrestrial civil and commercial law, the more maritime law deviates from 'pure maritime law', it means that people's understanding of maritime law is going backward, and vice versa. After that, people engaged in maritime activities will continue to explore the sea with the excessive reformed maritime spirit, which will lead to an increasing diversity of the unified marine spirit. As the Babel metaphor, The tower of Babel, which leads to the international unification of maritime law, collapsed.

C. The demise of maritime law

Maritime law ceases to exist when human life at sea is equal to land, and there is no difference between national spirit and maritime spirit. In other words, when the sea loses its unity and obtains the same diversity as the land, the maritime law as a separate law has no meaning.

V
METHODOLOGY: REDUCTIONISM

In this article, reductionism refers to a method of reducing the maritime law of each country to 'pure maritime law'. 'Pure maritime law' is a self-contained system with a comprehensive collection of laws including public law and private law, symbolized as the marine spirit. Maritime law is just a private branch of 'pure maritime law'. In legal technique, all legal concepts in 'Pure maritime law' are unified, but due to the influence of the national spirit, this unity has been disordered by diversity. So that different countries have different maritime laws. So specifically, the 'reductionism' starts from the specific maritime laws of various countries, excludes factors of national spirit, leaves only legal institutions and provisions that reflect the marine spirit, thereby reducing it to a highly unified Law, which will produce the law that is closest to 'pure maritime law'. This process can be called 'purification'. However, this does not mean to completely abandon the national spirit, which has harmoniously coexisted with the marine spirit. One may think that this is just a copy of the international unification movement of maritime law. This viewpoint is not the case. The approach is particularly important for countries that lack a marine culture. It can prevent the further disappearance of maritime law and provide a new method for promoting the international unification of maritime law. Limited by the number of words, the following will give a general description of the application of this methodology.

A. The classification of the maritime provisions

The criteria for dividing maritime spirit and national spirit must be clearly defined in specific legal provisions. The reason is that the maritime spirit is often hidden in the national spirit and expresses itself by the appearance of the national spirit. Because in legal techniques, maritime law organizes specific legal terms using legal concepts in private law. This disguise makes people mistakenly believe that maritime law is subordinate to civil and commercial law. In other words, people are blinded by the legal and technical manifestations of maritime law, tend to use the principles of general private law to

understand, interpret, and develop maritime law. Therefore, the maritime spirit covered by private law technique should be released and re-expressed through a new unified concept.

To this end, all provisions in China Maritime Code can be divided into three types. The first type is pure maritime law provisions. This type of provision regulates people's behavior only through the distribution of rights and obligations without further invoking private law concepts to express them. They formed concepts that only existed in maritime law. Such as ‘seaworthiness’ and ‘reasonable deviation’. In ‘carrier's liability cause’, although there is no independent legal concept because of the liability arising from the violation of the obligation, it also belongs to this type. The second type is the provisions expressed by private law techniques. This type of provision expresses the provisions of maritime law by applying legal concepts in private law. Such as ‘maritime priorities’ ‘possessory liens’ on ships, ‘limitations’ , ‘negligent principle’. Without learning these private law concepts in advance, there is no way to understand the specific meaning of such provisions. The order of their understanding is the source of misunderstandings of maritime law. The third type is pure technical private law provisions. Such provisions existed because of the general value orientation shared by the marine spirit and the national spirit. They have two roles. One is for formal purposes. These provisions are only guiding and procedural for achieving universal order. For example, the requirements for the ‘written form’ in chartering contracts are only set to achieve the goal of maintaining general transaction security; the other one is for substantive purposes. For instance, the ‘change of the rescue contract’ stipulates that the rescue contract can only be changed if it is obviously unfair or the rescue payment is significantly higher or lower than the actual rescue service provided. This is only a provision set up to maintain the idea of fairness in the general sense. There is no distinction between the pursuit of universal value and the use of private law techniques, and there is no need to create new concepts to express them according to Occam's razor principle.

B. The method of legal discovery

Problems can arise if the provisions of maritime law are miscategorized. For instance, in *PST Energy 7 Shipping, LLC v. O.W. Bunker Malta Ltd. (The Res Cogitans)* , the contract between OWBM and the Owners was not one of sale, but sui generis. Considering O.W.Bunker's position in the industry, this kind of contract can be considered to be typical so that it may be called a 'bunker supply contract'. Mr. Jonathan Crow QC pointed out that the basic form and language of the contract is for sale. It had special features that the liberty to use the bunkers for propulsion prior to payment is vital and essential to the bunker supply business. While the standard terms prohibiting any use would be uncommercial or in practice.[23] That is why he emphasized that the nature of the contract is a matter of substance, not form. Therefore, there is a danger that people tend to generalize contracts with maritime specialties. After all, the urgency of bunker supply on the sea is unmatched on land. As the Court of Appeal argued that the consideration for the payment of the price was not the transfer of property in the whole of the goods to which the contract related, but the delivery of a quantity of bunkers which they had an immediate right to use but for which they would not have to pay until the period of credit expired.[24] That is to say, in the bunker supply contract, the property in bunkers as a whole is not significant, but rather the use, as one of the property rights, plays the primary role. Technically, who bought bunker is not the owner of the bunker, because the ownership or property he acquired is incomplete. The property, as a 'bundle of rights', which have four positive competence: the right of possession, use, usufruct, and disposition. However, he only acquired the right to use the bunker in such a contract. So under the standard contract of sale of goods, he is just the bunker user other than the bunker owner. Even though he did make purchases in the sense of everyday life. Therefore, the 'property' should be restrictively interpreted to the right of use. By reducing the concept of private law, a suis generis

[23] ibid [27].
[24] ibid [23].

contract can be discovered and developed. The bunker supply contract can be described that the bunker supplier provides bunker for use, and the bunker user pays the price.

Only under the premise of recognizing the particularity of maritime law, the re-examination of commercial activities related to maritime affairs, and clarification of their nature, can we avoid unnecessary disputes.

VI
CONCLUSION

The great legacy of Lex Maritima is the particularities inherited in maritime law. The legislative history of Chinese maritime law has proved that maritime law is a self-contained system which hardly affected by politics, economics, and strives to reach the unity of the world. The driving force of which is the humans' eagerness to reach the perfectness of maritime natural state. Under this transition, the struggle between diverse national spirit and unified maritime spirit make the former distorts the latter, which deviate people from real maritime law. Correspondingly, the maritime law should be liberated and reducted from the private technique. By purification, the genuine maritime law can be reached. The unifying movement of maritime law will be brilliant again when these fetters broke.