Macao’s Legal System under Globalization and Regional Integration: Between Tradition and Evolution

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1. The Formation of Macao Law and Its Uniqueness

A. The Formation of Macao Law

Macao, a former Portuguese colony, now one of the only two Special Administrative Regions (SARs) of the People’s Republic of China, is undergoing unprecedented socio-economic growth and transformation.

The law of Macao rooted in Portuguese legal tradition. In 1557, Portuguese sailors and merchants were allowed by the Ming Empire to settle down in Macao by paying an annual lease to Ming government. Macao remained to be under the jurisdiction of Xiangshan County of Guangdong Province of Ming Empire where Chinese laws and statutes coexisted with a series of “unofficial” laws and customs influenced by Confucian thoughts and patriarchal clan system. The only differences between this region and other parts of China were: (i) the Portuguese residents were allowed to exercise certain autonomy to solve disputes within their own community using Portuguese laws and (ii) Macao represented a blend of oriental and occidental influences in political power, urban administration and culture in general. Until the end of the nineteenth century, Macao’s legal order features a duality, according to which the Chinese community employed Chinese law and the Portuguese community used Portuguese law. For legal disputes of mixed relations where one party involved Chinese residents and the other party involved Portuguese or foreign residents, Chinese law would be applied. This dual track system accompanied by mixed jurisdictions lasted nearly three hundred years.

Starting in the second Opium War, a number of colonial policies were imposed by the Portuguese authorities in Macao. After the Qing government ceded the Portuguese government the right to govern Macao through the Sino-Portuguese Treaty of Peking signed in 1887, main Portuguese codes (such as the Penal Code of 1852, the Civil Code of 1867, the Civil Procedure Code of 1876 and the Commercial Code of 1888) were extended to Macao under the wave of assimilationism. It is important to note that many local usages and customs, mainly in family, succession and commercial issues, were preserved in the process of legal transplants. Although all Qing officials were expelled from Macao, some judicial organs were created by to settle exclusively the disputes between the parties that were both Chinese people. During the most part of the Portuguese colonial administration, legal pluralism in Macao was not weakened.

Macao law has been developed from non-existence to pass into existence after the Sino-Portuguese Joint Declaration on the Question of Macao in 1987. During the so-called period of transition between 1987 and 1999, the year of the transfer of sovereignty from Portugal to China, Macao law experienced a course of localization. As a response to the Macao’s constitutional status’ change from a Chinese territory under the Portuguese administration to a Special Administrative Region of China, localization is a mean of adapting the previously existing Portuguese laws to specific needs and conditions of Macao as a new special administrative region of China under the principle of “One Country, Two Systems”. The final objectives of localization are to generate Macao law and to link up the Portuguese law and the local law of Macao. The course of localization implied both procedural requirements and substantive requirements.¹ From the procedural perspective, all Portuguese

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laws and normative documents which had been extended to Macao for application needed to be transformed into the local law of Macao through certain legal procedures of the legislative branch of Macao, including a process of bi-lingualization of laws. From the substantive perspective, all Portuguese laws and normative documents which had been extended to Macao for application needed to be sorted out, reviewed, amended or even nullified in order to be in line with the Basic Law of Macao which was passed on March 31, 1993 by the National People’s Congress and took effect on December 20, 1999.

The formation of Macao law occurred in such a peculiar historical context more than twenty years ago. In accordance with the Basic Law of Macao, the good reasons of its existence and to maintain the legal system of the territory after the handover is not to commemorate any Portuguese historical heritage, but to give recognition of the uniqueness of Macao law which aims to rationalize the special way of life in Macao’s society.

B. The Uniqueness of Macao Law

Generally speaking, the uniqueness of Macao law is perceived as follows.

At the outset, Macao legal system has the tradition of rather complex legal pluralism. As described by Boaventura de Sousa Santos, legal pluralism in the colonial and neocolonial eras is “the product of a narrow and self-marginalizing anthropology, a romantic anti-statism which functions as merely ‘pseudo-radical’, insofar as it simultaneously accepts the definitions of law as given in positivist accounts”.

Compared to the introduction of the English law in Hong Kong, the very first territory acquired the status of Special Administrative Region after the handover to China, Macao faces greater difficulty to be able to adapt with the transplanted Portuguese legal model due to the more heterogeneous natures of the two societies. During the process of localization, even more efforts were made to popularize law to the local people, such dissemination of legal knowledge focused still on the positive law. The local users of law in Macao in general are still unfamiliar with the precise legal terms in the Civil Code and in the Commercial Code which both follow the German legal theories and positions.

