

The Legal Status of Traditional Law in the Mongolian Legal System

This article explores the position of traditional law within Mongolia's current legal system by comparing it with the roles traditional legal systems play in other legal families around the world. It highlights how the influence and function of traditional law vary across countries based on their unique historical, cultural, and legal developments. The study notes that while traditional law served an essential regulatory function in Mongolia's past, today it is preserved mainly in symbolic and cultural forms within the Constitution and other legal documents, without holding binding legal authority. Furthermore, it discusses the challenges of translating legal terminology into English, which often leads to ambiguity among scholars. The findings suggest that traditional law, though no longer a normative source of regulation, continues to reflect Mongolia's national identity and historical continuity within the legal framework. Although the terms 'legal tradition' and 'traditional law' are often translated into Mongolian using the same or similar words – thereby creating ambiguity – the two concepts are clearly distinguishable in terms of their scope and meaning. In Mongolia's legal sources, there is no official legal terminology equivalent to 'indigenous law' or 'local law,' and customary law is not formally applied at the legal or regulatory level. Within the field of legal studies, customary norms are generally regarded as informal or non-codified sources of regulation.

Keywords: *customary law, indigenous law, informal law, religious law, legal tradition, traditional law*

1. Introduction

In each country's legal system, traditional law exists with a unique position shaped by historical characteristics, geographical location, legal family, system, and legal culture. According to *Jerg Gutmann* and *Stefan Voigt* in their article "Why Is Traditional Law So Common Across Nations?"¹, the standing of traditional law within a legal system can be evaluated based on three significant dimensions: legal status, the scope of its application, and the level of acceptance it enjoys. Additionally, it can be assessed through criteria such as how it establishes justice and protects fundamental human rights. This paper aims to examine the criteria and indicators by which the position of traditional law within legal systems, particularly those committed to the rule of law, is determined. Additionally, it seeks to understand current trends in how traditional law is perceived and integrated.

This end, the paper will explore answers to the following questions. (1) How is the term 'traditional law' understood and what are the distinctions and similarities between the English terms 'legal tradition' and 'traditional law'? (2) Regarding the terms this paper focuses on historical linguistic development and legal tradition: Given the topic of tradition, a brief look at the

* ORCID ID: 0009-0009-4520-4107.

1 GUTMANN – VOIGT, *Traditional Law in Times of the Nation State: Why Is It So Prevalent?* 445–461.

historical development of language and Mongolia's unique statehood history will be presented. Mongolia's distinctive historical tradition in law, legal sources, and thought will be highlighted, underscoring the fact that Mongolia has preserved a unique cultural and legal heritage in the history of humankind. (3) Identifying criteria for traditional law's position in Mongolia: Does Mongolia have specific criteria or standards to define the position of traditional law within its legal system? (4) From the perspective of the presence of traditional law in Mongolia's constitution and legal regulations: Has traditional law been retained within the legal framework of Mongolia's Constitution and other laws? (5) From the point of view of the endurance of national legal system amidst globalization: While examining the resilience and protection of Mongolia's national legal system against the influence of foreign legal systems through the perspective of traditional law, this paper will consider the statement, 'globalization is a process, and while that process concludes, sovereignty remains a core value'. (6) Taking into account the current role of traditional law in modern times: What is the contemporary standing of traditional law? This research will delve into these questions to clarify the role and significance of traditional law within Mongolia's legal system, along with a broader look at the global perspective.

2. Terminology and definition of traditional law

Traditional law, often referred to as 'informal law' in civil law countries, has a unique presence due to its relationship with state law, compliance with established norms and regulations, and level of recognition. This demonstrates that thorough research is needed to clarify its scope and application. In discussing traditional law, terms like 'customary law' or 'religious law' are sometimes used interchangeably, as customs and religious practices may be considered part of traditional law. Therefore, it's necessary to distinguish traditional law from other similar legal concepts.

The English terms legal tradition and traditional law are often used with overlapping meanings, but they carry distinct nuances. Legal tradition is a broader concept encompassing not only sources of law but also the principles, thought systems, institutional structures, and processes within a state's legal history. In contrast, traditional law is primarily focused on normative customs and principles and is a subset of the broader concept of legal tradition.

