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THE ROAD TOWARDS A SUSTAINABLE LEGAL ORDER —REFLECTIONS ON THE EVE OF THE 25TH ANNIVERSARY OF THE MACAU SAR

ABSTRACT: This article delves into the evolution and sustainability of Macau's legal order as it approaches the 25th anniversary of its establishment as a Special Administrative Region (SAR). It examines the intricate interplay between Portuguese colonial legacies and the Chinese sovereignty framework under the 'One Country, Two Systems' policy. The discussion begins with an analysis of Macau's legal status during the transitional period leading up to the 1999 handover, highlighting strategic governance measures aimed at preserving its unique socio-legal structure. The article further explores the challenges of legal reform, including the aging legal framework and the complexities of a bilingual legal order. It assesses the impact of legal education and professional development on the judiciary and legal professions in Macau, emphasizing the shift towards a more balanced and locally integrated system. Through a detailed examination of Macau's legal culture, the article illustrates the ongoing discourse and power dynamics shaping its legal identity. The study concludes with an epilogue that reflects on the future path of Macau's legal order, advocating for clear objectives, targeted improvements, and the importance of maintaining a bilingual legal framework to support the SAR's unique position as a bridge between East and West.

KEYWORDS: Macau legal order, Macau Basic Law, post-colonialism, legal culture, legal language, legal professions, discourse power, bilingual legal order, legal transplant, identity

I. INTRODUCTION

The historical fabric of Macau is intricately woven with the migratory patterns of people from Guangdong and Fujian provinces,¹ whose

* This paper should be considered a second edition of the work published in the *Academia Sinica Law Journal*, 2015, 17, with the title: 'The Road Towards a Sustainable Legal Order: in Search of the Rule of Law Ideal for "One Country Two Systems" in Macau within Post-Colonial Hybridity'. While the overall structure is retained, this edition should not be considered merely an English translation of the previous work; since many of the passages have been revised, truncated and updated.

¹ See Benjamim Videira Pires, 'Origins and Early History of Macau' in RD Cremer (ed), *Macau: City of Commerce and Culture* (2nd edn, API Press 1991) 7.

early settlements predate the formal establishment of Macau under the jurisdiction of Xiangshan County during the Ming and Qing Dynasties. This early phase of settlement laid the groundwork for the subsequent Portuguese colonization in the late Ming Dynasty, initiating a complex era of synarchy that distinctively shaped Macau's socio-cultural and legal evolution. Unlike other regions in China, Macau's 'quasi-colonial' experience endowed it with unique cultural characteristics, making it a sanctuary for Chinese nationals during the turbulent times of the late 19th century. Moreover, mainland China's consistent presence as the 'motherland' has distinguished Macau from other societies that have experienced European colonization throughout history.² This period of flux not only solidified Macau's identity but also set the stage for its transformation into the Macau Special Administrative Region (SAR) under the 'One Country, Two Systems' framework following its return to Chinese sovereignty.

Protected and governed by the Macau Basic Law, the SAR epitomises the successful implementation of a dual system that respects Macau's Lusophony legacy while integrating with China's broader socio-political framework. This unique administrative and legal stance positions Macau distinctly among former colonies that have transitioned to independence or reintegration with their sovereign states across Asia, Africa, and Latin America.³ The challenges and contradictions that emerge in Macau's post-colonial context are reflective of its complex historical and legal heritage,⁴

² The wave of anti-colonialism began in the 1930s. In the 1970s, Portugal began implementing a decolonization policy throughout its African colonies. Despite its recognition of the colonies' right to national self-determination and independence, Portugal had declared its intention of not treating Macau as a colony (in fact, it was the consensus reached between China and Portugal). For this reason, Macau was never granted the option of either national self-determination or independence, but the choice of returning to China during Portugal's gradual process of abandoning its colonies. See Zhihui He, *From Colonial Constitutional System to High Degree of Autonomy: On the 200-year Development of the Constitutional System in Macao* (One Country Two Systems Research Centre 2009) (何志輝:《從殖民憲制到高度自治:澳門二百年來憲制演進述評》,“一國兩制”研究中心2009年版).

³ Latin America is an illustration of the post-colonial paradigm: see Gayatri Chakravorty Spivak, 'Poststructuralism, Marginality, Postcolonialism and Value', in Diana Brydon (ed), *Postcolonialism: Critical Concepts in Literary and Cultural Studies Volume I* (Routledge 2000) 63–64.

⁴ The following statements to some extent reflect the post-colonial critical paradigm. 'In terms of legal culture as the foundation of the legal system, the foundation for the law of Macau has never been clearly identified since no independent legal culture has developed in Macau.' Jian Mi, 'See the Future of the Macau Legal System from Conflicts and Exchanges in the Chinese and Western Legal Cultures' (1994) 5 *The Jurist* 63 (米健:《從中西法律文化的衝突與交融看澳門法律制度的未來》,載《法學家》1994年第5期,第63頁).

Gengliang Xie believes, 'It will be difficult to improve both the law of Macau and Macau's development if the development of the law of Macau is dependent on the Portuguese legal culture.' The author also believes that aspects of the legal culture of Macau are still in the process of taking shape. This argument, of course, is also an appeal for identity: see Tong Io Cheng and Yanni Wu, 'Legal Transplants and the On-Going Formation of Macau Legal Culture', in Tong Io Cheng and Salvatore Mancuso (eds), *New Frontiers of Comparative Law* (LexisNexis 2013) 239–78.

which continues to influence its governance and legal reforms.⁵

Drawing on Edward W. Said's analysis in *Orientalism*,⁶ 'Macau's situation illustrates a profound discourse shaped by the interplay of various forms of power — political, intellectual, cultural, and moral. Said's insights into the dynamics of power and culture highlight how Macau's legal and administrative systems are not merely remnants of colonial rule but active fields where global and local influences converge and contest. The post-colonial discourse, in certain aspects also applicable to Macau, therefore, is a vibrant arena where historical narratives, legal complexities,

'Professor Li Xiaoping of the Macau University of Science and Technology's Faculty of Law pointed out that the existing laws of the Macau SAR — which were drafted in Portuguese and later translated into Chinese — belong to the category of 'foreign laws' as those in Hong Kong.' 'The existing laws in Macau are not truly Macau's own laws, but those from the outside.' Wong Wang Kang, 'Chinese Laws' Applicability in Macau: Difficulties and Outlook', in *Blue Book of Macau: Annual Report on Economy and Society of Macau (2013–2014)* (Macao Foundation and Social Sciences Academic Press 2014) 77 (黃宏耿:《中文法律在澳門的適用問題:困難與展望》,載吳志良、郝雨凡主編:《澳門藍皮書:澳門經濟社會發展報告(2013-2014)》,澳門基金會、社會科學文獻出版社2014年版,第77頁). 'For a long time, in the legislative and judicial fields of Macau, it has been emphasised that the Portuguese is "the strong language," while Chinese is "the weak language," which is contrary to the language state of the entire Macau society. As a result, there is a gap between the legal language and the language used in the society of Macau, which is also the main focus contradiction of the Macau society in terms of the official language issue.'

Leong Sok Man, 'On the Official Languages of the Macao SAR: from the SFG Discourse Analysis Perspective' (2012) 3 Academic Journal of 'One Country, Two Systems' 34, 39 (梁淑雯:《論澳門特別行政區的正式語文——以功能語篇分析為切入點》,載"一國兩制"研究2012年第3期,第39頁). 'Commanded by the Macau Basic Law, the legal system of the Macau SAR is a brand new legal system of the "One Country, Two Systems" policy, its structure, operation, characteristics, and impact have not only tremendously transcended the original format before the return, but also have created the new reality allowing the complementary advantages of both Chinese and Western legal systems. Another point that must be stressed is that the law of the Macau SAR at the macrolevel also constitutes a special type of connotation of the socialist legal system with Chinese characteristics. Its existence absolutely has not diluted Chinese characteristics, but has actually strengthened the originality of Chinese characteristics. It can never deny the socialist system. Instead, it has provided a realistic illustration for its innovation in the new reality.' Leong Wan Chong, 'On the Scientific Orientation and Timely Improvement of the Legal System in Macao SAR', in Leong Wan Chong (ed), *'One Country Two Systems' and the Improvement of Macao Legal System* (academic conference proceedings) (One Country Two Systems Research Centre 2013) 24 (楊允中:《論澳門特區法律體系的科學定位與適時完善》,載楊允中主編:《"一國兩制"與澳門法律體系完善(學術研討會論文集)》,"一國兩制"研究中心2013年版,第24頁).