In addition to the challenges of adaptation to local requirements and conditions, the law of Macao emerged in a society with a broad diversity of cultures. The territory was once labeled as a city of culture to be able to absorb, assimilate and mingle diverse cultures. The very first “university” in the Far East (College of St. Paul) was founded in Macao in 1594. Since then, Macao served as an important gateway through which western civilization entered China. For more than four centuries, Macao has been an amalgam of oriental and western cultures. Since the nineteen eighties, new immigrants have come to the territory and Macao has also become a city of immigrants. As far as the demographic composition is concerned, more than half of the total population in Macao was born outside. After the handover, there has been found a constant increase of new immigrants mainly coming from mainland China. The total number of non-local workers augmented from around 25000 in 2001 to around 95000 in 2011, which was equivalent to 12.5% of the whole population in Macao. The drastic changes of demographic structure as well as the continuous arrivals of new immigrants in Macao have sent a challenge to rooting of its legal tradition.

Macao is a territory with linguistic diversity. Cantonese, Fujian dialect, Putonghua, Portuguese, English and even the old creole Macanese Patuá are spoken by different groups of

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2 Or put it into another way, “the oficialization of the Chinese Language”.
people to express their cultural identity. Chinese and Portuguese are both official languages of Macao. Macao law has been formed in a special context of bilingualism supported by the Macao’s Basic Law. Article 9 of the Macao’s Basic Law provides that “In addition to the Chinese language, Portuguese may also be used as an official language by the executive authorities, legislature and judiciary of the Macao Special Administrative Region”. Before signing the Sino-Portuguese Joint Declaration, all laws and regulations were written in Portuguese. During the course of localization, they were also “localized” and translated into Chinese. Since the establishment of the Macao SAR, all laws, regulations and other normative documents have been elaborated and promulgated simultaneously in Chinese and Portuguese. Although Chinese and Portuguese are both official languages in Macao, the two languages are spoken by different ethnic groups: Chinese is the everyday language of more than 95% of the community and Portuguese remains the main working language used by jurists and lawyers in Macao due to its historical dominance in legal theories and practices. On the one hand, the legal translation took place rather late in Macao (just only around twenty-five years ago), the people still need more time to understand and employ abstract legal parlance; on the other hand, due to the notable differences between the Portuguese and the Chinese cultures, it is not easy to find the same assumptions, to draw the same analogies and to use the same way to communicate in a particular language to express the same idea. Generally speaking, Macao legal culture is still basically conveyed in Portuguese. In legal area, it seems that there is an asymmetry between the two official languages: a minority language which sets the tone of the legal tradition and is currently used by the great majority of jurists vis-a-vis a majority language which serves a key tool of expression of the general public (laymen in law) and plays an important role in fulfilling a historic mission of sovereignty’s handover and ensuring a sustainable social development of the territory.

Nowadays, in a peculiar geographic and social-cultural context, the Macao’s legal system takes shape its own identity which distinguishes from both the Portuguese heritage and the legal orders of nearby regions such as the mainland China and Hong Kong. As a Special Administrative Region of China, Macao retains a Portuguese tradition of the Civil Law family and enjoys a high degree of autonomy under the formula of “One Country, Two Systems” to develop an independent “law district” within the plural “law districts” of a single sovereign state. Nevertheless, being a Chinese territory, Macao faces constant and increasing legal cultural intercourse with other parts of China. Macao is vacillating between tradition and evolution.

2. Tradition of Macao law

A. Legal Tradition of Macao

According to the understanding of Patrick Glenn, legal tradition is “normative information that has been passed on over time through an iterative process of capture, application and recapture.” Legal tradition is an extension of the memory to the present. During the selective process, jurists may adopt different approaches of capture, application and recapture and evolve a style of their own about their vision on law as a social phenomenon and a device to achieve social development. Legal traditions are developed by jurists and also necessarily upheld and supported by the people.

Macao law has inherited the Portuguese tradition which follows the Roman doctrine. Portugal has a typical legal order of the Roman-Germanic family. It was once part of ancient Roman province called Hispania. In the initial period of the Middle Ages, a kind of vulgarized Roman Law survived in the Iberian Peninsula due to the process of elaboration of written law by the Visigoths. Later on, Glossators and Commentators exerted a direct

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influence on the formation of the common opinion in Aristotelian sense as well as the romanization of the Portuguese law. In modern times, rationalism of natural law and civil jurisprudence created a good basis of codification in Portugal. In the nineteenth century, all Portuguese codes received certain influences of the Napoleonic codes. The Civil Code of 1867 was considered the most original one because it combined the French influences with Portuguese doctrine and jurisprudence. The new Portuguese Civil Code of 1966 was in turn influenced heavily by the German BGB and Pandectist legal science.\(^7\)

