
I.

INTRODUCTORY REMARKS

1. Introduction and Background

This Handbook, occasionally succinct, delve into the legislative procedure governed by the parliamentary law of the Macau Special Administrative Region (MSAR). They place a pronounced emphasis on the body of rules outlined in the Rules of Procedure of the Legislative Assembly. Their origin is rooted in the establishment of the *Lawmaking Course* — presented in Portuguese — under the banner of the Centre for Legal and Judicial Training (CFJJ) in 2015. It was during this period that I was honoured with an invitation to elucidate on this subject. The continuation of both the course and my involvement in 2016 spurred the incremental enhancement and expansion of these pages, a progression that was diligently maintained in the ensuing years.⁷

At their core, these observations were designed to support the pedagogical objectives of the course. They serve as supplementary material, yet do not purport to be a comprehensive guide to the subject or the many specific features and challenges present in the legal order and praxis of the MSAR. Therefore, the included bibliography and normative sources are not mere formalities; this Handbook was conceived as vital, though not exhaustive, tools for the academic exploration of this subject, as part of the said course facilitated by the MSAR CFJJ.

I would like to stress the educational intent behind this compilation.⁸ Its wording and structure have been crafted with this foundational purpose in mind, albeit also allowing for adaptability. As a result, some broader topics or those with wider implications might be addressed multiple times. I kindly ask the reader for their understanding in this regard.

The recognised scarcity of local legal scholarship and training of a high calibre

⁷ This Handbook began as mere notes and were markedly sparse and unbalanced in the development of various subjects and were always distributed, before the lectures, to the students of the 2015 course. Following further scholarly inquiry and reflection — both post-lectures and after the conclusion of the initial course — the notes underwent a process of evolution, expanding in scope and incorporating additional topics. As previously mentioned, they were subsequently updated and modestly augmented. To ensure their continued relevance for future courses at the CFJJ or other institutions, those notes have been periodically revised, augmented, and refined within the constraints of available time, including an update of referenced materials. The text of this Handbook as it stands represents the culmination of a layered, evolutionary process.

⁸ The reader should therefore not be surprised to encounter a more frequent use of direct quotes, either from legal scholars, either from Reports issued by the Legislative Assembly.

underscores the significant contribution that the CFJJ has made to the dissemination and knowledge of Macau law.

More specifically, within the realms of the training course for which this Handbook were crafted, the desert of knowledge is well-known and utterly dry with only a few commendable exceptions.⁹ In other related topics such as the system of government, the peculiar distribution of normative functions, the study of Law No. 13/2009, and its relationship with the sources of international law, research, though present, is either limited or not widely acknowledged.

Other reasons are equally invokable. In fact, the adequacy of the study of law-making from a procedural standpoint makes particular sense in modern democratic, pluralist and participatory States.¹⁰

Within the curriculum of the said *Lawmaking Course* — delivered in Portuguese — my Lessons formed Module V, which included these following chapters, summarised here for reference and comparison:¹¹

- I. The legislative procedure
- II. Multitude of sources versus centrality of the Legislative Assembly's Rules of Procedure
- III. Nature, Scope, and Function of the Legislative Assembly's Rules of Procedure
- IV. Legislative power in the Rules of Procedure — e.g actors, initiative,

