

Comparative Legal Philosophy as the Foundation for Legal Reform in Mongolia: Why No Modernisation is Possible Without Jurisprudential Development

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ABSTRACT

The development of legal philosophy is a decisive but frequently neglected precondition for sustainable legal reform in post-socialist jurisdictions. Mongolia exemplifies this structural challenge: despite three decades of institutional overhauls, constitutional amendments, judicial restructuring, and the aggressive borrowing of foreign legal models, the domestic legal order continues to suffer from chronic instability, inconsistent doctrinal reasoning, and an underdeveloped culture of justification. This article argues that Mongolia's legal reforms repeatedly underperform because they are executed in a jurisprudential vacuum. Utilizing a comparative jurisprudential framework, this study examines how modernizing states construct legal meaning, foster interpretive consistency, and stabilize institutions through the deliberate cultivation of legal philosophy. The article demonstrates how Mongolia's hybrid legal identity—comprising civil law structures, lingering socialist-legal mentalities, revived customary-normative practices, and deepening engagement with international economic and human rights law—requires a systematic theoretical matrix capable of organizing doctrinal reasoning across fields. Without such foundations, reform remains fragmented, reactive, and formalistic. Ultimately, the article proposes a Mongolian framework of “Structured Pluralist Jurisprudence” that critically synthesizes Hartian legal positivism, Dworkinian interpretivism, Fullerian internal morality, and Razian authority with local normative culture and international obligations.

Keywords: legal philosophy, Mongolia, comparative jurisprudence, legal reform, legal modernization, post-socialist law, rule of law, structured pluralism.

INTRODUCTION

Background

Over the past three decades, Mongolia has engaged in an ambitious, multi-layered trajectory of legal reform. Following the democratic transition of 1990 and the adoption of the landmark 1992 Constitution, the state has continuously overhauled its institutional architecture. This process includes extensive constitutional revisions (1999–2001, 2019–2020, and 2023), systemic judicial restructurings, the codification of administrative law, major revisions of the Civil and Criminal Codes, and the progressive ratification of international treaties. Trotz dieser formalen Errungenschaften (Despite these formal legislative achievements), however, the domestic legal system exhibits persistent vulnerabilities: deep doctrinal inconsistency, unstable statutory interpretation, poorly reasoned judicial opinions, unpredictable administrative decision-making, and a pronounced reluctance by courts to engage substantively with constitutional principles. Reform cycles repeat with mechanical regularity, yet structural unpredictability endures.

The central thesis of this article is that these systemic pathologies cannot be resolved by further legislative drafting or technical institutional transplants alone. Rather, Mongolia's legal modernization has hit a structural ceiling because it occurs without a coherent jurisprudential foundation. Meaningful legal reform requires an

intellectual infrastructure—a shared legal philosophy—that guides how legal actors interpret, validate, and apply the law.

The Problem: Reform Without Theory

Legal reform in post-socialist Mongolia has historically been reactive rather than principled, formalistic rather than interpretive, transplanted rather than theorized, and procedural rather than conceptual. In the rush to transition from a socialist planned economy to a market-based liberal democracy, law was viewed as a technical instrument of economic engineering rather than an expression of philosophical principles.

This instrumentalism has resulted in severe legal fragmentation. Statutes proliferate at an unmanageable pace, yet coherent dogmatic reasoning remains rare. Judicial decisions frequently consist of verbatim string-citations of statutory clauses without any articulation of the underlying legal principles or the *ratio decidendi*. Consequently, the legal order lacks an internal stabilizing mechanism, leaving statutory meaning vulnerable to political shifting and shifting administrative caprice.

The Gap in the Literature

Extensive scholarship has documented Mongolia's post-socialist transition. Prominent domestic scholars have detailed the constitutional architecture and early democratic design,¹ while international observers have analyzed public administration reform² and the political dynamics of constitutional adjudication.³ Concurrently, broader comparative legal literature has thoroughly examined the rule of law crises in post-socialist Central and Eastern Europe.⁴

However, a significant gap remains: virtually no literature examines the systemic failures of Mongolian legal reform through the lens of analytical and comparative jurisprudence. Existing studies treat interpretive inconsistency as a mere lack of technical capacity or political willpower. This article rectifies this gap by diagnosing these challenges as symptoms of an absent jurisprudential infrastructure, offering a theoretical critique that integrates Mongolian legal developments into mainstream global jurisprudence.

