

# abstracts



## **Public Moneys, the Trial of the Accounts and Institutional Financial Control in the Territory of Macau**

António de Sousa Franco

(pp. 277)

*The Territory of Macau will still be under Portuguese administration for a short period of time. Being considered by China and Portugal as part of the People's Republic of China, the sovereignty, under a special regime, will be held by the P.R. China, on the 20<sup>th</sup> December, 1999.*

*Macau has also been under colonial regime, so an Administrative, Fiscal and Audit Court had the financial control in Macau. However, as for its decisions — only in terms of previous audit — they could appeal to Portugal Audit Court (which illustrates the enormous importance that the previous audit might have in certain actions which were accomplished under this control system).*

*The necessity of reviewing the situation — within the quite deformed context of the revision of the Macau Judiciary Organization where so often the necessities inherent to the financial control and those of the Region were not taken into consideration — led to a long and difficult process which originated the creation of the Audit Court.*

*The Basic Law for Judiciary Organization of Macau (Law n.º 112/91, of the 29<sup>th</sup> August, with the alterations introduced by Law n.º 4-A/93, of the 26<sup>th</sup> February) states that Macau Judiciary Organization comprises courts of common jurisdiction and courts of fiscal, customs and financial jurisdiction (article 5, n.º 1) and establishes that (see article 6): «in the Territory of Macau there are First Appeal Courts, the Audit Court and the High Court of Justice» stating in article 10, the jurisdiction and competence of Macau Audit Court.*

*Thus, bearing in mind the hand-over of Macau to the People's Republic of China, the present legislation needs to be adapted to the principles of the Basic Law, so that the transition may be smooth and without lacking competence.*

## **The Embassy of Alexandre Metello de Souza e Menezes to China within the Context of the Sino-Portuguese Relations**

Wong Qichen

(pp. 285)

*Little by little, the religious orders started their mission in China. Divergences among their members about how their work should be*

*accomplished and the nature of their principles which were not flexible, led to the prohibition of evangelization by the Chinese authorities, who ended up by expelling from China almost all the missionaries. In order to prevent the execution of the latter order, Alexandre Metello de Souza e Menezes went to China on an embassy, which was carefully prepared, and he used all the necessary means to impress the Emperor Yongzheng.*

*However, despite the Administration coffers becoming almost empty due to the expenses regarding the embassy, the results were not encouraging. We might say that the embassy was almost a fiasco, as the emperor didn't even allow that the matter was broached.*

*All the steps taken to send this embassy are broached by the author of this article, giving us an idea about the efforts, enthusiasm and the consequences of that mission.*

## **Sino-Portuguese Relations between 1949-1966**

Moisés Silva Fernandes

(pp. 299)

*The Sino-Portuguese relations which preceded the «Cultural Revolution» in Macau were characterized by two distinct phases: the first one marked by the restrictions imposed by the mainland China to Macau; the second one characterized by a gradual breach in the relations between Portugal and Formosa and the improvement of the relations with mainland China. The first period, between 1949 and 1960 was marked by the constant restrictions imposed by mainland China to Macau.*

*However, the international political situation ended up by favouring the Portuguese presence in Macau and contributed slowly and decisively to the emergence of a de facto informal and political condominium. The second phase, between 1961 and 1966, was marked by a gradual breach in the relations between Portugal and Formosa and by a considerable improvement of the relations with mainland China. Nevertheless we cannot consider the latter improvement in the relations with mainland China as a real progress in the relations between the red capitalist compatriots (Aomen hongse zibenjia tongbao) from Macau and the local Portuguese Administration. On the contrary, during this period a gradual worsening of the relations between the Portuguese Administration of Macau and the red capitalist compatriots of the enclave occurred, due to the grant of gold imports and gambling activities to Hong Kong Chinese rival capitalists by the Portuguese Administration between 1960 and 1961, respectively. During this phase, Formosa activities were gradually restricted by the local Portuguese administration and the Foreign Affairs Ministry tried to persuade Salazar to recognize and establish diplomatic relations with the People's Republic of China. However, the latter initiative failed due to the unshakable courage of Salazar.*