⁹ This panorama was recently changed with the publication of the extensive collective *oeuvre*, of nearly 800 pages, Centro de Formação Jurídica e Judiciária (eds), *Estudos no Âmbito da Produção Legislativa, Textos em Língua Portuguesa* (CFJJ 2018). I was unable, for various reasons, to delve deeply into such texts; therefore, no references or quotes thereto will be made throughout this Handbook. I am convinced that this work shall become groundbreaking. The following texts can be found therein: João Albuquerque, 'Poder Normativo: O regime jurídico de enquadramento das fontes normativas internas da Região Administrativa Especial de Macau', 1 et seq; José Bento Almeida, 'Autocontrolo da Legalidade na Produção Normativa', 111 et seq; António Marques Da Silva, 'Metódica de Legislação e Processo de Consulta Pública', 143 et seq; Paulo V Henriques, 'Processo de Redacção dos Actos Normativos', 173 et seq; Chan Hin Chi, 'Bilinguismo Legislativo', 229 et seq; Lau Io Keong, 'Produção Legislativa Bilingue: Tradução de Actos Normativos e Concorrência de Documentação Jurídica Bilingue', 241 et seq; Paulo Cardinal, 'O Procedimento Legislativo no Regimento da Assembleia Legislativa', 279 et seq; Cristina Ferreira, 'Direito Internacional', 315 et seq; Choi Chi Long, 'Pesquisa Jurídica', 357 et seq; Luís Pessanha, A pesquisa jurídica no processo legislativo, 361 et seq; António Marques Da Silva, 'Análise de casos legislativos: Lei n.º 2/2007 (Regime Tutelar Educativo dos Jovens Infractores)', 409 et seq; Chan Hin Chi and José Miguel Figueiredo, 'Análise de casos legislativos: A Revisão de 2013 do Código de Processo Penal – Breves notas sobre o procedimento legislativo respectivo', 415 et seq; Paulo Cardinal, 'Análise de casos legislativos: Lei n.º 16/2008, Alteração à Lei n.º 2/93M, Direito de Reunião e Manifestação e Lei n.º 13/2012, Regime Geral de Apoio Judiciário', 433 et seq; Luciano Correia De Oliveira, 'Análise de casos legislativos: Vídeo Vigilância em Espaços Públicos e Protecção de Dados Pessoais', 439 et seq; Pedro Pereira De Sena, 'O Exercício da Função Legislativa e os Desafios na Prática da Feitura das Leis – Análise de um processo legislativo (a)típico', 469 et seq; Paulo Cardinal, 'O Procedimento Legislativo no Direito Parlamentar de Macau – O procedimento legislativo no Regimento da Assembleia Legislativa', 495 et seq. All of these chapters are published in the supra mentioned *Estudos no Âmbito da Produção Legislativa, Textos em Língua Portuguesa* (CFJJ 2018).

¹⁰ José Eduardo Figueiredo Dias, 'Procedimento legislativo', in *Formação Jurídica e Judiciária – Colectânea, Tome I* (CFJJ 2006) 233.

¹¹ As already explained, this formatting no longer corresponds, in its entirety, to the division and presentation of subjects as expounded in this Handbook.

compliance and interconnection with the Basic Law, interconnection with other legislation

- V. The common legislative process and its various stages
- VI. The urgency process
- VII. The dynamics of the ground: praxis, usages, customs, and variances

In short, this framework was the initial guide I was tasked and constrained to adopt, which over time evolved into the present *Handbook on the Legislative Procedure under Macau Parliamentary Law*.

This evolution saw the integration of minor adjustments, in tandem with the delivery of the course and the preparation of this Handbook. Consequently, the table of contents might appear somewhat restructured and expanded, but it preserves the foundational structure of the original training module; indeed, no chapter or topic from the originally conceived programme has been excluded.

Further adjustments were imperative in this Handbook, potentially resulting from the act of teaching itself. This was driven by the interests and queries articulated by participants, as well as the inherent synergy with other modules and themes of the course.

This adaptive approach became evident at the culmination of several courses. The pedagogical experience, coupled with the fruitful debate that ensued, led to several modifications and improvements, particularly in content presentation and, by extension, in the table of contents.

It is worth clarifying that the first written notes might seem to be sparse. Certain topics shall be explored in depth due to their inherent significance, the evolving dynamics in practice, or the challenges these dynamics present. Conversely, other equally vital topics might receive a more succinct treatment, occasionally limited to a quote of a given norm.

A case in point for the first situation is the issue of *legislative initiative*, encompassing the legislature's supervening initiative. In our system, as delineated by the Basic Law, the issue of *legislative initiative* is tantamount to a major focal point, overshadowing aspects like the perimeter of the areas reserved to the law. Further examples of the former scenario include the necessary and permanent nexus between majority issues in the legislative process and the Basic Law; and the nature, value and function of the Rules of Procedure, which have evolved beyond being seen as a mere compendium of gentlemanly agreements.

