

Indigeneity of Neoliberalism in Mongolia's Nation Building

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Abstract. In brief, this paper shows the different consequences being contested in the process of nation building in Mongolia. Among the different consequences, I focus on what is called the liberal economy and market, which represent neoliberalism in Mongolia. I contextualize this through an analysis of the reconstruction of history and the continuity of the Mongolian legal system. These are the main contesting features that have consequences in Mongolian nation-building. In the contest, the historical reconstruction and the legal continuity are widely acknowledged and promoted by the public, and they remain the main force to justify the bills and political decisions to limit and tame some principles of neoliberalism. I argue that restricting and taming neoliberalism is a process to indigenize forms of neoliberalism employed in Mongolia's nation-building project.

Key words: Nation building, neoliberalism, indigeneity, resource, Law.

Introduction

In this chapter, I intend to respond to two related but different discussions on neoliberalism. One of them considers neoliberalism as something that is incoherent assemblage (Collier 2009; Ong 2006; Murray-Li 2007; Shore and Wright 1997; Shore and Pero 2011 cited in Bear 2015, 7) and is therefore difficult to use and make a clear discussion (Mair 2012). I need to respond to this claim in order to continue using the term 'neoliberalism'. Although I do agree with this claim, I also think that it is still possible to use the term 'neoliberalism' by making clear what it is *in Mongolia*. The second one considers neoliberalism as the external and colonial power of the international donor organizations, transnational corporations and capitalist states, such as the USA (Harvey 2010, 28; Graeber 2011, 2; cf. Peet 2003; Ferguson 2006; Ong 2006; Harvey 2005), and threatens the nation and inflicts death on the nation-state (Sassen 1996). My intent is neither to reject this claim nor *not* to take this approach. I choose not to repeat this claim in the case of Mongolia as it has been done by Morris Rossabi (2005) and Lhamsuren Munkh-Erdene (2012). In its place, I want to shed light on the employment of neoliberalism in the process of nation-building in Mongolia which indigenizes neoliberalism.

On 1 December 2012, in the *Group for Debates in Anthropological Theory* (GDAT), James Laidlaw and Jonatan Mair proposed a motion – “The concept of neoliberalism has become an obstacle to the anthropological understanding of the twenty-first century.” Later on, on his webpage, Mair wrote that every time when the term ‘neoliberalism’ was tagged, they “seemed to be talking about quite different, even contradictory, things — the neoliberal tag seemed to add nothing.” He continued, “Or worse, it seemed portentous to invoke a whole global theory as a background explanation without doing the work of showing how ‘global forces’ are actually linked to or expressed in the sort of ‘local’ settings” (Mair 2012). This is what Laidlaw and Mair proposed in the above-mentioned debate, and what many anthropologists find in their study of neoliberalism. “Anthropologists have shown that neoliberalism is not a single coherent project, but an assemblage of techniques and institutional structures” (Collier 2009; Ong 2007; Murray-Li 2007; Shore and Wright 1997; Shore and Pero 2011 cited in Bear 2015, 7). I acknowledge this argument and I agree that, cross-culturally, neoliberalism can be something that is incoherent and even contradictory (Ong 2006). The incoherence and inconsistency require authors not to abandon the use of the term as it was questioned by Laidlaw and Mair in the debate, but rather to clarify the meaning and the framework of the term in specific cultures when we decide how to use the term ‘neoliberalism’. To overcome the burden of the term ‘neoliberalism’ as something that can be empty and fluxuating, I start this chapter by clarifying my use of the term ‘neoliberalism’, basing it on the way Mongolians identify with the current era. It is popular for many Mongolians to use the term *zakh zeeliin üye* which literally means “the era of the market” (Sneath 2002) to talk about the contemporary Mongolia. The strict application of the term *zakh zeeliin üye* in Mongolia makes it difficult not to use the term ‘neoliberalism’. *Zakh zeeliin üye* in many ways captures the framework of neoliberalism which Manfred Steger and Ravi Roy (2010, 11) propose. Following Steger and Roy, I take neoliberalism as three intertwined manifestations: (1) an ideology, (2) a mode of governance, and (3) a policy package of deregulation, liberalization and privatization in the economy. I am adopting this definition not to test whether it fits in the case of Mongolia or not, but the ethnography I present in this chapter allows me to argue that forms of neoliberalism clearly exist in Mongolia at least in the range of the above manifestations (cf. Rossabi 2005; Munkh-Erdene 2012), which is hopefully good enough to justify my use of the term in this chapter.