The very basic of civilian law lies in the doctrine created by the authoritative jurists but not in the codes. The ideas and assertions of those jurists are exhibited expressively in the legal textbooks and academic theses, but implicitly in legislative texts. Therefore, the articulated knowledge of a legal order is only possible if some legal texts that are well written and easy to read are available for the public to obtain the basic ideas of the grammar of the law and to know the tendency of the application of the law.\(^8\) Portugal is no exception. In Portugal, jurisprudence and romanistic doctrine always went ahead of the codification. Rooted in reason, legal knowledge became a science and afterwards codification occurred. The academic contributions made by José Homen Correia Teles, Visconde de Seabra and Manuel António Coelo da Rocha and so forth were illustrative examples of such statement.

Macao adopts the civil law system, by and large, Macao carries on the legal tradition of the Portuguese model. Nevertheless, in Macao, the adherence to the Portuguese model has shifted from a mandatory hard way in colonial period to a persuasive soft way after the handover. The Portuguese heritage has been struggling to take root in a territory with completely different historical, social and cultural background. Additionally, after the establishment of Special Administrative Region, the Portuguese legal tradition has been constantly permeated by legal models and ideologies from Mainland China.\(^9\) In the specific context of Macao, it seems necessary to broaden the notion of “legal tradition” developed by Glenn\(^10\) by adding the element of culture, since the diversity of cultures and languages in Macao brings up an unusual soil where different cultures shape different ways of thinking and different conceptual schemes. An iterative process of capture, application and recapture of normative information in Macao is always subject to different cultural influences. Cultural elements determine the values and attitudes of people in thinking of law.

\begin{subsection}{Values for the Preservation of the Legal Tradition in Macao}
\begin{enumerate}[label=(\roman*)]
\item \textbf{Political values}
\end{enumerate}

Firstly, from the perspective of political thoughts, the tradition of Macao law needs to be maintained. As expressed in the Sino-Portuguese Joint Declaration on the Question of Macao, in line with the principle of “one country, two systems”, China will pursue the basic policy regarding the Macao’s legal order: the laws currently in force in Macao will remain basically unchanged.\(^11\) The Macao Basic Law further provides that “the socialist system and policies shall not be practiced in the Macao Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years”\(^12\) and “The laws, decrees, administrative regulations and other normative acts previously in force in Macao shall be maintained, except for any that contravenes this Law, or subject to any amendment by the legislature or other relevant organs of the Macao Special

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\(^10\) Glenn’s view of legal tradition has been contested by many scholars. See for example, N. Foster, \textit{A Fresh Start for Comparative Legal Studies? A Collective Review of Patrick Glenn’s Legal Traditions of the World, 2nd Edition}.


\(^12\) Basic Law of Macao Special Administrative Region of the People’s Republic of China, 1993, Article 5.
Administrative Region in accordance with legal procedures”. Both the international treaty and the legal provisions of constitutional nature reinforce the necessity to preserve the legal tradition in Macao and provide an intuitional guarantee for Macao to exercise a high degree of autonomy.

(ii) Cultural values
In every society, economy is the basis of achieving social development, political commitment is its guarantee and culture is its soul. Over the passage of time, development has created a new surge of culture awareness and requires culture to play a more prominent role and carry out a noble mission. When economic development reaches a certain level, further economic progress will increasingly depend upon cultural philosophy. To a certain extent, economic development is determined by the cultural advancement of a nation. Culture represents the character of a nation. It infiltrates every aspect of our life. It is a means of education and a source of inspiration that enhances man’s self-cultivation. Culture exerts its everlasting impact on man in a silent way, like water trickling down and moisturizing all beings. Culture seems soft but is actually robust and resilient.

Law, being part of culture, exists in social arenas with manifold fabrics of meaning and practice. Legal culture has a normative or framing feature and its impact on human societies is always persistent. Legal institutions can make autonomous self-adjustments as a response to social change. In Friedman’s words, “it is the culture which is the sole source of effectiveness of law”. Rokumoto also recognizes that the legal culture is persisting and pervasive and there is the living law created by culture. Cohen advocates that legal culture mirrored by a set of social rules is determinative and stable as well as responsive and flexible. Different legal cultures are all locally expressed but connected to the interests of advancing the universal value and the common basis of a global legal culture. The tension of legal culture is reflected by its swaying between particularism and generality.