'I am afraid that the so-called existence of the legal system of Macau, in a sense, will mostly be specified on paper and verbally publicised without any existence of a dynamic entity with sustainable development. It is no wonder that it must be packaged in a certain form of coat through the use of the Portuguese language.' Chang Xu, 'On the Existence of the Legal System of the Macao SAR and the Role of Core Legal Basis', in Leong Wan Chong (ed), *'One Country Two Systems' and the Improvement of Macao Legal System* (academic conference proceedings) (One Country Two Systems Research Centre 2013) 89 (許昌:《論特區法律體系存在和發揮功效的核心法理基礎》,載楊允中主編:《"一國兩制"與澳門法律體系完善(學術研討會論文集)》,"一國兩制"研究中心2013年版,第89頁).

⁵ According to Robert JC Young, the post-colonial studies scholar, the term 'post-colonial period' represents a tribute to the historical achievements of resisting colonial empires. Paradoxically, it also shows that many basic power structures have not been substantially changed in the later social conditions. Robert JC Young, *Postcolonialism: An Historical Introduction* (Blackwell Publishing 2001) 59.

⁶ Edward W Said, *Orientalism: Western Conceptions of the Orient* (Penguin Books 1985).

and cultural identities are continuously constructed and contested. This dynamic is particularly evident in the legal realm, where Macau's system serves as a crucible for the tensions and harmonisations between traditional Chinese legal practices and European legal influences.

This scholarly inquiry delves deep into the layers of Macau's legal ecology, scrutinising the influence of Portuguese legacies, the challenges of legal integration, and the ongoing evolution of its legal identity in the post-colonial era. By situating Macau within the broader discourse of post-colonial studies, this work acknowledges its own theoretical stance rooted in critical legal theory and post-colonial critique, aiming to contribute nuanced insights into the complex interplay of law, power, and identity in Macau's ongoing development as a SAR.

II. THE SONG OF SUNSET—THE PORTUGUESE BLUEPRINT AND THE STATUS QUO OF THE MACAU SAR

A. *Overview*

From 1986 to 1999, Macau found itself at a pivotal juncture following the signing of the Sino-Portuguese Joint Declaration. This period was marked by strategic governance efforts aimed at preserving Macau's unique socio-legal framework, ensuring stability, and preparing the region for a smooth transition under the 'One Country, Two Systems' principle. The Portuguese government meticulously crafted plans to maintain the continuity of Macau's legal and cultural identity, which were deemed essential for its future stability and prosperity.

One of the earliest and most representative descriptions of these plans can be found in a report by Alberto Costa, the head of the Gabinete dos Assuntos de Justiça during the Portuguese administration of Macau. This report, submitted to Manuel Magalhães e Silva, then the Secretário Adjunto para os Assuntos de Justiça in 1989, is referred to as the Costa Report in this paper. The Costa Report was subsequently published in full.⁷

This strategic governance was crucial in preventing the disintegration of Macau's socio-legal infrastructure, which could have led to a governance vacuum akin to those experienced by other former colonies post-independence. The objective was clear: to ensure a seamless

⁷ Alberto Costa, 'Contributo para a Definição de uma Política do Direito para Macau à Luz de Outras Experiências de Raiz Europeia na Região (1.a Parte)' (1995) 2 *Revista Jurídica de Macau* 33; Alberto Costa, 'Contributo para a Definição de uma Política do Direito para Macau à Luz de Outras Experiências de Raiz Europeia na Região (2.a Parte)' (1995) 3 *Revista Jurídica de Macau* 7.

transition by preserving a stable and functional legal system that reflected Macau's hybrid cultural identity while being compliant with overarching Chinese sovereignty.

B. Defining the Status Quo of the Law of Macau during the Transitional Period

The Costa Report drew critical insights from the post-colonial trajectories of the Philippines, Sri Lanka, Goa, and Singapore. His analysis underscored the rapid dissolution of the Portuguese influence in Goa post its annexation by India, a scenario he was keen to avoid in Macau. This historical reflection was instrumental in shaping a proactive legal strategy aimed at preserving the integrity and continuity of Macau's legal practices. The Costa Report advocated for a well-defined legal status quo that would maintain legal continuity while integrating reforms that catered to the evolving socio-political landscape of Macau under Chinese sovereignty. His recommendations were prescient, emphasizing the need to reinforce legal frameworks to support the enduring presence of Portuguese legal doctrines, thereby ensuring their relevance in the new administrative context.

Before any serious projection can be made, a clear description of the status quo is a prerequisite. For this purpose, and according to the Costa Report, the Status Quo of Macau Law can be characterised as the following:

1. Classification of Macau's Legal System

Macau's legal system falls under the civil law or continental law tradition, similar to those of European countries such as Germany and France. This classification underscores the stark differences between Macau's legal order and that of common law jurisdictions like the United States and the United Kingdom. Notably, Macau's legal framework shares a special historical and practical relationship with Portuguese law, characterised by the use of Portuguese as the official language and reliance on Portuguese legal literature.

2. The Aging Legal Framework

During the transitional period leading up to Macau's handover to China, many of the legal codes in use were relics from the late 19th and early 20th centuries, rendering them outdated. While Portugal had updated its own legislation, Macau lagged, leading to a legal framework that did not align with contemporary realities.

3. Challenges in Legal Reform

Several factors contributed to Macau's failure to modernise its legal system during the transitional period. The Costa Report highlighted the

stringent constitutional limitations on Macau's legislative powers and the region's insufficient local legislative capabilities. Additional challenges included:

- (a) A shortage of judicial talent;*
- (b) Limited academic commentary and review;*
- (c) A small legal market with close-knit relationships hindering transparency;*
- (d) Issues of linguistic fragmentation and an isolated legal culture;*
- (e) A low threshold for entry into the legal profession.*

C. Future Projections and Strategies

1. Predictions by the Portuguese Government

As entrusted by the Macau Portuguese Government, Costa proceeded to assess the future of Macau's legal system, predicting three possible outcomes:

- (a) Replacement by the mainland Chinese legal system;*
- (b) Replacement by the Hong Kong legal system;*
- (c) Preservation of the Portuguese legal system.*

Despite a prevailing pessimism among Portuguese legal professionals about retaining their legal system post-handover, Chinese legal scholars in Macau were more optimistic, encouraging proper preparation for the transition.⁸

2. Objectives and Strategies for Legal Continuity

After reviewing the situation, problems and crises of Macau's legal order during the transitional period, the Costa Report proposed two major objectives (with subsequent strategies and specific measures) for the Macau Portuguese Government:

- (a) Implement the Sino-Portuguese Joint Declaration to ensure the continuity of Portuguese laws after the establishment of the Macau Special Administrative Region (SAR).*
- (b) Ensure that Portuguese legal culture supports a high degree of autonomy in Macau.*

To achieve these objectives, Costa recommended seven strategies and four specific measures:

- (a) Promote external exchanges;*
- (b) Integrate the Chinese language into legislation, courts, legal education, and the legal profession;*
- (c) Implement reforms in line with the Sino-Portuguese Joint Declaration;*
- (d) Ensure equal treatment for Macau's residents;*
- (e) Popularise legal research and knowledge;*
- (f) Encourage grassroots legal development;*
- (g) Enhance legal awareness among citizens.*

Specific measures included:

- (a) Bilingual publication of legal texts;*
- (b) Cooperation with Europe and promotion of Macau's legal characteristics;*
- (c) Collaboration with Portuguese-speaking countries;*

⁸ Mi (n 4) 63.

(d) Establishment of institutions to review legal qualifications, inspired by models like Singapore's Committee on Legal Education and Studies.

D. Implementation and Impact Assessment

1. Will Portuguese law continue to exist after the establishment of the Macau SAR?

The Portuguese law applicable to Macau was a product of specific historical and political contexts, essentially a manifestation of quasi-colonialism. With the end of the Portuguese rule and the establishment of the Macau SAR, the ceremonial Portuguese law could no longer remain in force. During the transitional period of over a decade, the entire legal system operated in Portuguese, and both the government and judiciary operated primarily in Portuguese. Consequently, Portuguese scholars were concerned that Macau might face a situation similar to Goa. However, this did not happen due to the collective efforts of all involved parties. The status of the Macau SAR has far exceeded the best outcomes anticipated by the Portuguese during the transitional period.

On the eve of Macau's return, all important laws had been translated into both Chinese and Portuguese. The five major codes — the Penal Code, the Criminal Procedural Code, the Civil Code, the Commercial Code, and the Civil Procedural Code — had been updated. This successful achievement allowed these laws to be 'affirmed' and 'transformed' by the *Lei de Reunificação* in accordance with Article 8 of the Macau Basic Law during the establishment of the Macau SAR, thus becoming part of the SAR's laws. According to government statistics, over eleven hundred laws and regulations were transferred at that time.¹⁰

Had the timely modifications and bilingual versions of these major

⁹ Since the early 20 century, the Macau Portuguese Government had noticed the need to organise the laws and regulations already enacted systematically, and had entrusted the task to Jaime Robarts. Robarts used October 5, 1910 as his starting date and completed the work in 1940. The then Government Printing Bureau published the list in the format a book titled *Relação da legislação emanada da Metrópole desde 5-10-1910 ATÉ 30-9-1940*. It was later updated in 1948, 1955, and 1970 respectively. Thus, there are a total of four editions. The final edition published in 1970 contains more than 6,000 pieces of law and regulation. Jaime Robarts, *Relação da Legislação Emanada da Metrópole desde 5-10-1910 até 31-10-1970* (4th edn, Imprensa Nacional 1970) 11–301.