¹ B. Chimid, *The Constitutional Foundations of the Mongolian State* (Ulaanbaatar: State Great Khural Press, 1998), 45–67.

² B. Erdene, "Administrative Reform and State Capacity in Mongolia," *Journal of Asian Public Policy* 11, no. 2 (2018): 134–138.

³ S. Kim and J. Nam, "Post-Socialist Constitutionalism in Mongolia," *Asian Journal of Comparative Law* 15, no. 1 (2020): 89.

⁴ M. Krygier, "Rule of Law after Communism," *Law & Social Inquiry* 37, no. 1 (2012): 1–5; M. Popova, *Politicized Justice in Emerging Democracies* (Cambridge: Cambridge University Press, 2018), 12–24.

Purpose and Contribution

This article contributes to the fields of comparative law and legal theory in four distinct ways:

It demonstrates theoretically why a coherent legal philosophy is not an abstract luxury but a functional precondition for institutional stability in modernizing states.

It provides a comparative analysis of post-socialist and East Asian jurisdictions that successfully leveraged jurisprudential development to anchor legal modernization.

It diagnoses the chronic instability of Mongolia's current legal architecture as a conceptual failure rooted in the absence of an indigenous jurisprudential framework.

It articulates a novel theoretical framework—"Structured Pluralist Jurisprudence"—designed to harmonize Mongolia's complex hybrid legal identity.

METHODOLOGY

This study employs a comparative legal-theoretical methodology. It avoids a purely descriptive account of statutes, opting instead for a critical synthesis of analytical jurisprudence⁵ and interpretivism⁶ alongside comparative institutionalism.⁷ This theoretical apparatus is applied to a qualitative analysis of landmark rulings from the Mongolian Constitutional Court (Tsents) and the Supreme Court, illustrating how systemic interpretive failures manifest in practice.

Structure

The remainder of this article adheres to a rigorous analytical structure. Section 2 outlines the conceptual and comparative methods used. Section 3 details the empirical and comparative results, highlighting the divergences between states that institutionalized a jurisprudential culture and those that did not. Section 4 explores the theoretical implications for Mongolia, utilizing the insights of Hart, Dworkin, Fuller, and Raz to dissect domestic judicial failures and outline the "Structured Pluralist Jurisprudence" model. Section 5 concludes with concrete recommendations for legal education and institutional reform.

Methods

Conceptual Legal-Theoretical Method

To evaluate the intellectual underpinnings of Mongolia's legal order, this article deploys a pluralistic conceptual framework drawing from five core pillars of modern jurisprudence:

Hartian Analytical Jurisprudence: Used to assess whether the Mongolian legal system possesses a stable, uniform "Rule of Recognition" capable of resolving conflicts among overlapping sources of law.⁸

Dworkinian Interpretivism: Employed to evaluate the depth of judicial reasoning, analyzing whether Mongolian courts merely engage in mechanical literalism or actively seek the moral coherence of the legal order.⁹

Fullerian Legality: Applied to examine the internal morality of Mongolia's lawmaking processes, specifically testing for consistency, clarity, and non-retroactivity.¹⁰

Razian Authority Theory: Used to scrutinize the institutional weight of judicial and administrative decisions, determining whether they provide exclusionary reasons that genuinely guide behavior.¹¹

Socio-Legal Pluralism: Utilized to understand how official state law interacts with deep-seated customary normative structures and post-socialist bureaucratic habits.¹²

⁵ H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961); Joseph Raz, *The Authority of Law* (Oxford: Clarendon Press, 1986).

⁶ Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986).

⁷ C. Hutton, "Institutional Approaches to Comparative Law," *Oxford Journal of Legal Studies* 37, no. 2 (2017): 287–290.

⁸ Hart, *The Concept of Law*, 91–110.

⁹ Dworkin, *Law's Empire*, 225–258.

¹⁰ Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), 33–40.

¹¹ Raz, *The Authority of Law*, 45–62.

¹² Brian Tamanaha, *Legal Pluralism Explained* (Oxford: Oxford University Press, 2011), 77.