In fulfilling the functions of the state, various instruments are employed, among which law is a crucial and indispensable one. Before formal law, social relations were regulated by ethics, customs, and religion. Traditional law refers to the principles and practices of a society that arise from its customs and beliefs, often passed down through generations. These customs and practices define justice, resolve conflicts, and uphold social order. Traditional law usually exists alongside formal legal systems and plays a key role in local governance structures.

For Mongolia, terms like indigenous law, mixed law, informal law, or religious law are not commonly used at the legal application level. Instead, certain terms are used within the context of historical legal traditions, under the broader umbrella of traditional law.

3. Advantages and disadvantages of traditional law

Experts argue that the rule of law should not only involve implementing legislation but also considering the quality and impact of those laws.² The quality of legislation lies in its universal applicability, whereas traditional law, by its nature, can systematically exclude specific social groups (such as women, youth, and the poor), which conflicts with the concept of the rule of law.³ This issue raises the question of whether Western concepts of the rule of law align with the standards of social justice in other legal systems.⁴

Furthermore, scholars suggest that the traditional concept of the rule of law should be broadened, encouraging lawyers to look beyond the narrowly defined framework of law and consider the ‘real-life impact of legal practice’.⁵

In Mongolia, traditional legal norms rooted in patriarchal customs and practices still have influence, as evidenced by rulings of the Constitutional Court (Mong. *Tsets*) on whether certain legal provisions conflict with the Constitution. For example, in 2017, on June 30 the Mongolian Parliament passed the Law on Providing Allowances to Single Mothers and Fathers with Multiple Children. Article 1.1 of this law states, “*The purpose of this law is to regulate relations concerning the provision of allowances to pregnant mothers, mothers caring for children aged 0-3, mothers or fathers with twins under the age of four, and single mothers or fathers with three or more children.*” Article 3.1.3 specifies that a “*mother caring for her child*” refers to a woman who is on childcare leave as per Article 106.1 of the Labor Law or is unemployed and caring for a child aged 0-3 as per Article 3.1.3 of the Law on Employment Promotion. Article 6.2 further clarifies, “*A mother who is caring for her child under the age of 0-3 is entitled to receive monthly childcare benefits.*”

The Constitutional Court ruled that these provisions were unconstitutional, and from July 1, 2021, they were temporarily suspended and rendered invalid.⁶ Although the law’s title references mothers and fathers, certain clauses mistakenly granted benefits only to mothers, leading to an imbalance based on gender.

International documents discourage creating laws that favour one gender over the other, or that reinforce harmful social norms regarding gender roles and responsibilities. Such documents advocate against laws that perpetuate stereotypes, alter social perceptions of male and female behaviours, or lead to discrimination based on traditional gender roles.

4. Traditional law in Mongolia

Among the nomadic Mongols, the historical process of state formation evolved from clan and tribal unification to a structured government. The historical mission of uniting fragmented tribes, clans, and small states into a single unified nation was led by *Chinggis Khan*. He implemented legal norms that aligned with the nomadic lifestyle and livelihoods of the Mongols, establishing a code of conduct that was strictly enforced. This era marked the rise of the state and its legal

2 GUTMANN – VOIGT, *The Rule of Law: Measurement and Deep Roots*.

3 MORRISSON – JÜTTING, *Women’s Discrimination in Developing Countries*.

4 GUTMANN – VOIGT, *The Rule of Law and Islam*.

5 BOLDBAATAR – LÜNDEEJANTSAN, *State and Legal History of Mongolia* 15–16.

6 Regarding the resolution of the dispute as to whether certain provisions of the law on providing allowances to single mothers and fathers with multiple children violate the relevant provisions of the Constitution (2021), <https://legalinfo.mn/mn/detail?lawId=16123489875221>.

authority, making Mongolian law a powerful force globally. These legal norms are considered significant sources of Mongolia's traditional law.