¹⁰ This figure comes from *Acto Legislativo e Regulamento, Administrativos da R.A.E. de Macau em Vigor*, a book published by Gabinete para os Assuntos do Direito Internacional (GADI) in 2002. The book listed all laws still in force in Macau SAR in 2002, including 'laws' (390), 'decree-laws' (680), 'administrative regulations' (921), 'legislative diplomas' (199) and 'provincial decrees' (7). According to the person in charge of GADI, the list published in 2002 was revised based on the list made by the former Gabinete para os Assuntos Legislativos (GAL) before the return in 2000. Both were highly consistent. In fact, GAL's list was used by the National People's Congress Standing Committee of the People's Republic of China when formulating *Lei de Reunificação* (Law No. 1/1999). In other words, all laws previously in force in Macau mentioned by the Macau Basic Law in principle refer to the laws and regulations on this list. Jorge Oliveira, 'Nota de Abertura' in *Acto Legislativo e Regulamento Administrativos da R.A.E. de Macau em Vigor* (Programa de Cooperação na Área Jurídica Entre a União Europeia e Macau 2002) 7–8.

codes not been implemented, the smooth legal transition would have been much more doubtful. However, the swift integration of Portuguese laws into Macau's legal system was not solely the result of the Macau Portuguese Government's will; it was the most advantageous option for all parties involved at the time.

2. Has Portuguese legal culture become a pillar of Macau's high degree of autonomy?

In relation to the achievement of the second objective — whether Portuguese legal culture has become a pillar of Macau's high degree of autonomy — evaluation is not as straightforward as in the case of the first objective. The concept of culture is highly variable and inclusive,¹¹ making it difficult to determine the exact impact of Portuguese legal culture in this context.

Legal culture encompasses more than the mere use of Portuguese legal texts and precedents. It involves the broader influence on legal education and practices. Historical records indicate that Portuguese legal works and precedents have indeed become references for Macau's legal professionals.¹² Affirmed by the Lei de Reunificação, the Portuguese laws previously in force became the foundation for Macau's legal system.

The interpretation of legal texts is inherently tied to historical context, meaning that Portuguese legal culture continues to influence Macau's legal society. Legal education in Macau frequently uses Portuguese legal works, and courts reference both Portuguese legal works and precedents.¹³ However, as new participants and elements join the legal culture, it evolves, adding new dimensions while diluting historical images over

¹¹ The concept of culture itself is constantly changing: '... the concept of culture is highly variable and extremely inclusive ... because of the multiplicity of its referents and the studied vagueness with which it has all too often been invoked.' Anthony Townsend Kronman, 'Precedent and Tradition' (1990) 99 YLJ 1029, 1065; Mark Van Hoecke, *Epistemology and Methodology of Comparative Law* (Bloomsbury Publishing 2004).

¹² The author has on numerous occasions stated that if there is still some rationality in the legal profession and if legal study can still be considered an academic subject, then the interpretation of legal texts can never be arbitrary. Tong Io Cheng and Yanni Wu, 'Legal Transplants and the On-going Formation of Macau Legal Culture' (2011) 1 *Isaidat Law Review* 619; Tong Io Cheng, 'Legal Science, Legal Education and the Formation of Macau Lawyers' in Dezong Tang and Qi Zhong (eds), *Cross-Strait Four-Region Law Developments in Taiwan, China, Hong Kong, and Macau in 2010* (Institutum Iurisprudentiae Academia Sinica, Taiwan 2011) 231 (唐曉晴:《法學、法學教育與澳門法律人的養成》,載湯德宗、鍾騏主編:《2010 兩岸四地法律發展》,台灣中央研究院法律學研究所 2011 年版,第 231 頁以下)。

¹³ Nevertheless, there is already research showing that the Macau Courts went to the other extreme in citing Portuguese legal doctrine, namely quoting Portuguese legal works with 'inadequate persuasive power, unclear scope of doctrine citation, and lengthy and unfocused content'. See Qiang Zhang, 'Judicial Practice in Macau: Reinforcing Reasoning with Legal Doctrine' (2023) 4 *Hong Kong and Macau Journal* 14 (張強:《司法裁判援引法律學說說理的澳門實踐》,載《港澳研究》2023 年第 4 期,第 14 頁以下)。

time.

3. *Using Chinese in all aspects of the law*

Using Chinese in all aspects of Macau's legal system was a goal of the Portuguese government before the handover. However, the evaluation of its implementation should end with Macau's return. Since then, the use of Chinese in the legal field has been slow, despite the majority of the population being Chinese speakers. After Macau's return, the necessity of using Chinese in all spheres of society, including law, became evident. Even without significant effort from the Macau Portuguese Government, the establishment of the Macau SAR naturally led to the increased use of Chinese in the legal field and other areas.

4. *Legal education*

Macau's legal education began in 1988 when the Macau Portuguese Government established the Bachelor of Law Degree in Portuguese at the University of East Asia (the predecessor of the University of Macau). This occurred just a year after the signing of the Sino-Portuguese Joint Declaration, highlighting the urgency of legal education in Macau.

In 1991, the University of East Asia was renamed the University of Macau, and its law programme was restructured into the Faculty of Law, following the model of Portuguese law schools. Initially, the faculty was predominantly Portuguese, using Portuguese law textbooks and teaching in Portuguese. The student body was mostly Portuguese or of Portuguese descent, with a few Portuguese-speaking Chinese residents and students from Portuguese-speaking countries.¹⁴

In 1993, the Faculty of Law began offering a Master of Law Programme in Portuguese, focusing on both private and public law. However, the programme had limited admissions and few graduates. To increase access for Chinese residents, the Faculty established a Bachelor of Law Programme in Chinese in 1996 (evening) and 2000 (daytime). These initiatives significantly increased the number of Chinese legal professionals in Macau.

By 2001, the Faculty began offering a Master of Law Programme in Chinese, later expanded to include undergraduate recruitment from mainland China. In 2003, the school introduced a Master of Law in European Union Law, International Law, and Comparative Law in English. In 2006, a Master of Law in International Business Law in

¹⁴ Such as students from Portuguese-speaking countries in Africa or East Timor. Gaolong Liu, 'The Strengthening of Higher Education in the Science of Law with Macau Characteristics' (2007) 40 *Journal of Macau Studies* 128, 128–29 (劉高龍: 《努力辦好具有澳門特色的高等法學教育》, 載《澳門研究》2007年總第40期, 第128–129頁).

English was also established. In 2007, the Faculty introduced a Doctoral Degree in Law in Chinese, Portuguese, and English.

The first private university after the establishment of the Macau SAR, the Macau University of Science and Technology also established a Faculty of Law offering Bachelors, Masters, and Doctoral Degrees. This expansion of legal education institutions and programmes has significantly increased the number of people studying law in Macau.

The City University of Macau established its School of Law in 2014 and has been offering a master's degree programme in Law since 2015. The programme, taught in Chinese, includes four specialised fields: Constitutional Law, Basic Law and Administrative Law; Comparative Criminal Law; Comparative Civil Law; and International Commercial Law.

By March 2024, the Faculty of Law at the University of Macau had successfully trained over 1,952 graduates to Bachelor of Laws level, including 357 from the Portuguese language programme and 1,595 from the Chinese language programme. Additionally, the Master's degree programmes had produced nearly 1,382 graduates, while the Doctoral degree programs had produced 111 graduates. Furthermore, the faculty had awarded postgraduate certificates or diplomas to 694 individuals.

5. Judicial and Legal Professional Development

Macau's judiciary was traditionally staffed by Portuguese judges. However, following the handover, concerted efforts were made to include more Chinese judges, resulting in a more balanced judiciary. By 2024, the judiciary had expanded significantly, evolving through several generations, with the majority of magistrates (judges and prosecutors) being Chinese.

The framework of legal practitioners also experienced substantial changes. Regulations introduced in 1992¹⁵ allowed for the local qualification of lawyers, breaking the previous monopoly held by Portuguese-trained lawyers. By 2024, the number of legal practitioners had increased from fewer than one hundred to 400. Chinese nationals had surpassed their Portuguese colleagues in number, and for the first time, in 2023, the presidency of the Macau Lawyers Association was held by a Chinese national.

6. The publication of legal literature

¹⁵ The Official Gazette n° 48 of 30 November 1992 formally published the regulations on access to legal practice in Macau.

