

Texts from Old Macau

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Macau's Original Municipal Charter (10 April 1586)

Macau and Hong Kong, the two Special Administrative Regions (SARs) of the People's Republic of China, are each governed under a Basic Law. Often described as "mini-constitutions," these documents outline and guarantee 50 years of autonomy following each territory's return to Chinese administration. Each was shaped by a bilateral negotiation between China and the respective colonial power, and each came into effect immediately upon handover (1997 in the case of Hong Kong, and 1999 for Macau). They share a great deal of language, obscuring the fact that Hong Kong and Macau represent entirely different colonial legacies. Indeed, Macau was settled by Portuguese traders 288 years before the British ever set foot on Hong Kong. Although many of the Macau Basic Law's articles mirror those of its previously-drafted sister, it also contains several key differences that the Portuguese won despite negotiating from a position of weakness. The diplomatic record isn't always clear as to why the Portuguese persisted, but their success reminds us that Macau's constitutional development should not be viewed as merely derivative of the Hong Kong experience. Exploring those nuanced textual differences in a comparative context yields an enormous amount of historical intrigue.

Legal scholars in both SARs apply different lenses to interpret the two Basic Laws. Treatises explaining the Hong Kong Basic Law are replete with references to cases or acts dating from the city's colonial era, but that historical perspective is less common in Macau, despite the fact that Article 8 of both Basic Laws guarantee that upon handover "[t]he laws previously in force . . . shall be maintained . . ." Most Macau analysts are reluctant to look further back than the Macau Basic Law's immediate predecessor, the 1976 Organic Statute of Macau, for inspiration. That reflects the basic ideological difference between the civil and common law legal systems of the two SARs. Yet to appreciate the origins of terms contained in the Macau Basic Law (MBL), we must endeavor to trace them back further – back to the creation, if need be – or else a unique constitutional tradition will be lost to the dustbin of history.

Macau has existed in a symbiotic "one country, two systems" relationship with mainland China since Portuguese traders settled there in the mid-sixteenth century. Too distant to be dominated by either empire, the constitutional governance of Macau grew organically and expediently, as a result of Portuguese and Chinese cooperation and tension. Isolated and often besieged, it developed a complex nexus of local, regional and international linkages comprising a *de facto* separation of powers. Unfortunately, due to the passage of time, poor recordkeeping, and the sale or destruction of archived materials, many original documents from Macau's formative era are lost. By piecing together what we do have in the archives – including relevant portions of contemporary Chinese and Portuguese records, government dispatches, letters, news reports, and scholarly accounts – specific eras of constitutional development can be identified, each with its own defining repertoires and characteristics. That chronicle includes the eras of trade settlement (1553-1582), town-hall municipality (1583-1622), democratic fortress (1622-1783), colonial transition (1783-1846), colony (1846-1966), handover transition (1967-1999), and SAR (1999-present). That, however, is the subject of a dissertation. Presented for you here is a single thread of that rich tapestry: an overlooked document from Macau's long past.

The copy of Macau's original municipal charter translated below recalls one of Macau's earliest and most significant constitutional moments. Portuguese traders settled at Macau in 1553 pursuant to the terms of a trade agreement struck between Portuguese Captain-major Leonel de Sousa and the Deputy Surveillance Commissioner of Guangdong Province, Wang Bai. By 1557, their encampment had grown from a simple settlement (*povoação*, 村落) to an unincorporated trading outpost (*feitoria*, 商站), minor establishments within the constitutional scheme of the Portuguese maritime empire. When news arrived in 1582 that Spain had absorbed Portugal into an Iberian Union, the local secular and religious authorities of Macau hastily called a general council of all residents to incorporate their city and establish a form of self-government that would preserve their autonomy from the Spanish Crown. Royal acquiescence arrived in the form of this letter, via the Portuguese Viceroy of India, in 1586. It marks the official transformation from trade settlement to town-hall municipality (*conselho*, 政务会). Macau's local government would thereafter mirror that of the mainland Portuguese city of Évora, consisting of a powerful Senate (*Senado*, 议事会) comprised of three elected aldermen (*vereadores*, 市议员), two lay judges (*juíz ordinários*, 普通法官), and one *procurador* (检察长). Residual executive authority was vested in a locally elected Land Captain (*Capitão de Terra*, 驻地首领), while the jurisdiction of the Crown-appointed Captain-Major of the Japan Voyage – previously absolute over Macau – was henceforth limited only to overseeing the annual trade expedition. Macau thus was recognized as a full-fledged Portuguese city and, despite constant surveillance from a parallel Chinese administrative apparatus and periodic external crises, its legislature would remain the pivotal force in local affairs for the next 200 years.