The question of whether the development of traditional law began with *Chinggis Khan* can be partially answered by examining the evolution of the Mongolian language and script. Although the earliest surviving written records belong to the middle period of the Mongolian language, it is clear that the Uyghur-Mongolian script has ancient features. Scholars note that while the origins of this script lie in ancient Mongolian dialects, there is insufficient early linguistic material to study those characteristics fully. Given this, it seems appropriate to consider the sources of Mongolia's legal and governmental history alongside the development of its written language.

By the end of the 12th century, fragmented Mongolian tribes united under the name 'Mongol' to form a single state. This unification contributed to the consolidation of the Mongol ethnic identity, economic and cultural development, and linguistic unity. After establishing a centralized state, the need for a writing system to serve the empire became apparent. Consequently, *Chinggis Khan* adopted the Uyghur script to meet the needs of the Mongol Empire. Many scholars agree that a literary language as sophisticated as that used to compose "*The Secret History of the Mongols*" could not have developed within just two or three decades. This suggests that the Uyghur script might have existed as early as 100–200 years before the 13th century.

Hungarian scholar *L. Ligeti* and Soviet scholar *B. Ya. Vladimirtsov* suggest that *Chinggis Khan* adopted a well-established literary language in the Uyghur script for his empire's use. They further hypothesize that the old written language may have been influenced by the *Khitani* language, providing a possible explanation for its origin.

When examining the events and phenomena of governmental and legal history within their specific time and space, a well-rounded and accurate historical understanding emerges. Comparisons⁷ should consider governance, legal, social, and cultural issues as an integrated whole. This approach allows for a nuanced understanding of both common and unique characteristics across contexts. Thus, this study compares the chronological classification of legal history with the historical classification of Mongolian language dialects and written language.

This integrated view emphasizes that Mongolia's traditional legal system is deeply intertwined with its historical, linguistic, and cultural evolution.

7 NADMID, A brief overview of the historical development of the Mongolian language and its writing 34–35.

Periods	Mongolian language dialects & state-legal History	Written language and state-legal chronology	Sources of traditional law
Ancient period	<p>Dialects that formed the foundation of the old Mongolian script, along with earlier Mongolian dialects.</p> <p>Key historical eras: Xiongnu (209 BCE–93 CE) Xianbei (150–230 CE) Rouran (330–555 CE) Turkic (552–745 CE) Uyghur (745–840 CE) Khitan (913–1125 CE)</p>	<p>From unknown origins until the end of the 13th and beginning of the 14th century.</p> <p>State and legal development in Mongolia spans over 2200 years.</p>	<p>During the formation of ancient states, laws emerged alongside governance. Early written laws existed, such as those related to livestock in Xianbei, military regulations in Rouran, and laws on salt and alcohol in Khitan.</p>
Medieval period	<p>Dialects of Mongolian language from the 13th to 16th centuries.</p>	<p>14th century to the second half of the 16th century.</p> <p>The medieval Mongolian state and legal systems: In 1206, the Great Khuraldai established a unified Mongol state along the Onon River.</p>	<p>The Mongol Empire had both state-enforced written laws and customary law.</p>
Modern period	<p>Dialects of Mongolian language from the 17th century onward.</p>	<p>17th century to present.</p> <p>Numerous written sources exist.</p> <p>By the late 18th century, constitutional principles began to emerge, leading to preparations for the first Constitution.</p>	<p>Many written sources exist. Works such as “<i>The State’s Power</i>” reflect the spread of constitutional ideas in the late 18th century.</p>

Figure 1: Development of literacy and its connection to written law (developed by the author)

5. The role, comparison, and trends of traditional law in legal systems of common law, civil law, and mixed law countries

The choice between civil and common law systems is subjective and depends on various factors. Each system has its own strengths and weaknesses. Civil law and common law are two distinct legal systems with their own unique characteristics, principles, and approaches to law. Civil law is based on codified laws and rules, emphasizing legal clarity and the application of written statutes. Common law, on the other hand, is based on judicial decisions, legal precedent, and case law, allowing for more flexibility and development of the law through judicial interpretation. Despite their differences in interpretation, judicial roles, burden of proof, and legislative flexibility, both civil law and common law systems play crucial roles in establishing and implementing justice in various parts of the world.