Macau needs to preserve the tradition of its own legal culture not only because legal tradition has inertia force to survive but also for the reason that legal tradition is gifted with self-denial, self-adjustment and reinvigoration. Difference gives a legal culture its distinctive appeal. It is exactly such distinctiveness of Macao’s legal culture that attracts intercourse and interaction from other legal cultures. In the legal world where terms are conceptually constructed and expressed within a certain cultural background, there exists a diversity of elaboration of legal terminologies. In its hybrid model of different cultures, Macao offers a good opportunity for comparative lawyers to identify common ground as well as differences of normative information.

(iii) Practical significance
To preserve the legal tradition in Macao has also practical significances in two fundamental respects. The first and the most obvious respect is allowing Macao to be a facilitator in the exchanges between China and the Portuguese-speaking countries. After the handover, the Central Government in Beijing has projected a new development strategy for Macao to be a platform for the economic and commercial cooperation between China and the lusophonic countries. However, Macao is not envisaged to become a physical platform since

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14 J.Z. Sun, China’s Contemporary Culture: Dream and Pursuit, 2007, at 83.
18 The Portuguese-speaking countries comprise a population of over 200 million people in four continents: Angola, Brazil, Cape Verde, East Timor, Mozambique, Guinea-Bissau, Portugal and Sao Tome and Principe.
it is unrealistic for people from mainland China and people from the Portuguese-speaking countries to hold trade talks in Macao for every deals they reach; on the contrary, Macao needs to become an intellectual platform or an information platform due to its advantages of linguistic, historical and cultural linkages with the Portuguese-speaking countries. Macao will not only promote better understanding between China and the Portuguese-speaking world, but also enable alternatives to settle down the relevant disputes. The legal systems of the Portuguese-speaking countries use common language and have common legal legacy and Macao has a distinctive identity in connection with the lusophonic countries. Macao is expected to serve as a forum for litigation or arbitration for the businessmen and citizens of China and of Portuguese-speaking countries.

In the second respect, in a single sovereign state with plural law districts, Macao’s legal system is closer to the one of the Mainland China. In the context that China is on the way to embrace the rule of law and Macao may produce the effect of radiation and have more influences on the one of the Mainland China. The interaction after the handover has made notable headway and the learning from others occurs among the different “law districts” of a single sovereign state.

3. **Evolution of Macao Law**

   **A. Macao’s Strategy for Globalization and Regional Integration**

   Economic globalization is a kind of transnational circulation of goods, services, persons, essential factors of production and information. Nowadays, economic activities are no longer confined to national boarders but are underway in global sphere, at the same time, cross-regional economic integration becomes a rising trend. The essence of economic globalization and regional integration is the evolution and deepening of international division of labor in the light of comparative advantage, which in turn, leads to trade expansion and international capital flow. A good homework to respond the challenges of globalization and regional integration depends on domestic capacity of reforms, training period of development, and above all, the domestic conditions and comparative advantages. For a small and open economy like Macao, the effects of globalization and regional integration are more prominent.

   Macao, as a separate custom territory empowered with autonomous trade policy, is one of the founding members of the World Trade Organization. It is also a free port with no restriction on capital movement. Since the liberalization of gaming industry in 2002, Macao has attracted foreign investments, especially from the giant US-based companies in hospitality and resort projects. Currently, Macao has become No. 1 of profitability in global gambling destinations by gaming revenue. According to World Tourism Organization, Macau ranked the 20th position in terms of the world’s international tourist arrivals and ranked the 5th place in Asia and the Pacific in 2010. Also in 2011 in terms of international tourism receipt, Macau ranked the 9th place among other destinations in the world and ranked the 2nd position in Asia and the Pacific. Macao’s development strategy for an active participation in the economic globalization is embodied mainly in two facets: (i) to carve out a niche position as a platform between China and the Portuguese-speaking Countries; (ii) to be an international tourism and leisure hub.

   Concurrently, regional integration is a top priority for Macao. Macao signed with mainland China a Closer Economic Partnership Arrangement (CEPA) in 2003 to implement a staged elimination of tariffs on imports originating in Macao and a progressive reduction or elimination of restrictive measures against service suppliers of the territory. Judging under the WTO provisions, the CEPA take the form of free trade agreement (FTA) and fall within the scope of economic integration agreements (EIAs). The most notable innovation of the CEPA is the creation of a FTA composed by two separate customs territories within the same sovereign country. Despite asymmetries in economic size, openness and level of development,
both parties of the arrangement benefit from a deep integration that arrives ahead of China’s WTO timetable and even beyond China’s WTO commitments.