While I acknowledge the argument on the incoherence of neoliberalism, I aim to advance it by asking what makes the consequences of neoliberalism incoherent, inconsistent and contradictory. By asking such a question, I intend

to escape from the above complaint Mair (2012) develops about the 'portentous invoke' of the "whole global theory as a background explanation without doing the work of showing how 'global forces' are actually linked to or expressed in the sort of 'local' settings". I argue that it is not only because neoliberalism assembles different projects, techniques and institutional structures as it is summarized by Bear (2015, 7). In this chapter, it is the nation-building project of the indigenous nation-state of Mongolia that makes neoliberalism incoherent and not the same as it is in other countries. Because neoliberalism is not simply a project of the economy that occurs in the line of the global economy. As Anna Tsing (2005) argues, it is always a by-product of the 'local' and the 'global'. Here, in the case of this chapter, with the 'local', I mean the indigenous nation-state. In fact, the nation-building of a nation-state, to borrow the sentence structure from Mair, is another portentous invoke that can be used as a background explanation but, unlike neoliberalism, it can do the work to show how global forces are actually linked to or expressed in the sort of local setting. But my intent is not to look at the relationship of the neoliberalism and the nation-state as something that is contradictory, which is a dominant narrative in the scholarly discourses I turn to in the following discussion.

The relationship between neoliberalism and the nation-state recalls Karl Polanyi's argument which claims that it is impossible to disassemble the economy from society and the State (Polanyi cited in Block 2001, xxvi–xxvii). Recently, the same argument has also been developed by Hanna Appel. She states that "there is no economy without state" (Appel 2017, 301). Following Polanyi and Appel, I consider that neoliberalism, as an asset in the economy in Mongolia, can be embedded in the nation-building project. Finally, the above-mentioned anthropological definition of neoliberalism as manifold projects, techniques and institutional structures justifies my approach to neoliberalism that it can be employed and used for nation-states for national purposes. In this case, we, as anthropologists, should be able to discover the diversity of neoliberal projects across the globe, and possibly not just indigenous responses and resistances against neoliberalism (Bargh 2007), but also the indigeneity of neoliberalism. With the term 'indigeneity of neoliberalism', I do not intend to mean that Mongolia accepts or rejects the principles of neoliberalism. Rather, the country attempts to make the best use of it by limiting and controlling its principles. This can be possible in such states as Mongolia, a country of a homogenous indigenous nation, except for the small population of Kazakhs.

As I mentioned above, my argument on the indigeneity of neoliberalism claims the opposite of what many scholars write. It is common in the literature of

neoliberalism, nation-state, globalism, and capitalism to consider neoliberalism and nation-state projects as something that is distinct and contradictory. For instance, in the works that discuss neoliberal domination and neo-colonialization (Harvey 2010, 28; Graeber 2011, 2; cf. Peet 2003; Ferguson 2006; Ong 2006; Harvey 2005), the death of the nation-state (Sassen 1996), or resource nationalism (Bremmer and Johnston 2009, 149; Vivoda 2009, 532; Maniruzzaman 2009, 81; Click and Weiner 2010, 784; Kretzschmar, Kirchner, and Sharifzyanova 2010), neoliberalism for non-western states stands as an external force that inflicts and threatens the nation-state or indigenous nations. In the case of Mongolia, neoliberalism is a complexity and multiplicity of opportunities and risks available for the nation-state to engage in. The neoliberal projects of marketization, privatization, and deregulation are nationalized and often considered to be for the sake of building the nation. Therefore, they are not only neoliberal projects, but they are also nation-building projects of the nation-state. In this project, the nation-state has some freedom to decide which consequences of neoliberalism to experiment with, and then, which ones to employ and which to reject. Such attempts have always been considered as a form of 'resource nationalism' (cf. Joffé et al. 2009, 4; Domjan and Stone 2010, 38; Bremmer and Johnston 2009, 149; Wilson 2015, 399; Childs 2016, 539). Meanwhile, for Mongolia, resource nationalism can be regarded as a means to tame the alien supremacy of neoliberalism which does not fit the principles of nation building. As I mentioned before, this does not put neoliberalism in a position of an alien power. In fact, it is the other way around. In the framework of nation-building, neoliberalism becomes an element that is employed in the national agenda for building the nation. While the nation-state employs neoliberal opportunities, the State is also highly critical of neoliberalism and often controls and attempts to tame the 'foreignness' and 'unfitness' of neoliberalism. With 'taming,' I mean the State control, regulation, navigation by limiting and removing what is considered to be contrary, conflicting and threatening to what is called the *ünet züil* (values), *ashig sonirkhol* (interests) and *bakharkhal* (pride) of the nation. In other words, the nation-state of Mongolia attempts to manage, successfully or unsuccessfully, different consequences of neoliberalism. The overarching national project to build the nation decides which consequences of neoliberalism correspond or contradict to other matters in the process of nation-building, such as the construction of the history, culture, environment and the national identity. Therefore, what makes different consequences of neoliberalism inconsistent is the political decision that is relational to the imagined nation and the national building projects (cf. Anderson 1983). The nation State's capacity to decide and manage the consequences of neoliberalism addresses the