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Letter from the Viceroy of India, Dom Duarte de Menezes, Confirming Macau's Municipal Institutions, and Granting to its Residents and City Council the Privileges of the City of Évora

Forwarding the Charter of Privileges Granted by His Majesty to the City of Macau in China

Dom Philip, by the Grace of God, King of Portugal and the Algarves, from here to beyond the sea in Africa, Lord of Guinea, and of the conquest, navigation, and commerce of Ethiopia, Arabia, Persia, India, and the kingdoms of Malacca, etc.: Those to whom this letter comes, I announce that I made mercy to the residents of the City in the Name of God and Port of Macau, in China, to confirm to them the election of councilors, judges, and chamber officials, according to the letter written by the Count Dom Francisco Mascarenhas, my Viceroy of India. Henceforth this village shall, as it is contained in this letter that is passed to him in my name, have a Land Captain in order to best govern and fulfill their obligations more conveniently in my service and, moreover, to suit Justice, as many times disorder has reappeared because the Captain-majors of the Japan Voyage provided by me leave to finish their duties every year and are detained in China and Japan. At those times, there is no Land Captain who administers justice to the frontier until the time of the election, with each person following what seemed proper to him, and not even the Captain-majors had the authority that they should have, because there was no head [among them]. And the people responded by referring to this settlement as a City, having in it Aldermen and Councilors so that it can be governed, and have peace, and quiet, and Justice within it, which is the principle that I order in all of the Cities and Provinces of my States. That principle is to be fulfilled all the more in China, for it is much more remote than India, and unable to be provided for but from year to year, and even then not in every respect. The referred to City, and her residents, are favored by me, and

should have the privileges and jurisdiction that they need to better serve me, and to do what meets the good of the republic, and her government, and to respond to all that was aforesaid and any other happenings or alterations which may occur. I now make to them, through grace and mercy, in return for the services that they have done for me, and in the hope that from now on they remain such good and loyal vassals as they have always been, and I am pleased to grant and concede to the referred City of China, its residents, and its people, all of the privileges, freedoms, honors, and preeminence of my City of Évora, that this City of China fully enjoy them. They should be kept generally and entirely as granted and used in the City of Évora, because it is in that way I make mercy to China, and send these orders to be authorized and justified in the Councils of India's Cities as I have said. So in this way I notify and order the Captains-majors of China, and all other Captains, *Procurador* Generals, *Procuradores*, Judges, Justices, Officers, and people, now and in the future, to thus comply, fully enforce, and guard the manners contained in this letter, undoubtedly and with no restrictions, because this is my mercy. Given in my City of Goa, under the seal of royal arms of the Crown of Portugal on April 10. The King sends this to Dom Duarte de Menezes, of His Majesty's Council and His Viceroy of India, via Pero da Cunha. In the Year of our Lord Jesus Christ, One Thousand, Five hundred and Eighty-six. Transcribed by John Faria.

ORIGINAL PORTUGUESE

Carta do Vice-rei da Índia, D. Duarte de Menezes, confirmando as instituições municipais de Macau, com a concessão aos seus habitantes dos privilégios da cidade de Évora e de foro de cidade (10.4.1586)

Traslado da carta dos privilégios que Sua Majestade concedeu à cidade de Macau das partes da China

Dom Filipe por graça de Deus, Rei de Portugal e dos Algarves, daquém e dalém mar em África, senhor da Guiné, e da conquista, navegação e comercio da Etiópia, Arábia, Pérsia, da Índia e dos reinos de Maluco, etc. Aos que esta minha carta virem, faço saber que eu fiz mercê aos moradores da povoação do Nome de Deus do porto de Macau, na China, de lhe confirmar a eleição que fizeram de vereadores, juizes e oficiais da Câmara, conforme a carta que lhes sobre isso escreveu o Conde Dom Francisco Mascarenhas, meu Vice-rei, que foi da Índia, e que seja dai em diante a dita povoação, cidade como se mais contém na carta que, em meu nome, lhe mandei passar, e respeitos nela declarados, e par melhor puderem cumprir com as suas obrigações, e como o que convém a meu serviço, e governo da terra, e ao mais que se oferecer em especial no que convém à Justiça, por muitas vezes perecer, e se recrescerem desordens por causa dos Capitães-mores providos por mim na viagem ao Japão irem cada ano fazer a dita viagem, e fazerem pouca detenção na China por irem ao Japão acabar de a fazer, e quando não, não ficar na terra Capitão que administre a Justiça por até o tempo que se fez a dita eleição ser a terra fronteira, e cada um seguir o que lhe parecia, e nem os próprios capitães-mores tinham o respeito que convinha, por não haver cabeça, e povo ouvido que acudisse a isso, e como agora a dita povoação ser cidade, e haver nela Vereadores e Oficiais da Câmara poderá ser bem regida e governada, e haver nela sossego, quietação e Justiça, que é o principal, que encomendo que haja nas ditas Cidades e Províncias de meus Estados, e isto cumprir muito mais na China, por estar tão remota na Índia, e não se poder prover no que suceder, senão de ano a ano, em que se vai para lá, e tendo a tudo respeito, e quanto convém, que a dita Cidade, e moradores dela, sejam favorecidos de mim, e com privilégios, e Jurisdição para melhor me puderem servir, e fazerem o que cumpre a bem da república, e governo dela, e acudirem a todo o sobredito, e a quaisquer outras coisas, e alterações, que se moverem. E por folgar de lhes fazer, graça e mercê, pelos serviços que me têm feito, e espero que ao diante me façam como bons, e leais vassallos, que sempre foram a meu serviço hei por bem, e me apraz fazer de conceder à dita Cidade da China moradores, e