In 2004, Macao became formally a member of the Pan-Pearl River Delta (PPRD) Cooperation Framework Agreement together with Hong Kong and nine provinces in Southern China. The reason for the establishment of PPRD, an area which accounts for one-third of China’s population and gross domestic product, is to reduce internal trade barriers, market separation and political fragmentation. The scope of cooperation covers from energy, transportation infrastructures, investment, trade and tourism to labor movements, environmental protection and harmonization of rules and regulations for e-commerce as well as inspection standards and certification standards, etc.

In 2011, Macao inked with Guangdong a Cooperation Framework Agreement which is designed largely to promote a proper diversified development of Macao’s economy. Under the agreement, the two sides will construct a railway bridging between Zhuhai special economic zone and Macao and there will be a 24-hours clearance at the border. Both governments will jointly set up exemplary industrial parks and cultural zones. The agreement represents a new collaborative initiative for the establishment of urban agglomeration under the principle of “One Country, Two Systems” and allows a geographical extension of Macao by offering more land, more resources and a larger market scale to overcome Macao’s own economic weaknesses.

B. New Social Reality in Macao under a Rapid Socio-economic Transformation

(i) Economic dimension

Since the handover, Macao has enjoyed a high speed economic boom driven by tourism-gaming growth and become more dependent on external world. The overall economy of Macao is still influenced fundamentally by a single sector of gaming industry which is operated on an offshore mode by mostly non-local elite. Macao’s tourism is largely reliant on mainland China’s policy on issuing visas for individual travelers to Macao. The large business operations or financial transactions are frequently negotiated, litigated, and arbitrated especially in Hong Kong, using its language, law, courts, arbitral institutions and currency.19

Meanwhile, the economic transformation has constituted more challenges for the sustainable economic growth. When gaming industry is creating more well-paying jobs for local people, the local small and medium enterprises in many sectors of labor-intensive (especially traditional manufacturing industry) are under the pressure of foreign direct investment brought by the multinational companies and are facing challenges for farther development. Seeking better pay was the predominated reason of changing jobs. Due to the staff drain and operation under capacity, some small and medium enterprises have closed down. The labor force of the affected sectors is confronted with the need to switch to another job, but many of them are left behind due to costs of training or lack knowledge and skills needed for new jobs, to be able to adapt to economic structure changes. Numerous middle-aged residents with low technical abilities and low level of education who used to have a stable life in the past have now encountered competition from a large number of non-resident workers.

On the other hand, there has been an increasing wide gap between the rich and the poor. In a rapid socio-economic transformation period, many appeals on enhancing the standard of livelihood and on provision of “public good” have been addressed to Macao’s

government. There are more demands for change, for a higher income and for more equitable distribution of wealth.

(ii) Political dimension

Although Macao and the mainland apply different political systems, Macao is now part of Chinese territory. The Central government has been ensuring progressivism and compatibility of political development of different regions in one sovereign state. According to official statements, “one country” is the premise of “two systems” and the sovereignty, territorial integrity and security of the country must be safeguarded. Chinese concepts and ideologies have been unavoidably infiltrated in Macao after the handover. An illustrative example is the that Macao’s Legislative Assembly passed National Security Law under Article 23 of Macao’s Basic Law in 2009, according to the principle of “One Country, Two Systems”.

Taking into account of the Closer Economic Partnership Arrangement (CEPA), the Pan-Pearl River Delta (PPRD) Cooperation Framework Agreement and Guangdong-Macao Cooperation Framework Agreement, no provisions have been provided to settle the disputes between Macao and the other side through legal techniques. These institutional buildings seem to emphasize adequate political consultations and amicable negotiations aiming to avoid the use of a pure legal approach (or perhaps “a delegalized mode”).

(iii) Socio-cultural dimension

Since the handover, there has been an increasing influence of Chinese language and culture in Macao. Article 3 of Macao Basic Law provides that “the executive authorities and legislature of the Macao Special Administrative Region shall be composed of permanent residents of Macao in accordance with the relevant provisions of this Law”, consequently, legislators, government officials and public servants at large are Macao’s residents who speak Chinese. In legal community, there have been a larger Chinese influence and numerous nominated judges, prosecutors and lawyers received their law degrees in the Mainland.