Comparative Jurisprudence Method

This study utilizes a purposive comparative sampling method, pairing post-socialist transitional states (Estonia, Slovenia, Georgia, and the Czech Republic) with East Asian states that experienced rapid democratic and legal modernization (South Korea and Taiwan). These jurisdictions serve as ideal comparators because they faced identical structural baseline conditions: the necessity of dismantling authoritarian or socialist legal architectures, the rapid influx of international commercial templates, and the challenge of retraining a legacy judiciary trained in formalistic mechanical application.

Case Illustration Method

To bridge theory and practice, the article uses a qualitative case-study methodology focusing on judgments issued by the Mongolian Constitutional Court (Tsents) and the Civil and Administrative chambers of the Supreme Court of Mongolia between 2015 and 2025. Cases were selected based on their systemic implications for property rights, freedom of expression, and the separation of powers. The analysis isolates the courts' interpretive methodologies, tracking the presence or absence of principled justification.

Judicial Reasoning Pattern Analysis

To strengthen the empirical dimension of the study, the article examines recurring reasoning patterns in selected decisions of the Constitutional Court (Tsents) and the Supreme Court of Mongolia between 2015 and 2025. The analysis focuses on three indicators: (1) the extent of principle-based reasoning, (2) reliance on textual interpretation, and (3) engagement with constitutional or international legal norms. The purpose is not to evaluate the substantive correctness of judicial outcomes but to assess the consistency and sophistication of legal reasoning employed by judicial institutions.

The selected decisions were reviewed qualitatively to identify recurring interpretive tendencies and to determine whether judicial reasoning reflects an established jurisprudential methodology or a predominantly formalistic approach.

RESULTS

Comparative Finding 1: Successful Reforming States Built Law on Philosophy

The data from successful transforming jurisdictions indicates that sustainable legal modernization is directly correlated with the deliberate institutionalization of a jurisprudential tradition.

In Estonia, the post-socialist transition was anchored by introducing Hartian analytical positivism into judicial training curricula, forcing a sharp distinction between political decree and structured norm-hierarchy.¹³ In Slovenia, the Constitutional Court championed a Dworkinian, rights-based interpretivism that successfully built a "culture of justification" around the basic law.¹⁴ Georgia's administrative overhaul relied heavily on Fullerian principles of internal legality to guarantee predictability and reduce corruption,¹⁵ while South Korea and Taiwan blended Western constitutional rights with regional communitarian frameworks to achieve institutional stability.¹⁶

Comparative Finding 2: Post-Socialist States Without Jurisprudence Face Persistent Instability

Conversely, states that bypassed philosophical institutionalization in favor of rapid, uncritical legislative copying show an identical path of institutional decay. In jurisdictions like Kyrgyzstan, pre-reform Ukraine, and pre-2017 Uzbekistan, legal reform was characterized by extreme legislative volatility. Because the judiciaries in these

states lacked a coherent interpretive methodology to anchor new statutory texts, the introduction of sophisticated foreign codes produced profound systemic confusion. Courts alternated between hyper-literal readings that defeated the purpose of the laws and unprincipled, politically expedient teleological leaps. This dynamic mimics the contemporary Mongolian paradigm: high legislative output accompanied by low systemic efficacy and declining public trust.

¹³ K. Kask, "Legal Methodology in Estonian Courts," *Baltic Yearbook of International Law* 10 (2010): 45–52.

¹⁴ J. Letnar Čerňič, "Slovenian Constitutional Identity," *International Journal of Constitutional Law* 14, no. 2 (2016): 278–283.

¹⁵ D. Natsvlishvili, "Administrative Reform in Georgia," *Review of Central and East European Law* 39, no. 1 (2014): 55–60.

¹⁶ H. Sung, "South Korean Legal Modernisation," *Journal of Korean Legal Studies* 21, no. 3 (2009): 67–75; A. Chen, "Taiwan's Constitutional Court and Its Jurisprudence," *International Journal of Constitutional Law* 13, no. 1 (2015): 123–130.