povo dela, como de facto por esta minha carta concede, e dou todos privilégios, liberdades, honras, e preeminências, da minha Cidade de Évora, e que a Cidade da China goze inteiramente deles, e lhe sejam guardados inteiramente em geral, e em especial, assim, e da maneira, que usa, e goza, e são concedidos à dita Cidade de Évora, porque dessa própria maneira faço deles mercê à da China, de que lhe serão mandados dar os traslados autorizados, e justificados das Câmaras das Cidades da Índia onde estiverem para deles gozarem, e usarem como ditto é. Notifico assim aos Capitães-mores da China, e a todos os mais Capitães, Ouvidor geral, Ouvidores, Juizes, e Justiças, Oficiais, e pessoas, a quem pertencer, que agora ora são, e ao diante forem, lhes mando que assim o cumpram, e guardem, e façam inteiramente cumprir, e guardar da maneira, que se nesta carta contém digo, que se nesta minha carta contém, sem dúvida, nem embargo algum, que a ele seja posto, porquanto assim, é minha mercê. Dada na minha Cidade de Goa, sob o selo das Armas reais da coroa de Portugal aos dez de Abril. El Rei o mandou por Dom Duarte de Meneses do Conselho de Estado de Sua Majestade, e seu Vice-rei da Índia, pero da Cunha o fez. Ano do nascimento de nosso Senhor Jesus Cristo de mil, e quinhentos, e oitenta e seis. João Faria o fez escrever.

While this single document is too short and obscure to directly compare to the Macau Basic Law, we can extract a few points for further analysis. First, Macau was then officially styled as the “City in the Name of God” in China, emphasizing its importance to the Catholic Church and suggesting a legacy that likely inspired the MBL’s expanded terms on social welfare and religious liberties. Second, the post of *procurador* remains. Macau’s *Procurador* was more powerful than any other in the Portuguese Empire. A Senate officer, he became the city’s accredited representative in all dealings with Chinese officials, and from 1584 forward was recognized as a junior-grade mandarin officer by the Chinese authorities. The post survives in the MBL although it has never existed in Hong Kong. Third, noting its special circumstances, the King grants Macau’s residents the autonomy necessary to pursue “peace, and quiet, and Justice” in exchange for their continued loyalty and service, not entirely dissimilar from the modern arrangement. Perhaps the most striking dissimilarity is the degree of empowerment of the early legislature. It became so prominent in local affairs that by 1709 it even won unique dispensation from the Portuguese Crown for mixed-race residents to partake in local governance – an extremely progressive arrangement for the time. That ancient legacy makes it fitting that transitional Macau would reintroduce elected seats to its legislature in 1974, a decade before Hong Kong’s first legislative elections.

I hope to publish a large number of these annotated translations in book format someday, because understanding Macau’s legal history presents new perspectives for interpreting the text of the MBL in light of Macau’s unique history and realities, an alternative to the Hong Kong model of “one country, two systems” within Chinese constitutionalism, and a potent example for small jurisdictions enjoying layered autonomy around the world.

Source: Macau Archives 4^a series, 8.1 (1989) 36-37, reproduced in Hespanha, A.M., Panorama da História Institucional e Jurídica de Macau (Overview of the Legal and Institutional History of Macau), (Macau: Macau Foundation, 1995) at pp. 137-38, translated into English by me, Jason Buhi, with special thanks to Catia Rosas-Santos for help on several finer points. Any translation errors are solely my own.

Jason Buhi is a qualified Maryland attorney and Ph.D. candidate at the University of Hong Kong Faculty of Law. His research into Chinese constitutionalism focuses specifically on the theory and practice of “one country, two systems.” His dissertation explores the record of constitutional development in

Macau, the former Portuguese enclave across the Pearl River estuary from Hong Kong. As part of this project, he is interpreting several Portuguese and Chinese legal documents into English for the first time.