The history of modern higher education in Macau is relatively short, beginning in the 1980s. As a result, local legal publications have also had limited development.¹⁶ Legal literature is defined as published materials that identify, describe, discuss, analyse, and critique the law.¹⁷ Despite the empirical nature of legal literature, Macau has produced a substantial body of work, particularly since its return to Chinese sovereignty.

Since the 1980s, legal publications in Macau have included law journals, academic works, and other legal materials. The University of Macau's Faculty of Law has played a significant role in producing legal literature, translating Portuguese materials into Chinese, and publishing works specific to Macau's legal system. Other institutions, such as Fundação Macau and the Legal and Judicial Training Centre, have also contributed to this effort.¹⁸

Macau's first systematically published law journal was the *Revista Jurídica de Macau*, founded in 1988. Later renamed the Macau Law Journal, it is now managed by the Law Reform and International Law Bureau. The second specialised law journal, *Perspectivas do Direito*, was founded in 1996 and managed by the Legal Affairs Bureau after Macau's return.

The Faculty of Law at the University of Macau (UM) also started publishing the *Boletim da Faculdade de Direito* in 1997. In 2006, the Institute for Advanced Legal Studies at the UM Faculty of Law began publishing the Chinese journal *The Series Book of Legal Science*, later renamed the *Macau Law Review*.

In addition to these journals, other organizations, such as the Associação de Estudos Jurídico de Hou Kong and Fundação Rui Cunha, have published specialised law journals. Despite the limited number of professional academic journals, there are numerous publications on

¹⁶ Zhiliang Wu, 'The History and Current Conditions of Macau's Social Science Journals' (2008) 82 *Administração: Revista De Administração Pública De Macau* 903, 904 (吳志良:《澳門社會科學期刊的歷史與現狀》,載《行政:澳門政府雜誌》2008年總第82期,第904頁).

¹⁷ Peter Wesley-Smith, who once taught at the Faculty of Law of the University of Hong Kong, stated that published materials that can help identify, describe, discuss, analyse, and critique the law can all be referred to as legal literature. Peter Wesley-Smith, 'The Concept of A National Legal Literature' in William Twining and Jenny Uglow (eds), *Legal Literature in Small Jurisdictions* (Commonwealth Secretariat 1981) 7, 10; Peter Wesley-Smith, *Legal Literature in Hong Kong* (Centre of Asian Studies, University of Hong Kong 1979) 39.

¹⁸ A study published in 2010 pointed out that during the decade since Macau's return, there had been 263 local or foreign publications on the law of Macau, including 24 legal periodicals (nine bulletins, eight law journals, and two annual work reports and plans) and 143 academic works. Guoqiang Wang, 'Conditions and Analysis Concerning Legal Publishing of Macau during the Decade since the Return' (2011) 3 *Revista de Ciência Jurídica de Macau* 93 (王國強:《回歸十年來涉及澳門法律範疇的圖書出版狀況與分析》,載《澳門法學》2011年第3期,第93頁以下).

general law and political and legal affairs.¹⁹

The establishment of legal education programmes and the publication of legal literature have significantly contributed to the development of Macau's legal system, providing valuable resources for legal professionals and ensuring the continuous evolution of Macau's legal culture.

E. Conclusion

During the transitional period, the Macau Portuguese Government set clear objectives for the preservation and development of Macau's legal system. Through a combination of legislative updates, educational initiatives, and professional development, these objectives have largely been achieved.²⁰ Today, Macau's legal system is well-established, bilingual, and reflective of both its Portuguese heritage and its integration into the Chinese legal framework.²¹

III. THE CURVED SPACE-TIME—THE CONFUSION OF THE 'SCENES' AND 'DISCOURSE CONSTRUCTORS' OF MACAU'S LEGAL CULTURE

A. Introduction

The concept of space-time²² in physics metaphorically illuminates the complexities of legal culture in Macau, especially when influenced by

¹⁹ Revista do Ministério Público de Macau, Jornal da Associação da Justiça e da Procuradoria de Macau, Law and Culture, Bulletin of Associação de Divulgação da Lei Básica de Macau, Diário da Assembleia Legislativa da Região Administrativa Especial de Macau, Know More about the Law, Conhecer e Divulgar a Lei Básica, Boletim do Ministério Público, Labor Laws in Comic Strips, Boetim do GPDP, Bulletin of Gabinete para a Protecção de Dados Pessoais (Office for Personal Data Protection), Tribunais da Região Administrativa Especial de Macau, Relatório de Trabalho do Ministério Público (Report on the Work of the Public Prosecutions Office of Macao SAR).

²⁰ The achievement of such objectives is only possible with dedicated individuals consistently performing their duties during and after the transition period. In this regard, the name of Manuel Trigo should be remembered for his unwavering effort in establishing and developing the first Faculty of Law in Macau and for his 21 years of leadership in the training of magistrates.

²¹ This is also why the author has, in an interview, pointed out the tremendous achievements in the construction of the Macau legal order. Qiangkui Qu and Weien Wu, 'Tremendous Achievements in the Construction of the Macau Legal Order — Interview with Tong Io Cheng, Member of the 4th Legislative Assembly of Macau' China Trade News (Beijing, 18 October 2010) (曲强奎、吳偉恩:《澳門法制建設成就巨大——訪澳門第四屆立法會議員唐曉晴》, 載《中國貿易報》2010年10月18日); Some scholars have also responded to this assertion, such as Liu Baosan's statement in a recent paper: 'It should be noted that the achievements in the construction of the Macau legal order have been great since a relatively complete legal system has been formed.' Baosan Liu, 'Thoughts on Improving the Legal System of Macau' in Ieong Wan Chong (ed), 'One Country Two Systems' and the Improvement of Macao Legal System (academic conference proceedings) (One Country Two Systems Research Centre 2013) 66 (劉寶三:《關於完善澳門法律體系的幾點思考》, 載楊允中主編:《“一國兩制”與澳門法律體系完善(學術研討會論文集)》, “一國兩制”研究中心2013年版, 第66頁).

²² In a universe devoid of mass, space-time would be flat, and objects would travel in straight lines, following Euclidean geometry. However, the presence of mass or energy warps this geometry, resulting in curvature: see Richard Wolfson, *Simply Einstein: Relativity Demystified* (W. W. Norton & Company 2003).

significant mass or energy — here, the socio-political forces. Macau's legal culture, much like space-time in the presence of mass, bends around the influences of its colonial Portuguese heritage and Chinese sovereignty, creating a unique trajectory in legal and judicial norms.

Professor António Hespanha, a prominent European Legal Historian and former faculty member at the University of Macau, did not directly address Macau's legal culture in his work *Panorama da História Institucional e Jurídica de Macau*. He referred to the 19th-century law of Macau as 'legal and judicial pluralism,' highlighting the diverse origins of legal norms and the multiplicity of judicial and arbitration powers.²³ In his legal history lectures at the UM Faculty of Law, Professor Hespanha covered both ancient Chinese legal thought, particularly Confucian principles, and the existing Portuguese legal structures in Macau.²⁴

Professor Hespanha's ambivalence towards the term 'legal culture' likely reflects his perception that Macau lacks a distinct local legal culture.²⁵ This view aligns with the policy objective cited in Costa's report to preserve Portuguese legal culture, a stance more comprehensible within a post-colonial context. Conversely, Chinese scholars have expressed varied views on Macau's legal culture.²⁶ In 1994, Professor Mi Jian asserted that, 'Macau has never formed an independent legal "culture"'.²⁷ Sun Tongpeng in 1998 sought to find a 'matching point between the Portuguese legal culture and traditional Chinese culture.'²⁸ Xie Gengliang argued that 'Macau has no reasonable basis for the existence of the Portuguese legal culture'²⁹ and advocated the development of a

²³ Hespanha AM, *Panorama da História Institucional e Jurídica de Macau* (Fundação Macau 1995).

²⁴ Hespanha AM, *Panorama Histórico Do Direito Chinês. Versão dactilografada* (University of Macau 1994).

²⁵ In fact, he published a book on the European legal culture, coherently analysing the European culture of a thousand years according to the division of modern characteristics: António Manuel Hespanha, *Cultura Jurídica Europeia—síntese de um milénio* (Almedina 2012).

²⁶ Glenn Timmermans, 'Sir George Thomas Staunton and the Translation of the Qing Legal Code' in Macau Ricci Institute (ed), *Culture, Law and Order: Chinese and Western Traditions* (Macau Ricci Institute 2007) 201; Jianfu Chen, 'Civil Codification, Foreign Influence and Local Conditions in China: Towards China's Own Civil Code?' in Macau Ricci Institute (ed), *Culture, Law and Order: Chinese and Western Traditions* (Macau Ricci Institute 2007) 221.

²⁷ Mi (n 4) 63.