importance of the relational consequences of neoliberalism to the nation building. In this vein, incoherence and inconsistency, which are widely targeted by anthropologists, are relational to the agenda of certain actors, such as the nation-state rulers. In other words, it can be consistent with the national economy while it might *not* be consistent with other aspects of the nation-building project. Any consequences of neoliberalism can be relational to certain principles imagined to build the nation. It is the imagining of the nation that greatly shapes the consequences of neoliberalism.

My approach to the employment of neoliberalism in the nation-building project and the taming of it responds to the question of *how much* neoliberalism Mongolia actually has. Some consider that Mongolia has too much neoliberalism. Meanwhile, some others consider that it is not liberal enough as I discovered when I went to the investment forum *For Mining without Populism* in 2015, an annual event of the *Mongolian National Mining Association*. The first part of the paper shall present the growth of the liberal economy in Mongolia from about the 1990s to the mid-2000s. The second part of the paper shall present the State control in the mining sector which rejects some principles of neoliberalism and makes Mongolia's liberal economy not liberal enough as members of the *Mongolian National Mining Association* have been complaining. The final section sheds light on two other principles in the nation-building project that can be more privileged and prioritized than the importance of the national economy. One of them is the reconstruction of historical incidents to protect the environment, natural resources, locality, territory, and sovereignty. The other one is a continuity of concepts about the natural source ownership and protection in the legal system in the last hundred years.

The growth of neoliberalism in Mongolia

In the critical economic situation after the collapse of socialism, it was not a coincidence that the first president of Mongolia, Ochirbat Punsalmaa (1990–1997) was a mining engineer who graduated from the Leningrad Higher School of Mining. During the times of Socialism, he worked as a chief engineer in one of the largest coal mines of Mongolia — Sharyn Gol, he served as the Deputy Minister of Mining and Geology, a Deputy in the People's Great Khural, a member of the MPRP Central Committee, the Minister of Mining and Geology, and the Chairman of the State Commission for Foreign Economic Relations, and then became the Minister of Foreign Economic Relations and Supplies.

His expertise in the field of mining was an important asset to help the collapsed Post-Socialist economy of Mongolia. This was one of the reasons for him to be elected the President, and, for the leaders of democracy and market reform, to support him and collaborate with him. In 1992, President Ochirbat founded and started the Gold program (*Alt khötölbör*).¹ In 2013, in the opening of his book *Development Strategy and Ecology of the Valuable Minerals Complex (Ünet erdsiin tsogtsolboryn khögjliin strategi ba ekologi)*, Ochirbat explains that, in the situation with no currency reserve, export, investment and capacity to repay loans, and with the 325 percent inflation, it was impossible for the country to appeal for loans and investments. The country had to use its own facilities to increase the national currency reserve and the government's capacity to repay. Considering the situation, the quickest and easiest way was to use the gold deposits to assist the economy (Bold 2013). The emergency to consolidate the nation-state's sovereignty and the critical situation of the economy compels the rebuilding of the national economy where gold extraction became one of the building blocks of the national economy. The fact of being a building block of the national economy justifies extraction as well as the destruction of gold mining. In other words, policymakers and mine operators claim that both extraction and destruction of gold mining had to occur for the sake of the national economy.