Since the Middle Ages, English common law has been a custom-based legal system implemented through judicial decisions, reflecting a body of customary law established in court rulings. This system has continued to develop in the United States and most Commonwealth countries (formerly British Commonwealth nations). In this sense, common law is distinct from the civil law system, which originated in continental Europe and has since spread widely.

In the legal systems of England, America, and other jurisdictions, rules and laws may conflict. The United Kingdom comprises three major (and several minor) legal systems for England and Wales, Scotland, and Northern Ireland, as well as others. England's common law directly impacted Wales and Northern Ireland, while it influenced Scotland only partially and only in specific matters outside international issues. Starting in 1973, the UK legal system began merging with European Union law, which had a strong civil law influence on its domestic systems. This integration encouraged the development of interpretative methods in English common law, emphasizing the purpose of statutes over traditional customs. However, the UK left the EU in 2020. The European Convention on Human Rights (1950) influenced UK law in a similar way after the Human Rights Act was enacted in 1998.

The Roman-Germanic legal family mainly represents the civil law systems of European countries. This continental system includes countries such as Austria, Belgium, the Netherlands, Italy, Spain, Luxembourg, Russia, France, Germany, Switzerland, and several Scandinavian countries. Through colonization, civil law traditions spread to countries like China, Japan, and Thailand, which chose to adopt civil law systems. The prominent legal scholar *Chimed*⁸ has outlined common characteristics and key criteria for civil law, which align well with the content of this paper: legislation primarily uses codified laws (codes) and other written acts as the main source; courts and other institutions apply material and procedural laws rather than custom and precedent; legal principles (such as the rule of law, separation of powers, etc.) form the legal foundation; legislation is organized systematically and abstractly, based on logical thinking, natural law theory, and high-level methodology. These characteristics provide a clear view of traditional law's position within the civil law framework.

In addition to the examples from civil and common law countries, mixed legal systems also hold an important place for traditional law. Japan's legal system, for instance, provides insight into its approach to traditional law. In a mixed legal system, elements from both civil and common law combine, making traditional law's position especially noteworthy. Japan's legal system, for example, shows how it addresses traditional law. In Japan, legislation, especially regarding public and constitutional law, is closer to the United States model than the European one. However, in terms of private law norms and institutions, Japan's legal system remains more aligned with European civil law than with the U.S. common law system. Nevertheless, Japan's legal system differs significantly from Western legal frameworks in many respects. In Japan, law plays a relatively minor role in resolving disputes and regulating conduct. For many purposes, the Japanese family relies on the family unit rather than on individual spouses and children. The notion that businesses are treated similarly to family units illustrates that, although Japan adopted a version of the German Civil Code early on, it did not embrace the Germans' strong awareness of individual legal rights. It remains challenging to predict whether legal standards will govern dispute resolution in many areas of Japanese life, and individuals may be uncertain about their ability to exercise legally guaranteed rights. Concepts that are widespread in Western law have yet to deeply permeate Japanese legislation. In legal matters, the Japanese modeled their system after continental Europe, particularly Germany. The drafters of the 1898 Japanese Civil Code examined several legal systems, including those of France, Switzerland, and common law, adopting elements from each. However, their final product closely followed the initial draft of the German Civil Code. They often resolve disputes outside formal legal structures, favoring informal means such as mediation, which is based on irrelevant legal issues. In contemporary

8 CHIMED, Concept of constitution 64–65.

Somaliland and Puntland, survey participants rated their customary legal systems at an average of 4.2 on a scale of 1 to 5, similar to their assessment of the Islamic legal system. The state legal system, however, scored only 3.16. Among various traditional legal systems, Sharia law's role has been a topic of discussion in many Western countries. For example, the British Sharia councils are studied by Zee.⁹ Considering the recent influx of Muslim refugees, traditional law appears likely to gain increased relevance in Western Europe.

6. Examining the influence of traditional law on other countries' legal systems

When assessing the resilience and integrity of national legal systems in the face of foreign influence through the lens of traditional law, it is essential to consider the perspective: 'Globalization is a process. That process ends, but sovereignty remains a core value'.