Comparative Lessons from Kazakhstan and Vietnam

The experiences of Kazakhstan and Vietnam further demonstrate the importance of jurisprudential development in legal modernization. Kazakhstan has undertaken extensive legal reforms aimed at strengthening investment protection and judicial professionalism. However, scholars continue to identify challenges relating to judicial independence and consistency of legal interpretation. Similarly, Vietnam's transition toward a market-oriented economy has been accompanied by significant legislative modernization, yet legal predictability remains dependent upon the development of coherent interpretive practices within courts and administrative institutions.

These experiences suggest that legislative reform alone cannot guarantee legal certainty. Sustainable legal modernization requires the parallel development of jurisprudential methodologies capable of stabilizing legal interpretation and institutional behavior.

Comparative Finding 3: Hybrid Legal Systems Require Hybrid Legal Philosophy

A critical finding from the comparative data is that states with hybrid legal identities cannot achieve structural stability by adopting a single, monolithic legal theory. The most striking example is South Africa during its democratic transition. Faced with a fragmented mix of Roman-Dutch common law, English procedural law, and indigenous customary law, the state developed a distinct model of "Transformative Constitutionalism." This framework fused Dworkinian moral interpretation with an explicit recognition of legal pluralism.¹⁷ It allowed the judiciary to harmonize conflicting legal traditions by evaluating them against an overarching set of constitutional values.

Result: Mongolia Has Not Developed a Coherent Legal Philosophy

An empirical assessment of Mongolia's legal apparatus demonstrates that the domestic legal system operates in a philosophical vacuum. The findings indicate:

Mechanical Formalism: Supreme Court judgments consistently exhibit a pattern of text-matching, where judges merely quote statutory clauses without clarifying ambiguity or developing doctrine.

Methodological Oscillation: The Constitutional Court (Tssets) demonstrates an erratic interpretive posture, swinging unpredictably from strict textual literalism in one case to boundless, unreasoned appeals to the "spirit of the Constitution" in the next.

Legislative Inflation: The State Great Khural (Parliament) operates under a purely instrumentalist view of law, passing an immense volume of regulations that routinely violate basic principles of clarity and non-retroactivity due to a lack of structural oversight.

Pedagogical Deficit: Legal education in Mongolia remains anchored in a late-socialist pedagogical style that prioritizes the rote memorization of statutory provisions over critical jurisprudential inquiry and methodology.

Empirical Observation of Judicial Reasoning

A review of selected judicial decisions reveals several recurring characteristics. First, courts frequently rely on direct statutory citation without extensive discussion of underlying legal principles. Second, constitutional values and international legal commitments are invoked inconsistently across similar categories of disputes. Third, courts rarely articulate a coherent methodology for balancing competing legal norms.

These observations suggest that interpretive inconsistency is not merely a product of legislative complexity but also reflects the absence of a stable jurisprudential framework capable of guiding legal reasoning across institutions. The findings support the article's central argument that legal modernization requires not only institutional reform but also the development of a coherent legal philosophy.

DISCUSSION

Why Legal Philosophy Matters for Legal Reform

Hart: Law Requires a Rule of Recognition

According to H.L.A. Hart, a legal system transitions from a primitive set of separate rules into a true, mature legal order only when it establishes a stable "Rule of Recognition"—a shared social convention among officials that sets out the authoritative criteria for identifying, ranking, and validating legal norms.¹⁸

Mongolia lacks a stable Rule of Recognition. There is no domestic consensus among legal officials regarding the hierarchy of norms when international treaty obligations, domestic statutory provisions, and specialized administrative regulations conflict. For instance, despite the constitutional mandate that international treaties ratified by Mongolia become part of domestic law upon enactment, Mongolian judges routinely refuse to apply treaty provisions directly if they clash with an internal line of a domestic statute. The criteria for legal validity remain fragmented and unsettled.

¹⁷ K. Klare, "Legal Culture and Transformative Constitutionalism," *South African Journal on Human Rights* 14, no. 1 (1998): 146–152; M. Chanock, *The Making of South African Legal Culture* (Cambridge: Cambridge University Press, 2001), 34–45.

¹⁸ Hart, *The Concept of Law*, 100–105.

Dworkin: Law Requires Moral Interpretation

Ronald Dworkin's interpretivist model posits that law is not merely a collection of explicit rules; it includes a dense network of underlying legal principles that must be interpreted by judges to make the legal order the best it can be.¹⁹ Judges are under an obligation to seek out the moral and logical coherence of the entire legal framework.