To build the national economy, the Gold program had to support and develop the gold mining sector by creating a reassuring and appealing political, legal and socio-economic environment. N. Alгаа, the president of the *Mongolian National Mining Association*, told me that, at the start, the Gold program was a wish list (*mörөөдлийн жагсаалт*). In 1991, he worked at the *Government Agency for Mining (Zasgiin газрын дегредех ул уурхайн товчоо)*, and he was in the team to draft a new Minerals Law. It was one of the first steps to turn the Gold program wish list into reality. This wish list was one of the milestones to shape the imagined Asian tiger national economy of Mongolia, as Ochirbat proposed. The main purpose of the law was to appeal to foreign direct investment. Steps to open up the mining economy carefully followed the advice offered by the *World Bank* (Sanчир 2016). In 1991, the World Bank conducted research in Mongolia that provided Mongolia with technical assistance for developing mining. The project report produced recommendations on the geological potential of mineral resources, the capacity

1 Not only in 1992, but also in 1911 when the theocratic government of Mongolia proclaimed political independence, mining, and particularly gold mining, was immediately adopted to fund the emerging nation State and to promote its national economy (Tuya and Battomor 2012; Bonilla 2016; Jackson and Dear 2016). The same happened again in 1991, when President Ochirbat founded, and, in 1992, started the Gold program (*Alt khötölbör*).

of the existing mines, the legal environment, and the Government agencies and institutions to manage and assist the mining sector. In 1994, the draft of the law faced major criticism from some experts in the field of mining and geology whose concerns received lots of support in the Parliament. Alгаа identified them as technocrats, and they were among the first to resist neoliberal changes in the mining sector. I will introduce these technocrats in the next section. Actually, Alгаа called the 1997 Minerals Law a liberal law that equally distributed exploration licenses and equally permitted Mongolians as well as foreigners to own and operate mines. Meanwhile, the technocrats who resisted the law called it the *Black Law* (*khar khuuli*). Their main concern was not to allow foreigners to privately own mine(s) of strategic minerals, such as gold. They claimed that such strategic minerals can only be owned by Mongolians and the State of Mongolia, as it is declared in the Constitution of Mongolia. Ultimately, after making some major changes in the draft, the law was passed in 1994. However, it was not liberal and attractive enough to appeal to foreign investors. Finally, the liberal purpose of the law was fully accomplished when the *Mongolian Democratic Party* (MDP) won the election in 1996 and amended the *Minerals Law*. This time, it was not only President Ochirbat, but also M. Enkhsaikhan, the Prime Minister representing the *Democratic Party* who supported the law and pioneered the mining economy. By winning the election, democratic and market reformers became the other major State-driven force to support mining. One of the important changes in the amended law was the liberalization of mining and natural resources along with the stability agreement with mining companies. Starting from 1997, the law permitted the Government to issue thousands of exploration licenses for free (Bulag 2014, 132), except for a negligible administration and registration fee and tax. By 2000, 44 percent of the total territory of the country had already been given away for mining exploration. According to the *Mineral Resources and Petroleum Authority of Mongolia* (MRPAM), approximately 3329 mineral licenses were granted to both foreign and domestic companies covering 13.9 million hectares, or 8.9 percent of the entire territory, of which, 1494 were still operational, and 1835 were exploration licenses as of 2015 (Ganbold and Ali 2017, 4).

The amended Minerals Law from 1997 successfully turned Mongolia into an attractive country for mining ventures and brought mining companies from America, Europe, and Australia. *Boroo Gold* was one of the first, and the most famous example of foreign mining companies to make a large profit in Mongolia at that time. *AGR Limited* owned by *Resolute Mining*, an Australian mining company, purchased the *Boroo Gold* deposit and started its operation in 1999. In early 2002, *Cameco* (*Canadian Mining and Energy Corporation*), later