Asian law largely reflects legal frameworks imported from the West. As colonial empires expanded in the 19th century, Western legal systems spread across Asia. Even countries never colonized, such as Japan and China, adopted Western legal systems to resist foreign pressure. It is evident that Western law, grounded in the protection of individual autonomy and rights, is rooted in certain aspects foreign to traditional Asian norms. A major feature of Western legal culture is its emphasis on individualism, defined as the need to protect individual autonomy and rights. This cultural difference partially explains why Western legal concepts that are widespread have not deeply permeated Japanese law.

Before 1921, Mongolia, with a history spanning centuries, had unified under a single flag, establishing a state with laws and governance, although it lacked a formal constitution until the early 20th century. Before Mongolia could adopt a formal constitution, a draft version of the constitution was created after studying constitutional monarchies around the world. However, the initial drafting committee was disbanded and influenced by the Revolutionary Committee of Soviet Russia or the Comintern's branch council, a socialist-style constitution was adopted in 1924.

In the years following (1940–1960), the late 1930s saw the emergence of a need to revise the constitution to pursue development along a non-capitalist path, leading to the adoption of a second constitution. From 1960–1990, Mongolia pursued the complete establishment of socialism and aimed to transition to communism. On July 6, 1960, the third constitution was adopted. Between 1990 and 1992, significant social reforms took place in Mongolia, bringing sweeping democratic changes across various sectors of life. This transformation aimed to develop the nation in line with global trends toward a market-based economy.

The global political landscape in the early 1990s led to a reexamination of traditional legal approaches within comparative law. A wave of legal reform spread through former socialist countries, focusing on adopting and localizing legal practices to protect human rights, drawing on Western legal experiences. While legal systems generally strived to preserve their traditional aspects, the protection of human rights increasingly became a unifying focus.¹⁰ In 1992, Mongolia adopted its fourth constitution, incorporating certain traditional legal norms. Thus, the historical evolution of Mongolian legislation has served as a foundation for subsequent laws. Some traditional norms have been preserved and integrated into Mongolia's legal system, contributing significantly to its development.

9 ZEE, *When Multiculturalism and Islamic Fundamentalism Coincide*.

10 BATSUURI, *A new approach in comparative law and legal formation in Mongolia*.

7. Determining the role and trends of traditional law in Mongolia's current legal system

Mongolia's legal system is based on the civil law system similar to that of the Russian Federation and the Federal Republic of Germany. The principle of *stare decisis*¹¹ (Latin for 'to stand by things decided'), a doctrine wherein judges follow previously established principles, is not recognized as a source of law in Mongolia. This means that in the modern Mongolian legal system, court decisions do not serve as formal sources of law. Judges in Mongolia apply the law but do not create it. While traditional law continues to play a significant role in the legal systems of various countries, in Mongolia, issues regarding indigenous populations or refugees, which are common considerations in mixed legal systems, are not pressing matters. The importance of traditional law within Mongolia's legal system can be observed through the following points.

7.1. Role of traditional law in the constitution

The Constitution includes symbolic norms that reflect the nation's historical characteristics and the unique aspects of Mongolian statehood. Certain historical symbols and customs that represent the nation's cultural heritage and traditions are codified within the Constitution, helping to preserve Mongolia's legal heritage and reinforce its national identity. For instance, the Preamble of Mongolia's 1992 Constitution reads: *"We, the people of Mongolia: strengthening the independence and sovereignty of our state; cherishing human rights, justice, and national unity; respecting our traditions of statehood, history, and culture; valuing the achievements of world civilization; set forth the objective of building a humane, civic, and democratic society in our motherland, and therefore proclaim this Constitution."*

Additionally, representations of state symbols incorporate elements of the Mongolian people's symbolic norms and customary legal standards.



Figure 2: Image of the 1960 state emblem of the Mongolian People's Republic¹²

11 https://www.law.cornell.edu/wex/stare_decisis.