## **Monsignor Manuel Teixeira and the History of Education in Macau**

António Aresta

(pp. 335)

*In this article the author refers to the pioneer contribution of Monsignor Manuel Teixeira in the field of History of Education in Macau.*

*The article is also a simple homage to one of the greatest historians regarding the Portuguese presence in Macau and in the Far East.*

## **Educational Society and Teachers — prospects for the twenty-first century**

Roberto Carneiro

(pp. 349)

*The history of societies has got us used to the recurrent emergence of Utopian theories which proclaim a completely distinct outlook on the educational process. Theses about education without school or school without walls represent movements towards the rethinking of the pedagogical action, undoubtedly generated by generous purposes and romantic aspirations.*

*At present school without teachers is the trend followed by many important thinkers in the field of educational theorization. It might be, the excellence of the technological myth, which, starting by expelling people from the economic process in the name of gains in productivity and in the name of competition — «jobless economy» —, is already preparing itself to announce a new learning model — «teacherless school». The article mentions some of the existing educational schools of thought and refers briefly to the technology that it is believed to have had the greatest impact on education. The author, based his study on the UNESCO reports, and in spite of the new teaching and communication technologies, he defends that «teacherless school» will not materialize in the twenty first century.*

## **Some Considerations about Law**

Jorge Miranda

(pp.371)

*Law as an act of legislative function — or being, so many times, in close connection with law, as Law decreed by State — is part of one of the frequent themes of the "Juspublicista" science and, before and beyond the latter, is part of the political and juridical philosophy.*

*Its essence, its foundation and its limits, its relationship with welfare or with the principle of the political unity and authority have been researched since Antiquity. The most significant concepts about State and Law reflect necessarily on the different ways of understanding of what law is (or should be).*

*Hence in the last centuries law was considered as:*

- *Law, as the regulation of reason (S. Thomas de Aquina and in a certain way Suarez);*
- *Law, as the sovereign's will (Hobbes);*

- *Law, as the guarantee of civil freedom and propriety (Locke);*
- *Law, as connected with division of power and equilibrium of organizations (Montesquieu);*
- *Law, as the expression of the general will (Rousseau);*
- *Law, as rational will (Kant);*
- *Law, as a tool for general use and happiness (Bentham);*
- *Law, as the immediate manifestation of a sovereign power (Austin);*
- *Law, as a tool for class power (Marx, Engels);*
- *Law, as a group of norms following in importance the Constitution (Kelsen);*
- *Law political council (Schmitt).*

*But the law issue is part of the power general issue. The organization of the society and the power to rule it confronts law.*

*It is not by chance that Locke considers the legislative power as the first power because it determines the different form of government. Nor is it by chance that, though refusing the separation of powers, Rousseau agrees that there is a difference between the legislative function and the executive function, stating that the former is the only sovereign power. Or, that, on the contrary, Montesquieu wants to limit it.*

## **Determining Factors and Guidelines of the Legislative Reforms in Macau**

Paulo Cardinal

(pp. 385)

*The author presents in a personal perspective the determining factors of the legislative reforms of Macau juridical system, and he identifies as well the guidelines of the latter reforms, not only from a general point of view but also within the context of some great areas of the juridical system.*

*After presenting the introductory elements of this theme, as for example, the system of legislative production, stressing the fact that Macau is going through a transition period, the author denies the thesis which defends that due to the Sino-Portuguese Joint-Declaration on the Questions of Macau, law localization was a formal determining factor of the legislative reforms.*

*Then the author deals with the convergence with the Basic Law which he considers as an important reference point, therefore a guideline, but not as a determining factor based on an idea existing before the Law of the Macau Special Administrative Region.*

*The modernization of the juridical system, its adaptation, the preservation of the Portuguese matrix (and relating juridical matters) as well as juridical certainty and safety are the guidelines that must be present in any legislative reform, due to its general characteristics.*