²⁸ Tongpeng Sun, 'New Thought on the Localization of Macau's Laws' (1998) 42 *Administracao: Revista De Administracao Publica De Macau* 1157 (孫同鵬:《澳門法律本地化的新思考》,載《行政:澳門政府雜誌》1998年總第42期,第1157頁以下).

²⁹ Gengliang Xie, 'Legal Transplant, Legal Culture, and Legal Development — Critique of the Status Quo of the Law of Macau' in Jian Mi (eds), *Legal Reform and Legal Development in Macau* (Social Sciences Academic Press 2011) 131, 139 (謝耿亮:《法律移植、法律文化與法律發展——澳門法現狀的批判》,載米健主編:《澳門法律改革與法制建設》,社會科學文獻出版社2011年版,第131、139頁).

local legal culture.³⁰ These diverse perspectives emphasise the emerging subjectivity of Macau's legal culture. This appeal reminds the author of the *emancipação* system described in Article 120 of the Civil Code.

The differences in these views stem from varying definitions of legal culture. If legal culture is seen as requiring unique spiritual or intellectual qualities, Macau's legal culture might be seen as lacking. However, if legal culture is defined more broadly as a way of life encompassing legal practices, then Macau does possess a legal culture. This broader definition includes both idealistic (philosophical) and realistic (practical) perspectives on legal culture.

From a theoretical history standpoint, the idealistic legal culture links the legal system with the nation's spirit, as seen in Montesquieu's *The Spirit of Laws* and Savigny's *Of the Vocation of Our Age for Legislation and Jurisprudence*.³¹ Professor Mi Jian's concept aligns with this tradition, emphasizing the national culture's unique historical development.³² Conversely, the realistic legal culture, as described by Professor Xie Gengliang, involves the practical application of law by professionals and the public's engagement with legal processes.

In this respect, Professor Xie's critique of the Portuguese legal culture in Macau rests on several points:

1. Demographics: Over 90% of Macau's residents do not understand Portuguese, isolating them from the legal system;³³
2. Economic Associations: Portugal's limited economic ties with Macau offer little benefit compared to closer associations with mainland China, the United States, Japan, Hong Kong, and Taiwan;
3. Modernity: Portugal's legal system is not advanced, hindering Macau's legal and developmental progress;³⁴
4. Functional Interpretation: The reliance on Portuguese legal literature for interpreting Macau's laws is seen as unnecessary.³⁵

These arguments suggest that retaining the Portuguese legal culture provides no benefit, and that its removal would cause no harm. The focus of the discourse constructors of Macau's legal culture may not be on argument but on deconstruction and appeals.

³⁰ Tong and Wu (n 12) 650.

³¹ Savigny fully expressed the core concept that law originates from the spirit of the nation in this book. Just as he said, the law does not exist independently; rather, from a certain perspective, the essence of the law is human life itself. See Friedrich Carl von Savigny, 'Vom Beruf Unsrer Zeit für Gesetzgebung und Rechtswissenschaft' in Friedrich Carl von Savigny, *Politik und neuere Legislationen: Materialien zum 'Geist der Gesetzgebung'* (Hidetake Akamatsu and Joachim Rückert eds, Vittorio Klostermann 2000) 240.

³² Mi (n 4) 65.

³³ *ibid.*

³⁴ Xie (n 29) 136.

³⁵ Tong Io Cheng, 'Linguistic Pluralism and the Legal System of Macau' (2020) 7 *Journal of International and Comparative Law* 183.

Nevertheless, our primary concern is that the first thing to be deconstructed is Macau's legal culture itself. The inquiry into the legal culture of Macau also probes the differences between Macau's law and other laws, especially those of neighbouring regions or those with various associations with Macau. If we adopt the concept of legal realism by viewing legal culture as influential discourse literature, then the inquiry into Macau's legal culture means probing the literature affecting the interpretation of Macau's laws.

Regardless of which particular investigation is selected, they all involve the issue of identity and sameness. Identity is the basis of a rhetorical appeal, while sameness is a formal expression of the definition.³⁶ Distinguishing sameness is not easy in social phenomena, because of the role of rhetoric. Macau's law is the law that belongs to Macau. As long as Macau's law is in effective use, there will naturally be a legal culture of Macau. However, it is necessary to consider whether Macau has remained unchanged before and after the return. Macau has had different laws in different contexts that have produced different legal cultures. Like the legendary Ship of Theseus, what must remain unchanged to avoid completely replacing Macau itself? Which components are essential and which merely contingent? If Macau now is not the same as in the past, and the current legal culture is not the same as in the past, does the current legal culture really have nothing to do with the past?

The point that Macau's legal system is inherited from the Portuguese legal system is not disputable. Some critics believe that Macau's law has not developed although Portuguese law has. Consequently, Macau's law has lagged behind its Portuguese counterpart:

In the past decade after Macau's return, our legal system has not made corresponding adjustments according to the actual social development of the SAR. It has been out of touch with the SAR's development, especially the criminal law system, as the codes currently in force, both procedural and substantive laws, are still those enacted more than ten years ago — a fact quite rare in the world. Some friends from the Portuguese legal field have told me that in the recent decade, the pace of legal modernization in countries with the civil law tradition of the Continental European legal system has accelerated. They have developed various new means of litigation and dispute settlement methods, leaning towards simplified litigation proceedings and non-judicial settlement channels. Macau has seen little progress in this area. Therefore, it might be possible that one must come to the Macau SAR if one

³⁶ The notion of sameness or identity had already attracted the attention of theologians and philosophers as early as the Middle Ages. The invariant mass and the perpetual passage of time had been the standard used, but both were problematic. The ancient tale of Theseus's Ship may be most famous illustration of this issue. In the legend, Theseus had a small ship made of old planks and material. Suppose the ship had been used for a long time and was in need of some repairs. During the repair process, efforts began to replace the original old planks and material one by one. Was the ship still the same as the original one? If not, at what point did it become a different ship?

wishes to study Portuguese legal history a few years later.³⁷

After deconstructing Macau itself, even the main body of the legal culture may also be deconstructed:

It is now a commonplace in the anthropological and sociological literature that the concept of culture is highly variable and extremely inclusive ... because of the multiplicity of its referents and the studied vagueness For example, culture would include everything and the kitchen sink ... it would be constituted by '*n'importe laquelle manière d'agir*.' The concept of culture exists as a means of differentiation, providing a description of differentiating human groups. It is thus a descriptive concept.

Yet its shortcomings become evident when it is over-inclusive. Thus, 'in explaining societies in terms of their cultures, it refuses to distinguish between fundamental elements of human activity'.³⁸

If the phrase 'No benefit created if retained, no harm caused if abandoned' stands, then there is nothing to pity about this deconstruction. The real issue is how to reconstruct it after the deconstruction.

B. Macau's Legal Culture in Discourse

The discourse surrounding Macau's legal culture reflects its complex post-colonial hybridity. The Portuguese, confident in their legal culture before the handover, were untroubled by questions of Macau's legal identity. However, current discourse constructors face confusion, debating whether Macau ever had an independent legal culture.³⁹

These debates highlight a significant shift from the perceived homogeneity of legal thought under Portuguese influence to a fragmented and diverse exploration of what constitutes Macau's legal culture. This transition is not merely academic; it reflects deeper socio-political changes and the quest for a localised identity that aligns with the broader national framework under Chinese sovereignty. Critics' conceptual frameworks heavily influence their views on Macau's legal culture. If legal culture is defined by unique intellectual qualities, Macau's legal culture might be seen as lacking. However, if it encompasses practical legal life, then Macau undoubtedly has a legal culture shaped by its unique circumstances.

³⁷ Tian Lu, 'Controversy Continues with Lots of Resistance' *Jornal Va Kio* (Hong Kong, 22 October 2009) 11 (陸天:《爭議依舊,阻力不少》,載《華僑報》2009年10月22日,第11版); Naxin Xie and Zhendong Zheng, 'The Legal System Still Unadjusted for Social Development, Sam Hou Fai Expects Timely Legal Reform in the SAR' *Macao Daily News* (Macao, 22 October 2009) B01 (謝納新、鄭振東:《主體法律制度未與社會發展相應調整 岑浩輝冀特區法制適時革新》,載《澳門日報》2009年10月22日,第B01版)。

³⁸ The text is directly quoted from Mark Van Hoecke, *Epistemology and Methodology of Comparative Law* (Bloomsbury Publishing 2004).

³⁹ Prominent Chinese scholars during the transitional period expressed scepticism about the existence of an independent Macanese legal culture. For instance, Jian Mi in 1994 and Tongpeng Sun in 1998 argued against the viability of a stand-alone Macanese legal culture, advocating instead for a synthesis of Portuguese legal traditions and Chinese cultural values. Gengliang Xie later contested the relevance of Portuguese legal culture in Macau, suggesting the development of a localised legal culture that resonates more closely with the residents' socio-cultural realities.