Today, the Rules of Procedure in the MSAR¹² possess constitutional legitimation and a normative, binding identity, thereby demarcating specific areas for subsequent normative creation. Additionally, the Rules of Procedure possess a legal stature akin to that of a law. They can be viewed as a legal instrument with legislative equivalence, or

¹² Article 77 paragraph 2 of the Basic Law: “*The rules of procedure of the Legislative Council shall be made by the Council on its own, provided that they do not contravene this Law.*”

with the force of law. This is because these Rules, at their very core, epitomise the principle of the Legislative Assembly's self-organisation.

The latter situation, while still holding significant independent relevance — especially when considering the rise of independent administrative regulation as a normative source — is approached in a more ancillary manner, given the paramount importance, configuration and effectuation attributed to the legislative initiative. For this latter scenario, examples include the various deadlines and signatures in the parliamentary legislative process, which will be succinctly and largely uncritically addressed.

It should also be noted that issues of legislative drafting, especially its formal aspect, do not belong in this study.¹³

Additionally, I will abstain from challenges presented by the science of legislation, the theory of legislation, and similar topics.¹⁴ I will likewise avoid examining the contemporary feasibility of categorically defining the existence of a science, theory, or doctrine of legislation as an autonomous academic discipline.¹⁵ To this end, we shall reference the words of GOMES CANOTILHO, which, though distant in time, likely retain their validation:

“Despite the practical upheavals and the theoretical disquiet *apropos* a doctrine of legislation, one may state that no science of legislation (theory, doctrine) exists today as an autonomous scientific subject-matter.”¹⁶

¹³ On such issues, regarding Macau, see Luís Fábica, ‘Princípios de legística material e formal’ (unpublished and archived with the Author, CFJJ 2005); Alexandre Sousa Pinheiro, ‘Algumas notas relativas a temas de Legística Formal’ in *Colectânea, Tome II* (CFJJ 2007) 405 et seq; José Miguel Figueiredo and António Manuel Abrantes, *Manual de Legística Formal* (Fundação Rui Cunha/CRED-DM 2016); José Miguel Figueiredo, ‘O Estado Actual da Legística Formal na Região Administrativa Especial de Macau’ (Direcção dos Serviços de Assuntos de Justiça, 2017) powerpoint slides available at <<https://ial-online.org/wp-content/uploads/2019/02/macau.pdf>>; José Miguel Figueiredo, ‘Alterações aos Códigos: Questões de Técnica Legislativa a Partir do Enquadramento Normativo da Região Administrativa Especial de Macau’ [2017] Administração 118. See also, Manuel Andrade Neves, Nuno Sardinha Da Mata, and Inês Sequeira Mendes, *Contributos para a legística de expressão portuguesa* (Fundação Rui Cunha/CRED-DM 2015). Cf Regras de legística formal a observar na elaboração dos actos normativos da Assembleia Legislativa, Assembleia Legislativa, approved by Resolution No. 16/2016/Mesa, published in the Legislative Assembly's Official Gazette, Legislature V, 3rd Legislative Session (2015–2016), II Series, No. V-34, and available at <http://www.al.gov.mo/uploads/attachment/2016-12/2790458468f335e01c.pdf>. “These rules, by directly binding the Legislative Assembly, are indirectly binding on the Government.”: José Miguel Figueiredo, above.

¹⁴ Speaking, for example, of a science of legislation, which is concerned with the basic problems of the concept, evolution and comparative analysis of laws; analytics of legislation, which analyses legislation as a source of law; tactics of legislation, which analyses legislation's “external procedure”; method of legislation, which studies the “internal procedure” of legislation and its implementation; techniques of legislation, which analyses aspects of the systematics, composition and drafting of laws, Gomes Canotilho, referring to the systematisation of Ulrich Karpen, ‘Os impulsos modernos para uma teoria da legislação’ (1991) 1 Legislação 7, 10–11.

¹⁵ José Eduardo Figueiredo Dias, ‘Procedimento legislativo’, in *Formação Jurídica e Judiciária — Colectânea, Tome I* (CFJJ 2006) 214.