*In the last part, the author attempts a division of Macau Law into great blocks — however he doesn't use the whole law for that purpose — which will require special guidelines and special attention in its reform: business law, institutional private law and fundamental law.*

## **Error Concerning Fact and Error Concerning Unlawfulness in The Penal Law of Macao**

Zhao Guoqiang

(pp. 397)

*As widely known, when apprehending the outside world situations of disparity (between the objective reality and the representation of that same reality) inevitably occur on the part of the subject, originating situations of error. When the subject falls into error, there is a strong probability that its conduct may lead to results the subject itself did not desire or even tolerated. In order to exist deceit in a case of crime, in Penal Law, it is necessary for the agent to have a subjective attitude of wishfulness or, at least, of tolerance regarding the prejudicial results of the crime. If the producing of these typical and prejudicial results can be attributed to error (in the representation of reality) on the part of the agent, this fact is susceptible of removing the deceit. Situations of error directly linked with the existence or non-existence of deceit are dealt with in the doctrine under the designation of «error in Penal Law».*

*The theory of error in Penal Law assumes great practical relevance in the differentiation between crime and «non-crime» and in the determination of different types of crime. The penal codes of many countries and regions include specific dispositions (relating to the problematic of the error) in the part concerning general principles. The same happens with the Penal Code of Macao, whose articles 15<sup>th</sup> and 16<sup>th</sup> deal precisely with the matter of error in Penal Law.*

*The doctrine allows different ways of classification of the error in Penal Law, but traditionally and frequently it classifies the error under error concerning the fact constituting the crime and error concerning unlawfulness. In effect, the Penal Code of Macao followed the same methodology in what regards the classification of error, its article 15<sup>th</sup> pertaining to the error concerning the circumstances of the fact and article 16<sup>th</sup> pertaining to the error concerning unlawfulness.*

*In this text, the author presents us with a more detailed analysis of this subject so as to shed further light on the matter .*

## **Ombudsman: Its Origins and Competences**

José Menéres Pimentel

(pp. 409)

*The author starts his article referring to the origin of a figure whose functions were to receive the complaints of the citizens and to protect them, through persuasive means, against the injustices practised by civil servants. Then he mentions the diffusion of the Ombudsman throughout the world and the diversity of his designations and statutes. In Portugal, the creation of the position of Provedor de Justiça («Purveyor of Justice») comes in force before the approval of the 1976 Constitution. The attributions, implications and objectives of his intervention, the principles of his activity, the warrants, the means and the tools of the Provedor de Justiça are referred to as well.*

*The text ends by focusing on some convergent aspects of both positions: the Provedor de Justiça of Portugal and the Alto Comissário contra a Ilegalidade Administrativa de Macau (High Commissioner against Public Administration Illegal Acts).*

### **In Favour of a Place for Macau in the World**

Manuel Escovar Trigo

(pp. 425)

*In this article the author broaches five themes, the contents of which brings about some concern for those who reflect upon it, within the context of the Portuguese Community:*

*The community of the people of Macau and the Portuguese language;*

*Macau Juridical Community;*

*Present and future statute of Macau;*

*Macau's place in the communities of the countries where Portuguese is spoken;*

*The place of Macau in the world.*

*As the date of the hand-over of Macau to the People's Republic of China is just round the corner, all these subjects are pertinent and belong to the present day, hence the preoccupation. Therefore a careful and accurate reflection upon them is worthwhile.*

### **«If» Clauses in Portuguese and Chinese**

Jiang Hui

(pp. 439)

*The author has in view to contribute to a better understanding of the Portuguese and Chinese languages, through grammatical comparison.*

*Every language has its common and particular characteristics comparatively to other languages. The comparative analysis between mother tongue and a foreign language is always of assistance not only to the students but also to the teachers who teach them.*

*In this particular case the author chose the «if» clauses to establish a comparison between the Chinese and the Portuguese.*