C. The Contemporary Discourse Constructors of Macau's Legal Culture

1. Who is making the discourse? The self-other confusion

The hybridity of post-colonial discourse complicates the search for identity among discourse constructors. A young scholar once correctly noted the complex destiny of regions like Macau and Hong Kong, highlighting their unique historical and political contexts.⁴⁰

Portuguese legal scholars often emphasise the continuity and European roots of Macau's legal system. Conversely, Chinese legal scholars and local professionals advocate for a legal culture that reflects Macau's unique identity and circumstances.

Although Macau has inherited its legal system from Portugal, Macau's society is not a Portuguese society and the Macau Basic Law at the pinnacle of Macau legal order is also not the constitution of Portugal. However, it is an indisputable fact that the new legal culture of the SAR has inseparable ties with the SAR's original legal culture due to its history. The legal system of the Macau SAR is also different from the legal system in mainland China or even that of Hong Kong. Thus, the legal professionals in Macau have been looking forward to developing a form of 'legal culture of their own with unique characteristics'. Based on the realistic perspective of legal culture, one can also consider that Macau in fact has a legal culture before the characteristics can be manifested. This is the dispersed existence of elements mentioned above. Such dispersed and fragmented 'culture' itself is certainly not conducive to social integration.

More likely, the lack of identification with the legal culture (and other cultures related to laws which will be analysed in more detail in the section below) may also lead to the lack of identification socially or even fragmentation. For example, Macau residents of Chinese nationality might think that Portuguese people and other foreigners are all outsiders. However, residents born in Macau might also consider all foreign-born residents are outsiders. Moreover, people speaking the Cantonese dialect probably do not identify with people who speak other dialects, just like the speakers of the Minnan dialect, who might not identify with those speaking the Guangdong dialect. There is even internal division among the Cantonese-speaking population (Zhongshan, Jiangmen, and Zhanjiang), and so on. Of course, some believe that Chinese people, who are their own masters now, should naturally speak Putonghua (standard

⁴⁰ Jiaying Pang, 'Analysis of Hong Kong Constitutional Culture under the Complex of Modernity and Post Colonial Concept' in Miguel Chan (ed), *Master Thesis Collection vol 3* (Faculty of Law, University of Macau 2007) 253 (龐嘉穎:《現代性與後殖民語境交織下的香港憲政文化探析》,載陳淦添等編:《碩士論文集3》,澳門大學法學院2007年版,第253頁以下)。

Chinese).

According to the above-mentioned perspective of realism, if there was no legal culture of Macau in the 20th century, then there certainly is one in the 21st century. Different publishing houses in Macau (e.g. the Centro de Formação Jurídica e Judiciária/Legal and Judicial Training Centre, Legislative Assembly, the Legal Affairs Bureau, and the universities) have published hundreds of law-related books. Their authors include Portuguese living in Macau and native-born people of Macau. Some are even legal scholars from China or different countries working in Macau. Most of these authors' books revolve around the legal system of Macau. Should these not be regarded as part of Macau's legal culture?

In fact, they all are, despite the fact that there have not been sufficient channels of communication between the discourse constructors. As a result, they either do not know or ignore each other. Of course, the existing situation could be favourable to certain discourse constructors and simultaneously unfavourable to others. Since the legal professionals are changing internally, the situation will change over time.

2. The audience of the discourse

Public debates on legal culture aim to persuade third-party spectators, often targeting the professional legal community. Critics argue for abandoning Portuguese legal culture, seeking to gain discourse power and influence over legal professionals. However, for these appeals to be effective, they must resonate with the professional community and be substantiated through practical legal activities.

D. Summary

Macau's legal culture is a vibrant and contested space, characterised by a rich tapestry of historical influences and contemporary challenges. As Macau continues to navigate its identity, the post-colonial legal discourse will play a crucial role in shaping its path forward. This discourse is not just about reconciling the past with the present but is also about envisioning a legal framework that supports Macau's unique position as a bridge between the East and West, and its role within Greater China.

The analysis of Macau's legal culture reveals a complex interplay of history, law, and culture, mirroring the curved space-time analogy where the mass of historical and cultural influences bends the trajectory of legal development. Understanding this curvature is essential for appreciating the nuanced and multifaceted nature of legal culture in Macau.

The discourse on Macau's legal culture is intertwined with questions of legal power and identity. Changing the structure of legal power requires addressing specific details and engaging in substantive rhetorical

activities. The ongoing debate reflects a broader struggle to define Macau's legal identity within its historical and contemporary contexts. Understanding and navigating this complex landscape is crucial for shaping the future of Macau's legal culture.

IV. LANGUAGE GAMES: THE INITIAL EXPLORATION OF MODE-SWITCHING AMONG MACAU'S SOCIETY, LANGUAGE, LAW, AND POWER

A. Listening to Their Words

A famous lawyer stated: 'The key issue is legal technicality, not the language itself. Although more areas, including public administration and the judiciary, increasingly use Chinese, there has been no improvement in efficiency or productivity due to the language switch. In fact, productivity and efficiency have deteriorated.'⁴¹

An authority on Chinese Constitutional Law remarked: 'Chinese will hold an important position in the Macau SAR in the future and is the primary official language for the executive, legislature, and judiciary. When discrepancies arise between the Chinese and Portuguese versions, the Chinese version shall prevail. The future Government, Legislative Assembly, Courts, and Procuratorate of the Macau SAR must use Chinese.'⁴²

A Professor of Chinese literature commented: 'Despite calls for establishing Chinese as the primary official language, the inability to write qualified legal texts in Chinese and the continued reliance on Portuguese render the primary and secondary status meaningless.'⁴³

A local Legal writer noted: 'This results in a reversed order, emphasizing language over professionalism, claiming insufficient talent while

⁴¹ 'Há bilinguismo no Canadá, na Bélgica e, bem mais perto de nós, em Hong Kong. E em muitos outros lugares. Não me consta que sejam países ou regiões atrasados nem que se proponham tomar medidas para acabar com o bilinguismo. O bilinguismo tem custos? Claro que tem. Mas é um custo insignificante quando comparado com o de escrever a História e de não governar segundo a Lei. Não resisto a constatar que, apesar da cada vez maior utilização da língua chinesa em todos os sectores e em todos os níveis da Administração Pública e da Justiça, não conheço nenhum órgão ou instituição em Macau cuja eficiência e produtividade tenham melhorado por causa da língua. Mas conheço alguns em que a produtividade e a eficiência pioraram.' Dr Jorge Neto Valente, Speech at the Solemn Opening Session of the Judicial Year (Macau Lawyers Association, 21 October 2009).

⁴² Weiyun Xiao (ed), *One Country, Two System and the Macau Basic Law* (Peking University Press 1993) 77–78 (蕭蔚雲主編:《一國兩制與澳門特別行政區基本法》, 北京大學出版社 1993 年版, 第 77–78 頁).

⁴³ Xianghui Cheng, 'National Language, Official language, and Formal Language' *Macao Daily News* (Macau, 9 January 2005) D06 (程祥徽:《國語、官方語文和正式語文》, 載《澳門日報》2005 年 1 月 9 日, 第 D06 版).

simultaneously restricting talent with unprofessional conditions.’⁴⁴

A local linguistic scholar highlighted: ‘Diplomatic relations between China and Portuguese-speaking countries have made Portuguese a “language of opportunity”. The development of Portuguese-speaking talent in Macau is not limited to government departments but extends to unlimited business opportunities. Understanding this can increase motivation for learning Portuguese.’⁴⁵

A local politician pointed out: ‘No one can deny the heavy academic burden on Macau’s students. Most schools prioritise English for foreign language programmes. The required Portuguese courses add to this burden, making it unrealistic to promote Portuguese now. Even if promotion is desired, it should be gradual and optional, rather than sudden and compulsory.’⁴⁶

B. What are they saying?

These statements reflect the linguistic and legal dynamics in post-colonial Macau, a society navigating its identity. Michel Foucault’s notion, cited by Gayatri Spivak,⁴⁷ is relevant here: ‘[A] whole set of knowledges that have been disqualified as inadequate to their task or insufficiently elaborated: native knowledges located low down on the hierarchy beneath the required level of cognition or scientificity.’⁴⁸

Behind these statements lies a competition for discourse and legal power within Macau’s bilingual legal order. The struggle mirrors the broader post-colonial paradigm where dominant and subordinate groups vie for influence.⁴⁹

The competition for discourse power and legal power is evident in the bilingual legal order of Chinese and Portuguese. As Foucault noted, ‘Discourse at the macro level must manifest itself at the micro level as talk. It is only through talk that dominance can be expressed, reproduced, and challenged.’⁵⁰

⁴⁴ Wong (n 4) 76.

⁴⁵ Leong Sok Man, ‘On the Language Development in Macau under the “One Country, Two Systems” Policy’ (2011) 8 Academic Journal of ‘One Country Two Systems’ 138, 143 (梁淑雯:《淺談“一國兩制”下澳門的語言發展》, 載《“一國兩制”研究》2011年第8期, 第143頁).