¹⁶ Gomes Canotilho, ‘Os impulsos modernos para uma teoria da legislação’ (1991) 1 Legislação 7, 7.

2. Parliamentary Law — A Few Notes

From the title itself, it is evident that my focus will be confined to what I have designated as *parliamentary law*.

While this concept might seem novel in the context of Macau, it boasts a rich history and extensive theorisation in other jurisdictions, particularly in legal systems employing the Spanish language.

I shall refrain from an in-depth exploration of the academic debates that interrogate the ontological nature of parliamentary law, such as whether it stands as an autonomous branch of law, an intrinsic component of constitutional law,¹⁷ or as one that penetrates into the realm of administrative law.¹⁸ For the specific purposes of this Handbook, I have employed the term as an operational tool to delineate the scope of my study, a choice that will become clearer as we progress.

To navigate this terrain, it is imperative to have a clear definition of parliamentary law. I find the following definition apt:

“Parliamentary law is characterised by its object, a body of political representation¹⁹ (organisation and functioning of the Parliament), and by its functions, resulting in a normative reality — inserted into Constitutional Law — which is sheltered and heterogeneous, and formed by the Constitution, laws, regulations,²⁰ other autonomous norms (‘parliamentary acts’), usages and customs, precedents, and parliamentary case-law.”²¹

¹⁷ For one example, “the subject-matter of the initiative and the formation of laws within the broader context of the discipline known as parliamentary law, which, in turn, is a branch of the general constitutional law.”: Marta Morineau, ‘Iniciativa Y Formación De Las Leyes’ (2001) 5 Cuestiones Constitucionales 277.

¹⁸ Cf, “One can firmly support the position that parliamentary law is a part of Constitutional Law, although some areas thereof also belong to Administrative Law”: Manuel Aragón Reyes, ‘Las fuentes del derecho parlamentario (ponencia general)’ in *Estudios de Derecho Constitucional* (CEPC 2009).

¹⁹ While the Legislative Assembly is not wholly comprised of elected members, it nonetheless serves as a body with a significant component of political representation, given that a substantial number of its members are appointed by the executive branch. This arrangement is not anomalous, particularly within the unique framework of “One Country, Two Systems”. Although lacking sovereign authority, the Legislative Assembly functions as the representative assembly for a political organisation that transcends mere regional modalities. It wields genuine primary legislative power and maintains a relationship of interdependency — not mere dependency — with the Executive, thereby embodying the principle of separation of powers within the MSAR. For the purposes of conceptualising parliamentary law, it is also pertinent to note the irrelevance of both the political regime and the specific designation of the generic legislative body, as stated by José María and Serna De La Garza, *Derecho parlamentario* (McGraw-Hill 1997) 2, who concludes that “after all, this is an issue of terminology and convention”.

²⁰ Under MSAR law, one should understand “regulation” as encompassing the Rules of Procedure and complementary normative resolutions.

²¹ Francisco Zúñiga Urbina, ‘Fuentes del Derecho Parlamentario (Apuntes acerca del Reglamento Parlamentario)’ (1997) 18 Revista de Derecho de la Universidad Católica de Valparaíso 277. See also Enrique Salazar Abaroa, *Derecho parlamentario* (Instituto Nacional de Administración Pública 1989) 51; José María and Serna De La Garza, *Derecho parlamentario* (McGraw-Hill 1997) 1. For an overview of different formal and material concepts of parliamentary law, see Manuel Aragón Reyes, ‘Las fuentes del derecho parlamentario

Historically, parliamentary law has evolved, breaking free from its traditional constraints and constitutionalised itself. It has transcended its earlier status as simple by-laws, mere internal regulations, or *interna corporis* acts and norms.