12 Source: МОНГОЛ УЛСЫН ТӨРИЙН БЭЛЭГ ТЭМДЭГ 1960 ОНЫ СҮЛД - Search.



Figure 3: Image of the 1992 state emblem of Mongolia¹³

7.2. Traditional law as a historical source of Mongolian governance and legal tradition

The history of governance and law in Mongolia is a significant part of the vast cultural heritage created by the Mongolian people. Every Mongolian, through traditional practices, acquires knowledge of over 2000 years of Mongolian statehood and legal history, and they study traditional law to pass this heritage on to future generations.¹⁴

From the Great Wall in the East to Lake Baikal in the West, ancient Mongolian lands were home to powerful states such as the Xiongnu (209 BCE–93 CE), Xianbei (150–230 CE), Rouran (330–555 CE), Turkic (552–745 CE), Uyghur (745–840 CE), and Khitan (913–1125 CE) empires. Alongside the establishment of these ancient states, legal systems and governance emerged. These states adopted written laws or customary (traditional) laws. For instance, the Xianbei state established laws concerning horses, the Rouran state military laws, and the Khitan state laws concerning salt and alcohol. From the 6th to the 9th centuries, records on Mongolic tribes became sparse, and sources from this period are scarce.¹⁵

In 1206, at the source of the Onon River, the *Great Khuraldai* (Eng. Parliament) convened, declaring the establishment of a united Mongol state and bestowing the title of *Chinggis* upon *Temüjin*, who was then enthroned as khan.¹⁶ Thus, in the early 13th century, a powerful Mongolian state was established under *Chinggis Khan*, who enacted the *Great Yasa*, Mongolia's principal law. This medieval legal tradition endured for over 800 years, lasting until the 20th century, as described in previous sections on legislative history.

7.3. Traditional law as a source of law

Various Mongolian laws that were in force during different stages of Mongolian civilization are rightfully part of the heritage of Mongolian governance and legal sources. Significant historical laws developed on Mongolian soil include *Chinggis Khan's* famous *Great Yasa*, the *Ten Virtuous*

13 The State Emblem of Mongolia incorporates symbolic imagery that has been transmitted through historical tradition. For instance, blue background express Eternal Blue Sky that means eternal connection between the past, present, and future, the Precious Gem, and so forth. Source: МОНГОЛ УЛСЫН ТӨРИЙН БЭЛЭГ ТЭМДЭГ 1992 ОНЫ СҮЛД - Search Images.

14 DASHNYAM, State and legal history of Mongolia 24–27.

15 MINJIN, Through history 12–13.

16 NUM, State and legal basis of Mongolia 35–37.

*White History, The Yuan Code, The Law of Altan Khan of the Tumed, Religious Decrees of Khutagtai Setsen Khun Taiji, Law of Tumen Khan, Law on Birch Bark of the Khalkha, Khalkha Regulations, Mongol and Oirat Great Code, Law of Galdan Boshigt, Law of Ligden Khan, Mongolian Code, Legal Regulations of the External Mongolian Ministry of State, and The State Laws of the Mongolian Empire by Decree.*¹⁷ These illustrate how traditional law has served as a fundamental source of Mongolia's state and legal history.

7.4. Traditional law as a reflection of legal consciousness and legal culture

Legal consciousness is a form of social awareness, representing a comprehensive understanding of legal realities through knowledge, opinions, evaluations, implementation, and effects of law.¹⁸ Through the process of implementing traditional legal norms, this legal consciousness is expressed and influences society. For instance, traditional legal norms are realized through people's ordinary and theoretical consciousness, seen in historical legal sources that reflect theoretical ideas, beliefs, and principles.

Legal culture refers to the level of legal development, the evolution of state legislation, and how law is practiced and integrated into daily life. Legal culture is also a measure of social order and its development, and the growth of legal awareness among members of society is an important indicator of legal culture. The values, norms, and practices accepted and passed down through generations constitute culture, and traditional law remains a crucial cultural value within this framework.

7.5. Traditional legal terminology as a basis for modern legal regulations

Mongolia's current state and legal structure are a direct continuation of its historical traditions. This continuity is natural, as the present arises from the past – a fundamental principle of human development. Mongolian governance and legal tradition have evolved by learning from and integrating historical knowledge, customs, and lessons, creating a vital link between past and present legal developments.