Mongolian courts operate in direct opposition to this ideal. By treating law exclusively as a discrete set of commands issued by the sovereign, judges lack the conceptual vocabulary to resolve hard cases where the statutory text is silent or self-contradictory. Because they reject the Dworkinian view that principles (such as good faith, proportionality, and systemic coherence) are binding law, judges default to hyper-literalism. When a literal reading produces an absurd or unjust outcome, the court typically abdicates responsibility, claiming that

the error lies with the legislature. This formalism undermines the judiciary's role as an independent guardian of rights.

Raz: Law Requires Legitimate Authority

Joseph Raz argues that the defining feature of law is its claim to legitimate authority. For a legal directive to possess authority, it must provide "exclusionary reasons"—reasons that replace the subject's own independent moral or practical assessments, allowing them to coordinate their behavior predictably.²⁰ This authority is legitimate only if the institution issuing the directive acts as a reliable mediator, delivering decisions rooted in reasoned justification.

In Mongolia, the authority of the state is continually compromised because both administrative agencies and judicial bodies regularly issue directives that lack a clear "culture of justification." Rulings are frequently delivered without any written explanation of how conflicting facts were weighed or how ambiguous texts were resolved. When legal decisions appear arbitrary and unreasoned, they fail to provide stable exclusionary reasons for action, leading to widespread non-compliance, litigation loops, and institutional instability.

Fuller: Law Requires Internal Morality

Lon Fuller's secular natural law theory outlines eight distinct pathways to procedural failure for a legal system, including a lack of clarity, excessive retroactivity, unstable alterations, and a lack of congruence between official action and the stated rule.²¹ Fuller calls these principles the "internal morality of law."

Mongolian lawmaking consistently violates Fuller's structural constraints. Driven by shifting political coalitions and corporate lobbying, economic and tax legislation is frequently passed through expedited parliamentary tracks. This results in obscure statutory phrasing, retroactive tax liabilities, and constant regulatory flux. This disregard for the structural demands of legality strips the legal order of its internal predictability, making long-term foreign direct investment and stable economic planning impossible.

¹⁹ Dworkin, *Law's Empire*, 90–112.

²⁰ Raz, *The Authority of Law*, 35–42.

²¹ Fuller, *The Morality of Law*, 33–94.

Mongolia's Hybrid Legal Identity and Its Theoretical Demands

A primary reason past legal reforms have stalled is that reformers treat Mongolia as a simple, blank-slate civil law jurisdiction. In reality, Mongolia possesses a complex, deeply layered hybrid legal identity that combines five distinct normative traditions: the Civil Law Structure, Socialist Legal Legacies, Customary Legal Culture, Constitutional Liberalism, and International Law.

A system this complex cannot be managed by simple mechanical formalism. It requires a sophisticated, overarching jurisprudential framework capable of acting as an intellectual clearinghouse—mediating conflicts between these divergent legal cultures and synthesizing them into a coherent whole.

Case Illustrations

Constitutional Court (Tsets) Decisions

The conceptual instability of Mongolia's legal framework is vividly illustrated by the jurisprudence of the Constitutional Court (Tsets). In a landmark case concerning the scope of executive authority and the separation

of powers, the Court was asked to evaluate whether specific legislative limits placed on executive appointments violated constitutional boundaries.

Instead of employing a structured, globally recognized doctrinal test—such as the tripartite separation of powers doctrine or a formal proportionality analysis—the Court based its decision on a vague, unstructured invocation of the "spirit of the Constitution." Within the very same cycle, when handling a crucial freedom of expression case regarding online defamation, the Tsets reversed its methodology entirely. It adopted a rigid, ultra-literal textual interpretation of statutory clauses, completely ignoring the broad constitutional and international guarantees of free speech it was duty-bound to protect. This unpredictable oscillation between unreasoned activism and defensive literalism reveals an institution lacking a coherent theory of constitutional interpretation.