known as *Centerra Gold*, entered the *Boroo Gold Company*. Under the *Stability Agreement* signed with the Government of Mongolia in 1998, *BGC* was exempt only from the corporate income tax: 100% exemption for the 3 years from the start of commercial production in 2004 and 50% exemption for the next 3 years thereafter. Danny Walker, a miner from New Zealand, was one of those who were attracted to operating a mine in Mongolia, and personally experienced the case of *Boroo Gold*. He first came to Mongolia in 1998 and started his company *Cold Gold Mongolia* in 1999, just after *Boroo Gold* made the *Stability Agreement* with the Mongolian Government. He notes that Mongolia benefited massively from *Boroo Gold*, maybe not in the sense of the tax which *Boroo Gold* paid to Mongolia, but by other means. The operation of *Boroo Gold* in Mongolia was truly stimulating for many investors and mining companies all around the world, and, as a result, many foreign companies came to Mongolia to operate mines and to contribute to the Mongolian economy. Mongolian economists also confirm this achievement of the Government. Khashchuluun Chuluundorj and Enkhjargal Dandinbazar note that the liberal economic regime for investments in the mining sector resulted in a rapidly increasing inflow of foreign investment in the natural resource sectors, and Mongolia became one of the top 10 destinations in the world in terms of exploration investment (2014, 293; cf. Jackson 2014, 6; Bridge 2004). Later, on the television in Mongolia, I watched Khashchuluun's interview where he pointed out that the case of *Boroo Gold* was an important move for the Government of Mongolia that enticed foreign investors, enlarge the mining industry, and support for the national economy. In fact, there was a dramatic increase in the annual production of gold from 4.5 to 10.2 metric tons from 1992 to 2000, and from 11.8 to 24.1 metric tons from 2000 to 2005, and about ten thousand workplaces were created (*Gold 2025* program baseline research report 2015, 7–8) and brought a major contribution in the GDP with up to 20 percent (Bold 2013). Also, many of the major Mongolian national companies operating in the sector of food, construction, agriculture, education, health, media, trade and banking, etc. started their businesses from gold mines (cf. Appel 2017, 311). The owners of these companies, for instance, L. Chinbat, the founder and owner of the *Gatsuurt Company*, one of largest food producers in Mongolia that used to operate a gold mine, addressed the importance of gold mines in the building of the Post-Socialist Mongolian national economy. For this reason, many, including the first President of Mongolia, market reformers, gold mining companies and investors, etc. refer to the Gold program as a success story, which justifies the exploitation of gold by using the concept of the national economy. Mongolia's achievement as a mineral nation (Jackson 2014) excellently depicts the employment of neoliberalism for

the sake of the national economy (cf. Appel 2017). Here, neoliberalism becomes an important opportunity for Mongolian nation-state rulers to help its collapsed national economy. Neoliberalization of the national economy was a technique for Ochirbat, Alгаа, and the *Democratic Union* Government to fund the emerging nation-state and build the nation.

Taming the consequences of neoliberalism

Alternatively, many Mongolians complained that the mining companies, namely, BGC, managed to complete the major extraction of the deposit within the first five years and ended up not paying as much as expected in taxes (Ganchimeg 2015). In 2007, the Parliament of Mongolia requested the *National Audit Office* to produce an evaluation. The report of the evaluation notes that the *Stability Agreement* with *Boroo Gold* was based on improper economic calculation, and announced that *Boroo Gold* would finish exploiting its mineral deposit by 2009 (Mendbayar et al. 2007, 12–13). The report found that the company would finish its exploitation much earlier than the Government of Mongolia's calculations indicated. This audition and the report were a result of some concerns, and thus conflicts and resistance appeared in the context of the rapid growth of neoliberalism in the gold mining sector. Those were the resistance of the above-mentioned technocrats against the mining sector, the opposition to environmental destruction caused by the mining companies, local protests against mining operations, and the understanding in the ownership of the mineral wealth and its distribution, which made the Government and the Parliament pass decisions to regulate the mining sector.

By 2000, as gold mining operations rapidly progressed in the country, their growth caused many other concerns, conflicts, and resistance. While the resistance of the above-mentioned technocrats against the new Minerals Law in the early 1990s was one of the earliest, the next major exposure to such concerns was the environmental and nationalistic movements which started in 2000. Starting from about the mid-2000s, the pressure stemming from some movements, complaints expressed by some technocrats, and concerns of the public eventually led the government and the parliament to slowly regulate the mining sector. One of the first attempts to regulate mining since the liberalization and deregulation introduced by the 1997 Minerals Law was the amendment of the Minerals Law in 2006.