For example, a noteworthy instance of traditional legal terminology forming the basis for modern regulation is the concept of the *marshal* or *tahar* office. An interesting example is the *tahar* office from earlier state systems, discussed in the famous Mongolian novel "*The Clear Tamir*", which reflects Mongolia's socio-political situation between 1914 and the 1930s. In this novel, a character named *Badarch* serves as a *tahar*, a role involving the execution of judicial decisions. In that period, those appointed as *tahar* were required to be strong, unafraid of confrontation, and quick to act – qualities that shaped the character *Tahar Badarch* as an impulsive and brash figure.

When this role was later revived in modern times, *MP D. Lündeejantsan* explained¹⁹ that, while "*The Clear Tamir*" may have given *tahar* a negative connotation, the term *marshal* actually corresponds to this role. After debate, Parliament decided to retain the original Mongolian term *tahar* leading to the renaming of the *Law on the Office of the Marshal* to *Law on the Office of the Tahar*.²⁰ The *tahar* office was responsible for six main duties: ensuring the security of the court

17 DASHNYAM, State and legal history of Mongolia 30.

18 NYUAMSUREN, Theory of law 123.

19 Law to be implemented from the beginning of the year: Tahar Office, <https://news.mn/t/652671/>.

20 The law has been repealed, <https://legalinfo.mn/mn/detail/9286>.

and judges, protecting witnesses and victims, escorting and transporting detainees, searching for escaped detainees, extraditing convicts, and enforcing compulsory appearances for defendants and witnesses. However, due to overlapping functions with the police, the *tahar* office was eventually dissolved, marking an end to this historical institution.

8. The naming of the Constitutional Tsets (Court)

The term *Tsets* for the Constitutional Court of Mongolia was inspired by traditional Mongolian sports in the national festival, particularly wrestling and archery, two of the three ‘manly games’. In wrestling, if a dispute arises, a *Tsets* referee resolves the issue, while in archery, *Tsets* is associated with accuracy, symbolizing the wish for a precise shot to hit the target. Therefore, the Constitutional *Tsets* (Court) was named to represent making fair and wise decisions, echoing the symbolism of accuracy and impartiality.

According to Article 4.1.1 of the *Law on the National Naadam Festival*²¹, National Naadam Festival is defined as a national traditional celebration symbolizing Mongolia’s independence, sovereignty, national unity, statehood, history, culture, heritage, and customs. This aligns with the definition of traditional law as rooted in customs and beliefs, exemplifying legal regulation grounded in cultural traditions.

9. Traditional law as a mirror of legal thought and philosophy

For centuries, humanity has used reason to understand, interpret, and reveal the essence of legal phenomena. The theories and concepts of past legal thought reflect humanity’s cultural achievements and the intellectual pursuit of understanding social relations. Unfortunately, this rich heritage has often been neglected.²²

The legal philosophy of Mongolians, past and present, is shaped by Eastern cultural and legal traditions, as well as by natural, social, and intellectual influences. Understanding the unique characteristics and development of Mongolian views on governance and law reveals a distinct perspective that reflects the Mongolian approach to state and legal philosophy.

The evolution of Mongolian legal thought is assessed by examining its internal development, the factors influencing its transformation, and distinctive characteristics. This includes stages such as customary, natural, and the influence of the Manchu-Chinese state, followed by European legal culture, socialist ideology, and modern legal thought. Each stage’s unique aspects are analyzed through historical sources.

The period of the late 1980s to early 1990s was transformative, introducing new Western methodologies to Marxist historical approaches in Mongolian social sciences. This period marked a transition towards a pluralistic perspective, allowing Mongolians to embrace a broader range of philosophical viewpoints.