⁴⁶ Peilin Li, ‘Universal Portuguese Language Education Unrealistic’ *Jornal do Cidadão* (Macau, 31 December 2013) P03 (李沛霖:《普及葡語教育不切實際》, 載《市民日報》2013年12月31日, 第P03版).

⁴⁷ Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason: Toward A History of the Vanishing Present* (Harvard University Press 1999) 266–67.

⁴⁸ Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (Richard Howard tr, Pantheon 1965) 251, 262, 269.

⁴⁹ Spivak (n 47) 230–31.

⁵⁰ John M. Conley and William M. O’ Barr, *Just Words: Law, Language, and Power* (University of Chicago Press 2019) 9.

C. Meaning behind Their Words—the Complex Factors of Macau's Language Issues

Language has always been a complex and sensitive issue, involving the distribution of social resources, power, politics,⁵¹ and law. Multilingual countries like Switzerland, Belgium, and Canada have faced challenges due to language politics. Even monolingual countries have encountered social conflicts over language issues. In post-colonial contexts, these issues are even more complex and politically sensitive.

Macau, as a Lusophony community, has had Portuguese as its official language for over a century.⁵² This history has deeply impacted the public sector, shaping the future trajectory of Macau's development. However, the Portuguese language has not become universal in business, education, and cultural life.⁵³ The primary and secondary education system in Macau primarily uses Chinese and English, with a few government-run Portuguese-speaking schools. This creates a gap in producing Portuguese-speaking talents.

A large working population in Macau speaks Southeast Asian languages, further complicating the linguistic landscape.⁵⁴ While the society does not require bilingualism, it is a rational path for political and administrative reasons.

D. Order Restored—The Power Interaction between Macau's Laws and Languages

1. Overview

Despite potential social issues arising from language complexities, the predominant Chinese-speaking population in Macau mitigates immediate problems. The primary challenge is optimizing the bilingual legal order, a topic of ongoing debate since the transitional period.

2. Article 9 of the Macau Basic Law and the issue of being primary and secondary of the official languages

Article 9 of the Macau Basic Law states: 'In addition to the Chinese

⁵¹ Jianfei Xiao, *Language Rights Studies—Regarding the Legal and Political Science of Language* (Law Press 2012) 3 (肖建飛：《語言權利研究：關於語言的法律政治學》，法律出版社 2012 年版，第 3 頁)。

⁵² Some scholars believed that the signing of the Sino-Portuguese Joint Declaration in 1987 was the starting point of the bilingualism of Macau's legal system. Salvatore Casabona, 'The Law of Macau and its Language: A Glance at the Real "Masters of the Law"' (2012) 4 *Tsinghua China Law Review* 223, 229.

⁵³ There is nothing secretive about the Portuguese language policy and way of colonization. For example, Brazilian scholars have pointed out: '[T]he difference of Portuguese colonialism' must reproduce itself in 'the difference of postcolonialism in the space of official Portuguese language'. Boaventura de Sousa Santos, 'Between Prospero and Caliban: Colonized, Postcolonialism, and Inter-identity' (2002) 39 (2) *Luso-Brazilian Review* 9, 17.

⁵⁴ For example, there were candidates claiming to represent the Southeast Asian ethnic groups during the election of the fourth Legislative Assembly.

language, Portuguese may also be used as an official language by the executive authorities, legislature, and judiciary of the Macau SAR.' The Standing Committee of the 8th National People's Congress clarified that when discrepancies arise, the Chinese version shall prevail.⁵⁵ This provision has been a point of contention, with scholars arguing⁵⁶ for the primacy of Chinese in the judicial process.

3. *The issue of whether one must speak Portuguese to understand the law of Macau*

For a long period there has been a thesis which argues that mastering European (continental) law allows one to understand Macau's law without speaking Portuguese.⁵⁷ Taking Taiwan as a benchmark, at the point that the latter, which inherited German laws, similar to Macau's Portuguese inheritance,⁵⁸ does not require legal professionals to speak German, demonstrating that understanding the law of certain jurisdiction is possible without specific linguistic proficiency.

⁵⁵ The Standing Committee of the 8th National People's Congress at its second meeting on 2 July, 1999 made a resolution with interpretative significance based on the above provisions, pointing out: 'When there are discrepancies in the interpretation or understanding of Chinese and Portuguese, the Chinese version shall prevail.' Regarding the legal significance of this decision and the priority issue involving the two official languages of Chinese and Portuguese, Mr. Kuan Kun Hong published a paper in 2006 to address this topic, which is by far the most in-depth study of its kind. Kuan Kun Hong, 'Examining the Effects of the Chinese and Portuguese Legal Texts of Macau's Legislation from the Perspective of Legal Hermeneutics' (2006) 2 *Cadernos de Ciência Jurídica* 134, 136–42 (關冠雄:《從法律解釋學看澳門立法中的中葡法律文本的效力》,載《法學論叢》2006年第2期,第136–142頁).

⁵⁶ Among the most representative is Professor Xiao Weiyun's following argument: 'Chinese will be in an important position in the Macau SAR in the future, and is the main official language for the executive authorities, legislature and judiciary of the Macau SAR. ... When there are discrepancies in the interpretation or understanding of Chinese and Portuguese, the Chinese version shall prevail. The future Government, Legislative Assembly, the Court and the Procuratorate of the Macau SAR must use Chinese. Xiao (n 42); More recently, some linguists have even tried to prove from the grammatical angle ('Systemic-Functional Grammar') that the legislative texts of the Macau Basic Law have demonstrated the lawmakers' view of 'Chinese being primary and Portuguese secondary': Leong (n 4) 34–35.

⁵⁷ For example, in his article 'Some Thoughts on the Issues of Legal Reform', Professor Zhao Guoqiang pointed out that, 'in terms of idea, the view that one can not understand the law of Macau if one does not speak the Portuguese language still lingers; ... However, it does not mean that the law of Macau can never be detached from the Portuguese language, as they are two different concepts.' Guoqiang Zhao, 'Some Thoughts on the Issues of Legal Reform' in Jian Mi (eds), *Legal Reform and Legal Development in Macau* (Social Sciences Academic Press 2011) 43 (趙國強:《關於法律改革若干問題的思考》,載米健主編:《澳門法律改革與法制建設》,社會科學文獻出版社2011年版,第43頁). In a separate piece, he also pointed out: 'In Macau, some people have believed that "the ignorance of the Portuguese legal doctrines hinders the understanding of the law of Macau". This is very naive and wrong.' Guoqiang Zhao, *Research on Macau Criminal law: General Theory of Crimes* (Social Sciences Academic Press 2012) 2 (趙國強:《澳門刑法概說(犯罪通論)》,社會科學文獻出版社2012年版,第2頁).

⁵⁸ The official language of Taiwan is Mandarin, while the official languages in Macau are Chinese and Portuguese. Therefore, the issue of whether to use German or Mandarin will not appear in the legal practice in Taiwan. However, the situation is different in academic areas that transcend actual legal practices. For a very long period of time, legal scholars in Taiwan (e.g. the well-known Professor Wang Tze-Chien, Professor Su Yeong-Chin, Professor Lin Shan-Tien, Professor Chen Ming, and so on) have studied in Germany. One reason is that German legal doctrine and judicial opinion as the origins of Taiwanese laws are valuable to both legal understanding and application in Taiwan.

4. *The issue of 'anomie' of Chinese expression in legal texts*

Criticisms of Macau's Chinese legal texts often highlight translation issues.⁵⁹ The Macau Portuguese Government initiated Chinese translations of major legal codes during the transitional period, but the initial translations faced criticism. Despite improvements, the quality of translations remains a concern. The Legislative Assembly has made significant strides in bilingual legislation, but issues persist due to historical translations.

Nevertheless, as Artificial intelligence advances quickly, it is legitimate to anticipate that multi-lingual legislation will cease to be a problem in the near future.

5. *The order and distribution of interests between languages and laws*

This issue is highlighted by the tension between language emphasis and professionalism in Macau's legal field. Macau's predominantly Chinese-speaking society complicates the bilingual legal order. Bilingual legal professionals are valuable intermediaries, bridging linguistic divides and facilitating communication.⁶⁰ However, the development of bilingual talent requires incentives rather than mandates.