C. Challenges of Evolution of Macao Law

(i) Overview

Even though the laws and regulations of Macao shall be maintained and shall remain basically unchanged, as provided by the Joint Declaration and Macao’s Basic Law, it does not mean that Macao law should stand in its original place forever. Legal historians recognize that law is never stagnant and tradition itself is a synonym of constant change, recalibration, evolution and solidifying. In a broad sense, no legal culture in the world is static and invariant. The laws and legislation previously in force in Macao shall be maintained in order to prop up the capitalist system and the way of life of Macao people. Even in Portugal, in the last ten years, there have been some law reforms either due to its own initiative or through the directives of the European Union. These newly introduced changes in Portuguese laws could not be extended to Macao as before, because China resumed the exercise of sovereignty over Macao in 1999. In Macao’s society with a fast pace of social changes, none believes in the fixity and perpetuity of its law. Therefore, the future trend in Macao is that law has to be changed along with the economic pushes and the new social reality, but any changes of law shall not uproot its own tradition.

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21 Law No. 2/2009.
If one believes that the localization process started in 1987 aimed to accomplish a historical mission for Macao to become a Special Administrative Region of China, now, under the context of globalization and regional integration, the evolution of Macao law is envisioned to guarantee that it has become really a localized law to monitor and regulate effectively Macao’s local society. At the present time, there is a continuous need for a deeper localization of Macao law in a sense that local legal culture is to be generated.

Both globalization and regional integration require a more active interaction between law and social development. Unlike traditional societies, modern societies in the era of globalization call for a timely response from law and what is more, the response of legal system must be effective enough.

In light of the arguments of Twinning, “globalization and interdependence challenge ‘black box theories’ that treat nation states or societies or legal systems as discrete, impervious entities that can be studied in isolation either internally or externally”, as Macao is deeply integrated with the globe and the other nearby regions, Macao law will increasingly contact more with other legal systems and become more interactive to the complexity of legal diversity. Globalization and regional integration would make Macao attuned to cross-cultural awareness and cultural differences, and the most importantly, globalization and regional integration would help to create cultural identities and to develop a perspective on one’s own society and culture. On the one hand, the legal system of Macao has to face competition from other legal cultures; on the other hand, Macao needs collaborate with other jurisdictions for a better harmonization of laws and a more effective legal cooperation in order to deal with global and cross-regional problems.

(ii) Current Perplexities on Law Reform of Macao

At the outset, the bilingualism in Macao represents a challenge for an efficient legal reform. The frail bilingualism in the books not supported by the community has set off many perplexities in Macao’s society. The relation between law and languages in Macao can be perceived both from the angle of “law in the language” which refers to the problematic of translation in multilingual law making process, and from the angle of “language in the law” which in turn denotes the right to have access to justice in one’s own language. So far, in the legislative process, most proposals and draft bills are elaborated in Portuguese first and then translated into Chinese; therefore some held the view that the Chinese language has not been fully used. In the judicial area, before the 1999, Portuguese was the only language used by the judicial organs. Chinese Language has been used in litigation process only after the handover. Most written sentences made by the Court of the Second Instance and the Court of Final Appeal in Macao are still written in Portuguese. Language and the Chinese litigants cannot understand the court rulings in Portuguese. The judicial organs in Macao have no legal obligations to provide the parties a translation of those written judgments in Portuguese. Article 87 of the Macao’s Basic Law allows that qualified judges of foreign nationality may also be employed and the only criterion for choosing judges is their professional qualifications but not any preferences of language. In addition, the current

24 Currently, Macao has signed Plan of the Supreme People’s Court for Mutual Entrustment in Civil and Commercial Matters for the Service of Judicial Documents and Investigation and Evidence Obtainment with the Mainland in 2001, Arrangement on the Mutual Recognition and Enforcement of Civil and Commercial Judgments with the Mainland in 2006 and Arrangement on Reciprocal Recognition and Enforcement of Arbitration Awards with the Mainland in 2007, Arrangement on Reciprocal Recognition and Enforcement of Arbitration Awards with Hong Kong in 2013. However, in criminal matters, there is no mutual legal assistance arrangement with the Mainland.
laws of Macao permit one of the official languages is used in the litigious activities. As a result, the parties concerned who speak Chinese might feel that they are discriminated to certain extent and their right to access to justice has been negatively affected. Until now, in Macao, although few studies have been done to debate whether the right to get a court sentence translated into a mother tongue of the parties belongs to any type of fundamental rights, some Chinese scholars defend that litigants may request judicial organs to provide them sentences in any official language which can be understood by them, based on Article 25 of Macao’s Basic Law, according to which all Macao residents shall be equal before the law, and shall be free from discrimination, irrespective of their (...) language (...). However, none judicial case in Macao has ever recognized such right as a fundamental right enjoyed by Macao’s residents. As a matter of fact, no international treaties have any peremptory rule for the translation of documents. Article 14 (3f) of the International Covenant on Civil and Political Rights of the United Nations prescribes that everyone shall be entitled “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”. In Macao, the right of individuals in court proceedings to use their mother tongue does not extend to the translation of written documents. This practice is rather similar with those of many other countries or regions. It appears that thus far the issue of language used by judicial organs in Macao is not a pure legal problematic but a tricky issue related to bilingualism and cultural diversity. For users of law, their legal knowledge and their conception on law is not acquired directly through the codes but through their personal experiences in solving the disputes inside or outside courts. Judges need to convince and persuade the parties the legal reasoning and his or her sense of justice. Maybe, in a territory with a great diversity of culture like Macao, if the transplanted codes are to be better understood, accredited, rooted and embraced, the language to express and convey the law (especially the language used by judicial organs or so called “language in the law”) will need to assume a lofty mission for the popularization of law, for the reception of law by its users and above all, for the development of substantive aspect of rule of law.