This evolutionary trajectory becomes salient when contrasted with its historical antecedents.²² Its constitutionalisation implies a diminished capacity of the Rules of Procedure and the law to be (the sole) standards of legal conformity.²³ These Rules cannot contravene the Constitution²⁴; and in the case of the MSAR, the Basic Law. This shift curtails the Parliament's exclusive internal oversight of its actions, as any breach of parliamentary law that contradicts the Constitution is now open to external judicial scrutiny just like any other norms. The constitutionalisation of parliamentary law also means that the constitutional text necessitates or pre-determines, in the words of MANUEL ARAGÓN REYES, "a certain image of parliament".²⁵

In this context, it is also worth mentioning the concept of 'law of legislation', conceived as the law governing the legislative process. It can be succinctly described as "the law that provides for the formalities to be followed by those who have the right to make laws".²⁶ While the 'law of legislation' is intrinsically related to the subject of this

(ponencia general)' in *Estudios de Derecho Constitucional* (CEPC 2009) 663 et seq. This author adopts a broad conception of parliamentary law, which includes all the norms regulating the organisation and functioning of parliaments "more concretely, the structure, powers and faculties of the parliament, the status of its members and the activity that is carried out 'for' the body and 'in' the body". He stresses that such "norms are of varied hierarchy and diverse origin, some belonging to common or general types existing in the legal order [...] and others (the written norms of internal origin) specific to this branch of Law, with singular characteristics within the normative system."

²² Manuel Aragón Reyes, 'Las fuentes del derecho parlamentario (ponencia general)' in *Estudios de Derecho Constitucional* (CEPC 2009) 672. See also, for example, on this once extremely complex issue, Alessandro Pizzorusso, 'Le deliberazioni preliminari delle assemblee parlamentari nel procedimento legislativo', (1969) 92(6) *Il Foro Italiano* 17, 17 et seq; Paloma Biglino Campos, 'Los Vicios En El Procedimiento Legislativo: La Postura del Tribunal Constitucional En La Sentencia 99/87', (1988) *Revista Española de Derecho Constitucional* 8, 24, 211 et seq; and, at length, Paloma Biglino Campos, *Los Vicios En El Procedimiento Legislativo* (UNAM IJ 2020). Note that the *interna corporis* acts approach (and the conclusions obtained) will differ significantly when one discusses common law jurisdictions, namely in regard to the parliament of the United Kingdom, and its procedures and approved laws. See summarily, 'In recent years, the South African Constitutional Court has dramatically shed the general reluctance it had shared with most courts around the world to review legislative processes as distinct from outcomes. In a series of graduated steps culminating in two 2017 cases, the Court has engaged in increasingly robust oversight of various types of legislative procedures. These processes embrace not only the law-making process itself, but also internal National Assembly rules, especially those relating to the National Assembly's other central function in a parliamentary democracy of holding the executive politically accountable [...] it has not only found existing promulgated National Assembly rules unconstitutional, as in violation of the constitutional rights of individual members of parliament., Stephen Gardbaum, 'Pushing the Boundaries: Judicial Review of Legislative Procedures in South Africa' (2019) 9 *Constitutional Court Review* 1, 1–2.

²³ Manuel Aragón Reyes, 'Las fuentes del derecho parlamentario (ponencia general)' in *Estudios de Derecho Constitucional* (CEPC 2009).

²⁴ However, despite this constitutionalisation and the consequent relativisation of the Rules of Procedure's autonomy, the areas of procedural reserve continue to play an important role, as pointed out by Manuel Aragón Reyes, 'Las fuentes del derecho parlamentario (ponencia general)' in *Estudios de Derecho Constitucional* (CEPC 2009) 680.

²⁵ *ibid.*

²⁶ Enrique Salazar Abaroa, *Derecho parlamentario* (Instituto Nacional de Administración Pública 1989) 52; see also José María and Serna De La Garza, *Derecho parlamentario* (McGraw-Hill 1997) 1–2, who is critical of the concept of a law of legislation, especially for reasons arising from the legal system on which he is writing.

Handbook, I have opted not to use it as the title for this study but rather to report such a concept and to emphasise instead the overarching theme of the legislative procedure.