Supreme Court Decisions

The Civil Chamber of the Supreme Court demonstrates an identical methodological deficit in its approach to contract and property disputes. In cases involving complex financial instruments or foreign direct investment disputes, the Court frequently avoids analyzing the commercial intent of the contracting parties or applying settled doctrines of contract interpretation. Instead, judges focus heavily on minor procedural infractions, such as whether a document was stamped with a corporate seal or whether a statutory clause contains a specific literal phrase. By prioritizing formal text-matching over substantive legal analysis, the Court creates an environment of profound legal risk for commercial actors.

Administrative Agencies

The operational failures of the Mongolian state apparatus are directly linked to this jurisprudential deficit. In a wide-ranging empirical review of administrative decisions across mining and environmental licensing sectors, researchers noted that over 65% of administrative acts failed to provide any clear legal or factual justification.²² Agencies routinely issue, suspend, or revoke high-value corporate licenses using brief, ambiguous references to omnibus statutory provisions, violating the fundamental benchmarks of administrative legality.

²² B. Barkhuu, *Legal Reform and Democratic Transition in Mongolia* (Ulaanbaatar: NUM Press, 2015), 112–120.

Why Past Legal Reforms Failed

The implementation of the 2002 Civil Code, major overhauls of the Criminal and Criminal Procedure Codes, the establishment of the Administrative Court system, and even the systemic Constitutional Amendments of 2019–2023 have all hit a structural ceiling. The underlying problem is identical across fields: reformers updated the statutory text but left the late-socialist inquisitorial and hyper-formalistic interpretive framework untouched. Changing the textual shell of the law yields minimal results if the actors tasked with enforcing it lack the underlying theory of rights, evidence, proportionality, and state power.

What Mongolia Needs: A Structured Pluralist Jurisprudence

To break out of this cycle of superficial reform, Mongolia must deliberately construct an indigenous theoretical framework: Structured Pluralist Jurisprudence. This approach demands a disciplined synthesis of existing analytical and normative tools, explicitly configured to manage Mongolia's hybrid legal identity:

Component 1: Hartian Positivism (The Analytical Foundation): Establishing an explicit rule of recognition to clearly define the hierarchy of norms and standard interpretive rules.

Component 2: Dworkinian Interpretivism (The Interpretive Standard): Training judges to transition from mechanical text-matching to principled, rights-based adjudication.

Component 3: Fullerian Legality (The Lawmaking Constraint): Institutionalizing legislative audits to block obscure, retroactive, or constantly fluctuating regulations.

Component 4: Razian Authority (The Justification Metric): Conditioning the legal validity of all state actions on a transparent, written narrative of reasons.

Component 5: Legal Pluralism (Socio-Legal Integration): Formally defining the clear boundary lines where customary practices and state structures can legally co-exist.

Component 6: International Law Integration: Building predictable, rigorous frameworks for direct treaty application across domestic courts.

Analytical Indicators for Structured Pluralist Jurisprudence

For practical implementation, Structured Pluralist Jurisprudence may be assessed through five analytical indicators:

1. Normative Coherence Indicator – the degree to which judicial decisions reconcile constitutional, statutory, and international legal norms.
2. Justification Indicator – the extent to which courts provide reasoned explanations rather than merely citing legal provisions.
3. Principle Integration Indicator – the frequency with which legal principles such as proportionality, good faith, and legal certainty are incorporated into judicial reasoning.
4. Institutional Consistency Indicator – the consistency of interpretive methodologies across courts and administrative agencies.
5. Legal Pluralism Indicator – the capacity of legal institutions to accommodate customary norms and international legal obligations without undermining constitutional supremacy.

These indicators provide an initial framework for evaluating the effectiveness of jurisprudential development and may serve as a basis for future empirical assessment.

CONCLUSION

Mongolia's legal reforms repeatedly fail because they rest on an unstable jurisprudential foundation. Without legal philosophy, law becomes a collection of texts unmoored from principles, coherence, and institutional integrity. Comparative evidence demonstrates that successful reforming states first cultivate legal philosophy, then build institutions around it. Mongolia must adopt a structured pluralist jurisprudence integrating analytic, interpretive, procedural, and pluralistic dimensions of law. Only then can reforms achieve coherence, judicial professionalism, and public trust.

Future research should expand the empirical base of this framework through interviews with judges, practicing lawyers, regulators, and legal academics, as well as through systematic comparative studies involving Kazakhstan, Vietnam, and other post-socialist jurisdictions.

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