In Macao, there is a common consent that now the public demands for change and law reform. Macao government has created accordingly Law Reform & International Law Bureau and Law Reform Consultative Committee. These entities are responsible for assisting the Macao government in coordinating and formulating legislative scheme as well as the implementation and review of major law codes and principal legal systems. The community believes that Macao’s law lags behind social change.

Taking into account of the new social reality of Macao in the last decade, broadly speaking, three areas of law need to be greatly improved. The first area of law is regulatory and planning law (such as the Land Law, Urban Planning Law, etc.). For Macao’s economic and social development, they are of the first significance for distributive justice. There are a number of regulatory laws in force in Macao which were enacted in a very different socio-economic context, for instance, the Fiscal Execution Code took in force in 1950, the Land Law was approved in 1980 and the General Budget Law was elaborated.

27 See for instance, Article 89 of the Civil Procedural Code of Macao.
29 For example, the Universal Declaration of Linguistic Rights, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities and the International Covenant on Civil and Political Rights.
30 European Parliament, Right to Defence and Fair Legal Procedures in the Member States and the Candidate Countries, (2001), Working Paper, Civil Liberties Series, LIBE 115 EN, at vi and vii. See for example the practices of Sweden, Finland and German.
31 Decree No. 38088 of 12 of December of 1950.
32 Law No. 6/80/M of 5 of July.
33 Decree-Law No. 41/83/M of 21 of November.
and promulgated in 1984. After several decades, the public makes demands on Macao government to regulate or amend regimes on concession of land’s use, on public participation, on the relationship between public property rights and private property rights, cultural heritage, etc.

The second area of law is so-called social law which concerns the livelihood of Macao people and achieves the social justice (such as the labor law, social security law and even consumer law). For example, consumer law can be said to be based on “social task of private law”, with an objective to remedy the “exaggerated individualism and formalistic concept of freedom and equality”.

The rationales of consumer law are to sustain private autonomy and proper market economy by providing additional mechanisms to contribute a substantive equity. The contemporary consumer lawyers defend that a consumer is not in a position of equal bargaining power and regulation for intervention is justified to achieve a substantive fairness and a social justice when one of the parties is deprived of his freedom of choice and expression of the self-determination, when one of the parties is able to exclude his liability in respect of a breach of the contract terms, when one of the parties in a transaction is not being informed with relevant and sufficient information by the other party and no adequate information is available due to market failures.

As such, “freedom of contract” and “party autonomy” are not the best rules in consumer contracts. In addition to define the notion of “consumer” and the notion of “consumer contract”, in the private law area, the main devices of consumer law are the imposition of the duty of information of the entrepreneur, the right of revocation of the consumer and the establishment of mandatory rules of law or contract regimes. So far, such law tools have not been granted and implemented in consumer law in Macao, as an international city for consumers. Considering that Law on General Contractual Clauses is not made to apply only to consumers and there is no typical consumer contract being regulated and incorporated by consumer law of Macao, one cannot come across any confrontation or discrepancy in legal norms between consumer law and Civil Code. There is an urgent need for scholars, practitioners and legislators of Macao to rethink about the underlying assumptions of conventional private law, the new trend of private law and the direction of Macao consumer law.