3. Other Issues

The reader should be cognisant that the ambit of this Handbook is confined, with few exceptions, to the legislative procedure²⁷ rather than the legislative process;²⁸ the former being a more expansive concept that encompasses additional domains of knowledge, contributions, and approaches.²⁹ As LUCIO PEGORARO defends, the examination of the legislative procedure serves as either a preliminary or parallel investigation *vis-à-vis* the study of constitutional law.³⁰

This Handbook scrutinises the legislative procedure — the *iter legis* or the lawmaking route — in its most stringent sense, eschewing other aspects of parliamentary law, and normative procedures such as those pertaining to administrative regulations.³¹ In addition, the focus will be on the legislative procedure as properly regulated and illuminating primarily the sphere of the Legislative Assembly. Exceptions to this focus will be those explicitly delineated in the Basic Law and the Rules of Procedure, eg the mandatory prior consultation with the Executive Council concerning Government bills. This Handbook deliberately circumvents any exploration of the steps previous to a bill's consultation by the said Council;³² such steps, contingent upon the circumstances and issues subject to normative attention, are extraneous to the legislative procedure in its strictest sense.

As we transition to the substantive analysis, the reader might initially perceive these pages as somewhat monochromatic, tedious, or overly descriptive and repetitive, especially when examining deadlines and identifying competent bodies and procedural protocol.

One would mitigate such potential pallor by shifting the gravitational poles of this Handbook and by interlinking it with other matters of unequivocal significance and breadth, squarely within the realm of constitutional law.

For instance, what utility is there in dissecting a formalised legislative procedure

²⁷ And I should stress, it is a strictly legal study.

²⁸ For what I believe are traditional and historical reasons, the language of the Rules of Procedure employs the expression “legislative process” and not legislative procedure. In this study, except when I really intend to distinguish between these concepts – as in the body of the text — the use of the two expressions shall entail an identity between them. On occasions, the term “process” will be specifically employed to maintain fidelity to direct quotations from the Rules of Procedure.

²⁹ See, for instance, Lucio Pegoraro, ‘Le fonti del diritto’, in Mauro Volpi and Lucio Pegoraro and Antonio Reposo and Angelo Rinella and others (eds), *Diritto Costituzionale e Pubblico* (Giapichelli 2005) 131.

³⁰ Lucio Pegoraro, ‘Le fonti del diritto’, in Mauro Volpi and Lucio Pegoraro and Antonio Reposo and Angelo Rinella and others (eds), *Diritto Costituzionale e Pubblico* (Giapichelli 2005) 131.

³¹ For example, those regarding resolutions.

³² Notwithstanding the fact that some of these steps might, in a fashion, have attained normativity through orders/decisions, guidelines, etc

if the overarching framework for normative distribution, or the constitutionally established areas of reserved legislative initiative, remains opaque or unexplored?

Or if the scope of autonomy, defined from above by the Sino-Portuguese Joint Declaration and the Basic Law, is not critically examined?

Or if one neglects the practical realities and fails to highlight any non-compliance thereof *vis-à-vis* the normative underpinnings?

Or if one fails to go even yonder, to decipher how Macau's demographic and economic landscape can be factored into making better laws — laws that are not only just and fairer but also better financially supported?³³

As one scholar declared,

“It is important to emphasise that for a legal rule to be effective, it must correspond to the values of the society that it intends to mould, and should reflect its aspirations for justice. Otherwise, the legal rule, in addition to being unjust, is also ineffective”.³⁴

Such are the themes that will be expounded upon in the ensuing chapters.

³³ Allow me to give a few examples, even though such a discussion might apparently not be totally fitting herein. Take for instance, the crafting of a law on medical malpractice. Should considerations of justice and fairness, coupled with Macau's relatively small population (in absolute terms) and its economic and financial stability, not lead to a framework that incorporates (or at least partially aligns with) comparative law solutions like strict liability and the establishment of a guarantee fund? Similarly, what of the legislative lacuna tackling the unbridled and wild increase in the real estate rental market? Or the absence of legislative measures to ameliorate the conditions of migrant workers, particularly in relation to free access to compulsory education and public healthcare services?

³⁴ JA Oliveira Rocha, ‘Processo de decisão política e feitura de leis: Aplicação a Macau’ (1992) 15 Administração 30.