21 Law on the National Naadam Festival, <https://legalinfo.mn/mn/detail?lawId=16530657329231>.

22 NYUAMSUREN, *Theory of law* 402–404.

10. Conclusion

As discussed, the position of traditional law can be assessed through three primary dimensions: legal status, the scope of its application, and its level of acceptance, as well as measures of how it establishes justice and protects fundamental human rights. However, these dimensions are insufficient for defining the role of traditional law in countries with civil law systems that prioritize the principle of rule of law. This raises the question of how to determine traditional law's role in protecting human rights and freedoms when moral or traditional legal sources are not applied. To explore this, it was considered appropriate to analyze traditional law separately in terms of common and civil law systems.

In countries that uphold the principle of rule of law, the significance and role of traditional law can be determined by examining its contributions to the state's legal history and its functions within the legal system. Furthermore, the historical development of traditional law is closely linked with linguistic and literary evolution. The timeline of written and unwritten sources of traditional law was studied in conjunction with the history and development of Mongolian language and script. The presence of written sources in historical records directly impacts the preservation and recognition of traditional law.

Studies suggest that societies heavily reliant on traditional law tend to score lower on measures of rule of law and per capita income.²³ In rule-of-law-based countries, traditional law does not typically serve as a basis for legal resolution, as demonstrated by Article 49.1 of the Constitution of Mongolia, which states, *"Judges shall be independent and be subject only to the law"*, reflecting the distinct characteristics of Mongolia's legal family.

The role and importance of traditional law in Mongolia's legal system can be summarized as follows: the role of traditional law in the Constitution (1); traditional law as a historical source of Mongolian governance and legal tradition (2); traditional law as a primary source of law (3); traditional legal terminology as a foundation for modern legal regulation (4). These points outline how traditional law continues to hold significance within the Mongolian legal system, both as a historical heritage and as a cultural value that shapes contemporary legal thought and structure.

Literature and sources

BATSUURI, M. A New Approach in Comparative Law and Legal Formation in Mongolia. New Mirror, No. 62/2008

BOLDBAATAR, Jigjid – LÜNDEEJANTSAN, Danzan: State and Legal History of Mongolia. Ulaanbaatar 1998

CHIMED, B.: Concept of the Constitution. Ulaanbaatar 2020

DASHNYAM, D.: State and Legal History of Mongolia. Ulaanbaatar 2005

GUTMANN, Jerg – VOIGT, Stefan: Traditional Law in Times of the Nation State: Why Is It So Prevalent? Journal of Institutional Economics, Nr. 16/2020, 445–461, <https://www.scribd.com/document/859091221/P-Traditional-law-in-times-of-the-nation-state-why-is-it-so-prevalent> (06. 02. 2026)

GUTMANN, Jerg – VOIGT, Stefan: The Rule of Law and Islam, <https://www5.austlii.edu.au/au/journals/ELECD/2018/620.html> (06. 02. 2026)

23 GUTMANN – VOIGT, Traditional law in times of the nation state: why is it so prevalent?

- GUTMANN, Jerg – VOIGT, Stefan: The Rule of Law: Measurement and Deep Roots, <https://www.econstor.eu/bitstream/10419/156097/1/ile-wp-2016-1.pdf> (06. 02. 2026)
- Law on the National Naadam Festival, <https://legalinfo.mn/mn/detail?lawId=16530657329231> (06. 02. 2026)
- Law to be implemented from the beginning of the year: Tahar Office, <https://news.mn/r/652671/> (06. 02. 2026)
- MINJIN, TS. M.: Through History: From East to West. Ulaanbaatar 2011
- MORRISSON, Christian – JÜTTING, Johannes: Women's Discrimination in Developing Countries: A New Dataset for Better Policies, <https://gsdrc.org/document-library/womens-discrimination-in-developing-countries-a-new-dataset-for-better-policies/> (06. 02. 2026)
- NADMID, J.: A Brief Overview of the Historical Development of the Mongolian Language and Its Writing. Ulaanbaatar 1967
- NYAMSUREN, Ch.: Legal Theory. Ulaanbaatar 2017
- ZEE, Machteld E.: When Multiculturalism and Islamic Fundamentalism Coincide Sharia Councils in the United Kingdom, <https://www.wzb.eu/en/events/when-multiculturalism-and-islamic-fundamentalism-coincide-sharia-councils-in-the-united-kingdom> (06. 02. 2026)