The third area of law focuses on dispute resolution. The public opinion in Macao generally criticizes the delay for court rulings and demands for the optimization of contentious proceedings and the enhancement of efficiency. Great efforts for the revision of Criminal Procedure Code and Civil Procedure Code have been spent. To take for example the public consultations for the revision of the Criminal Procedure Code, many controversial and even conflicting opinions just reflect the different and contradictory positions of the legal community on assessing the existing laws and the legal system of Macao. As far as the alternative dispute resolution (ADR) is concerned, Mediation Law has not yet been included in the legislative scheme. Since the enactment of the Voluntary Arbitration Law and Commercial Arbitration Law concerning Foreign Interests, arbitration has not been frequently utilized by Macao society. Arbitration still plays an insignificant role in various dispute resolutions due to some limitations in the existing system and can hardly fulfill the

36 Law No. 17/92/M of September 28. In other jurisdictions, “general contractual clauses” can be designated as “standard terms”.
38 Decree-Law No. 29/96/M of June 11.
39 Decree-Law No. 55/98/M of November 23.
functions as ADR in Macao.\textsuperscript{40} If Macao is to be an international tourism and leisure hub and a bridge for economic and commercial relationship between China and the Portuguese-speaking countries, there is a great need to develop its arbitration law.

Some teething troubles of Macao’s law reform are linked to technical aspects of law. Macao belongs to the Civil Law System and any changes in the codes need cautious thinking because a slight move in one part might affect the situation as a whole and any amendments in the codes must ensure their overall coherence in addition to the compatibility with other sources of law. Other difficulties for Macao’s law reform connect with the absence of local legal culture, in particular, the absence of authoritative doctrine written in Chinese. This situation is even aggravated by the cultural divergences between the Chinese and the Portuguese and the non-existence of certain corresponding legal terms due to different habits of expression of the two languages.

4. \textbf{Implications of the Case Study of Macao and Concluding Remarks}

The above analysis exemplifies how legal tradition is formed in Macao and how its legal tradition is constantly shaped by the socio-economic, cultural and linguistic backgrounds in a context of globalization and regional integration.

In our reflection about tradition and modernity of Macao’s law, two extreme points of view should be abandoned. The first view is that Macao’s law needs to sustain its purity and needs to be preserved for ever as a cultural heritage, as it belongs to social elites and operators of law. This kind of nostalgia for tradition can be easily understood but the idea itself goes against the principle of democracy in a modern society. The second view is that Macao’s law represents an outcome of the Portuguese colonization and there is no need to give weight to the Portuguese mode of law when Macao became a Chinese territory. The patriotic feeling and nationalism are highly appreciated; however, this argument lacks a scientific basis because legal history teaches us legal tradition cannot be easily cut off due to likes or dislikes of some people.

In a globalized world, our thinking of law requires a new perspective. Law cannot be thought and revisited in an isolated and closed “black box”. As different legal systems interact frequently among themselves, a global vision is particularly important to find solutions for a certain national or regional legal tradition. Some problems which seem to be “local” can only be solved through cross-regional or trans-boundary interaction.

Unlike what happened in the past, legal transplants or legal borrowing in a globalized world has shifted from a passive and mandatory approach to a pro-active and selective approach. Today, there is no need to follow blindly the simple practice of taking in and learning from other jurisdictions. If a certain legal culture needs to better interact with others, it must make sure at first that it is deeply rooted in fertile soil and it is erect and strong enough to withstand a test. Legal borrowing today is a kind of deepening and consolidating local legal traditions. With a solid localized and deep-rooted tradition, the intercourse of employing foreign tools will become much easier and the legal tradition in question will feel more confident to export its experiences to other jurisdictions.

Law is not just rules. Law is not just an instrumental technique. Law interacts with other social-culture factors. Rule of Law does not exist if law is only among legal elites but not in the everyday users of the legal system. In a globalized world, law necessities popularization because law is an intrinsic product of culture and the transmission of a legal tradition depends on the support of users of law.

Macao, due to its uniqueness in many ways, has potentials to become a laboratory of researches on comparative law and international law. It is located closely to Hong Kong, a

jurisdiction of Common Law System, to the Mainland, a jurisdiction adopted the socialism and on its way to build rule of law, and to Taiwan, another jurisdiction with Roman-Germanic tradition. All these four regions with different legal cultures share a common language and common customs. Will the particularism of Macao be able to contribute to an eventual convergence among these regions? Will it be easier for a small territory like Macao to play a more active role in the interaction among these regions?

Perhaps it is still too early to answer these questions. However, we are convinced any legal culture is able to carry out self-reflection and self-adjustments in dynamic and diverse dimensions of time and space. In order to find out the right answers, we certainly need an innovative approach to discover the progressive pattern of inertia, evolution, survival, diffusion and interaction of a legal tradition in global context. We name the innovative approach as “pyramid approach” which requires both a wide breadth at the base and a sharp edge at the top. To understand well any legal tradition in a diverse world, law needs to be understood and observed in very broad dimensions such as culture, languages, sociology, anthropology and so forth, at the same time, all local laws need to be viewed from a vantage point to get a panorama in our globalized world.