E. Hypothetical Imperative

All the signs seem to tell us that if Macau's legal system were operated exclusively in Chinese, many problems might be resolved. This hypothesis can be divided into two scenarios:

1 Suppose Macau had never adopted a bilingual legal order;

2 Suppose the bilingual legal order is given up from now on.

In the first scenario, the bilingual legal order evolved from a purely Portuguese system during the colonial period. Abandoning bilingualism then would have deprived Chinese of its legal status. During Macau's return, the Portuguese feared an outcome where existing Portuguese laws were not transferred, creating a new set of rules for Macau,⁶¹ challenging

⁵⁹ Chaoyuan Ji, 'Anomie and Rectification of Chinese Legislative Language in the Macau SAR' in Jeong Wan Chong (ed), *Legal Development and Legal Perfection* (Symposium Essays) (Union of Macau Scholars 2010) 121 (姬朝遠:《澳門特區中文立法語言之失範與矯正》,載楊允中主編:《“法治建設與法制完善”學術研討會論文集》,澳門學者同盟2010年版,第121頁).

⁶⁰ Yanping Li, 'Characteristics, Issues, and Strategies of the SAR's Legal Language' (2008) 1 *Law and Literature* 113, 119 (李燕萍:《特別行政區法律語言的特點、問題及其對策》,載《法律與文學》2008年第1期,第119頁).

⁶¹ It must be noted that the bilingual system in Macau did not start from scratch. Previously, Portuguese law carried out through the Portuguese language had been implemented for more than a hundred years in Macau. During the consultations on the Sino-Portuguese Joint Declaration between China and Portugal, the choice facing the Chinese side was either to give up the established order completely or to continue with it. The continuity of the existing legal order would mean that the contact with the Portuguese law could not be severed. Since these laws had already existed through the use of the Portuguese language, the subsequent tasks were mainly to manifest the law's Chinese cultural characteristics.

the ‘One Country, Two Systems’ policy.

In the second scenario — whether the bilingual legal order can still be abandoned now — the answer can only be pessimistic. Reviewing the development of Macau’s bilingual legal order reveals its recent history. Although the Portuguese had been in Macau for centuries, the bilingual legal order began in the 1980s with the establishment of the Comissão para a Implementação da Língua Chinesa by Governor Vasco Almeida e Costa in June 1985.⁶² The bilingual legal order officially started with the Sino-Portuguese Joint Declaration in 1987. Key measures included:

- Setting up the Legal Translation Office in 1988;
- Publishing the Portuguese-Chinese Glossary of Legal Terms;
- Decree No. 11/89/M mandating all laws in Macau be published in both Portuguese and Chinese;
- Establishing the first university course in legal studies in 1989;
- Decree-Law No. 455/91 granting the Chinese language official status;
- Enacting the Penal Code in both Chinese and Portuguese in 1996;
- Promulgating all codes bilingually in 1999;
- Confirming bilingualism with Article 9 of the Macau Basic Law.

Since Macau’s return, the Macau SAR Government has trained several batches of bilingual magistrates, and the Legislative Assembly has achieved substantial bilingual operations. The bilingual legal order has essentially taken root in Macau. Its future development will unfold over time.

Forcibly changing the bilingual legal order now would be unwise. Besides the solemn commitment of the Macau Basic Law and the efforts of the Macau SAR Government over the past decades, potential consequences must be considered. The most immediate issue might be that of whether native Portuguese speakers (especially Chinese-Portuguese descendants) have the right to use Portuguese. Portuguese-speaking residents could be considered a vulnerable community or ethnic minority. Based on the *Beijing-Oslo Recommendations on Protection for the Rights of Linguistic Minorities*, measures should include:⁶³

- Using locally common languages of ethnic minorities when performing duties;
- Ensuring that civil servants use the same languages when interacting with citizens;
- Allowing minority groups to use their native languages in applications and receive responses in the same languages;
- Providing documents and forms in minority languages or bilingual formats;
- Offering translation services between minority languages and the standard national language.

⁶² This Committee was established by the Macau Governor’s Decree No. 113/85. Its chairman was Joaquim Morais Alves, a famous Macanese figure. Other members included Chui Tak Kei, Lam Ka Chun (bishop), Henrique de Senna Fernandes (lawyer), Hsueh Shou Sheng, Jogo Bosco da Silva, Maria Edith da Silva, Rui Pedro Cabaço Gomes, Chui Lok Kei, Bat Ji Man, Alexandre Ho and so on. The committee also produced chapters that focused on evaluating the use of the Chinese language in various government departments.

⁶³ Xiao (n 51) 226, 228, 229.

At an abstract level, the cost of these measures is not lower than the current bilingual legal order in Macau. Not implementing bilingualism does not mean that Macau's inherited Portuguese law will be unaffected by Portuguese legal culture unless critics believe it is possible to rewrite the entire legal framework.

In summary, overhauling Macau's legal system by not transferring existing laws and abandoning the bilingual legal order is unsuitable. After more than twenty years of practice, the decision of the drafters of the Macau Basic Law has proven rational and wise.

If Macau's legal system operated solely in Chinese, many issues would disappear. However, abandoning the bilingual legal order would strip the Chinese language of its legal status during the colonial period and disrupt the current legal framework. Despite its challenges, the bilingual legal order has taken root in Macau and represents a rational choice given the historical and political context.

F. Summary

Macau's bilingual legal order is a product of its historical, political, and cultural context. While predominantly Chinese-speaking, Macau must maintain bilingualism in public and legal fields to respect history, protect minority residents, and ensure social continuity. Language planning should reflect Macau's unique characteristics, optimizing bilingual operations without hindering development. The government must invest in bilingual education and training, establishing clear boundaries for bilingualism in public and legal fields.

The cost of a bilingual legal order must be controlled, balancing cultural and economic conditions with higher social values. While full bilingualism is impractical, targeted investment in bilingual legal professionals can support the system. Justice should remain the primary goal of the legal system, ensuring protection for all regardless of language proficiency. Bilingualism may initially cause inefficiencies, but with proper investment and policy guidance, it can be an effective system.

As noted by a Chinese professor, language and culture evolve over time, and the transition period must be managed with patience and strategic planning.⁶⁴ Maintaining bilingualism in Macau is a rational and wise choice, reflecting the historical and political realities of the region.

⁶⁴ Qianhua Wang, 'Formal Language Issues in the Legal Construction of the Macao SAR' in Jeong Wan Chong (ed), *'One Country Two Systems' and the Improvement of Macao Legal System* (academic conference proceedings) (One Country Two Systems Research Centre 2013) 104 (王千華:《澳門特區法制建設中的正式語文問題》,載楊允中主編:《“一國兩制”與澳門法律體系完善(學術研討會論文集)》,“一國兩制”研究中心2013年版,第104頁).

V. EPILOGUE: PATH-FINDING IN THE WOODS

As travellers navigate through a forest filled with crossroads, their chosen path is guided by both their will and their destination. Different companions in the woods might have varying purposes — some may leisurely enjoy the scenery, while others rush to complete their journey. Even if their paths intersect, their goals and destinations differ.

Regarding the development of Macau's legal order, the complexity of the discourse reflects the ongoing power struggle in this post-colonial society. Discourse constructors, with their distinct identities and appeals, must navigate this power dynamic. Despite the continuous struggle, these discourses need a public platform for expression, compelling them to confront broader moral and ethical considerations.

The Macau Basic Law envisions Macau as an executive-led society governed by law. To achieve this, the drafters endowed Macau with unprecedented judicial independence, including final adjudication power. The Macau SAR Government has provided magistrates with strong institutional safeguards to uphold this crucial line of defence. However, while the drafters foresaw Macau's future rule of law, they did not meticulously plan every detail of its legal operations. Instead, they expected the colonial-era system to integrate seamlessly into the new constitutional and social power structures. This expectation has led to mixed results, with some successes but not universally satisfactory outcomes.

The Macau Basic Law mandates a bilingual legal order, a political decision that presents both challenges and opportunities for the Macau SAR. Overturning this bilingual order would be extremely difficult, politically risky, and socially unrealistic. Universal bilingualism across Macau is equally unfeasible and burdensome. A pragmatic approach involves implementing a limited degree of bilingualism within the public sector, including the legal field, achieved through government planning and investment.

For a legal system to function effectively and develop continuously, it needs the support of a high-quality professional legal culture. Currently, Macau's professional legal culture is underdeveloped, fragmented, and lacking cohesion. Discourse constructors from different backgrounds have failed to communicate and collaborate effectively, complicating the social role of law. Therefore, the government must guide the future direction of Macau's legal order, steering the complex power struggle towards the common good.

Macau's society and government need clear objectives for the development of its legal order. This includes specific improvements such as reforming organizational structures, improving training and hiring mechanisms for legal professionals, ensuring reasonable access to the legal profession, and enhancing judicial efficiency and transparency.⁶⁵ Only with these targeted improvements can judicial activities become a platform for upholding the rule of law, creating a promising future for Macau's legal order.

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⁶⁵ The author has already addressed these issues in the previously published research papers. Tong (n 12); Tong Io Cheng, 'On Establishing a Unified Judicial Examination System in Macau' *Macao Daily News* (Macau, 19 November 2014) E6 (唐曉晴:《論建立澳門統一司法考試制度的意義》, 載《澳門日報》2014年11月19日, 第E6版).

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