The *Democratic Union* lost its power in the 2000 parliamentary election. The victory of the old Communist *Revolutionary Party* supported the arguments of

those technocrats who called Alгаа's liberal law the *Black Law*. The key person in the group was Khurts Choijin who is a Doctor of Philosophy in the field of geology, and who was the former Minister of Geology and Mining Productions (*Geologi, uul uurkhain üildveriin yamny said*) during the Socialist times. In the debate on the Minerals Law and the liberal mining economy, he closely collaborated with some experts from the *National University of Mongolia*, namely, S. Avirmed, a mining engineer and economist, and J. Byambaa, a geologist. They considered that the 1997 Minerals Law of Mongolia needed to be amended entirely. In a media interview, Khurts complained that the law was written by a foreigner who was a *World Bank* consultant, and it was mostly translated from English (Tsogzolmaa 2010). Also, the law violated articles of other major laws of Mongolia, including the Constitution. There were three main reasons why they resisted the liberal minerals law and called it the *Black Law*. The first reason was that a large territory of Mongolia was distributed in the form of mining licenses to private mining companies, while, according to Article Six in the Constitution of Mongolia, "In Mongolia, the land, its subsoil, forests, water, fauna and flora and other natural resources shall be subject to people's power and State protection." More precisely, many argued that the territory of Mongolia was sold to private companies. The second complaint of those technocrats was the sales of those licenses (*litsenziin naimaa*). As a result, some people and some companies started possessing a large number of mining licenses for exploration, and also for extraction purposes. The third complaint of the technocrats problematized the fact that many of those people and companies possessing mining licenses were foreigners. In the media, this situation was publicly interpreted that foreigners were occupying Mongolia's land and stealing wealth.

This time, it was not the neoliberal group of Ochirbat and Alгаа and the leaders of the *Democratic Union*, but the above group of technocrats and scholars led by Khurts who received political support from the ruling *Mongolian Revolutionary Party* and obtained a better political position to amend, or, actually, to re-draft the Minerals Law. At the time, one of the most influential and supportive people in the parliament was Enkhsaikhan Onomoo. Since the case of *Boroo Gold*, he was deeply inspired to amend the 1997 Minerals Law lobbied by the Democrats and the neoliberal reformers. In order to support the technocrats and scholars' group and to draft the new Minerals Law, he founded a movement called *Minii mongolyn gazar shoroo*, which literally means "My Mongolian Land and Earth." With the effort of Enkhsaikhan and a few other members of the Parliament, the new Minerals Law was successfully passed by the Parliament in 2006. The new law involved some major differences from the previous liberal version of the law.

For example, the new version of the law introduced a new classification of mineral deposits in Chapter One. The first class was denoted by strategic importance, and the State should own from 34 to 50 percent of the shares. This allocates the right and power for the State authorities to participate in mining and control the process. Then, Chapter Two was dedicated to the State Regulation in the Mineral Sector. Moreover, the regulation to issue licenses to those who apply first was eliminated. In its place, a selection process along with its criteria was introduced. Also, the section on the stability agreement was eliminated in the new version.

Another law that inflicted a major downturn in the growth of the gold mining economy was the *Windfall Profit Tax* law which was also passed at around the same time in 2006. In Mongolian, it is called *Genetiin ashigiin tatvaryn huuli*, which literally means the “sudden profit tax law”. In 2005, the Government submitted to the Parliament a bill that provided for a “windfall profit tax on some products”. The bill would establish export customs tariffs on some types of minerals. In May 2006, the Parliament approved the *Windfall Profit Tax* on copper and gold exports which required companies exporting copper and gold to pay a tax at a rate of 68% when the copper price exceeded \$2,600 per metric ton and the gold price reached \$500 per troy ounce on the *London Metal Exchange* (Tse 2007, 1). As the Government and the Parliament predicted, after the implementation of the law, the GDP of Mongolia had an average 56 percent increase from 2006 to 2008, while the average was 19 percent from 2001 to 2005. This was about 35 percent, or one-third of Mongolia's GDP (Mongolian Mining Journal 2008). This statistic also shows that the original intention of this law was to assist the national economy. This explains why the tax rate was 68 percent, which was the highest in the world. Rumors suggest that, in the original discussion, the percentage was not 68 but 80, in order to make it more beneficial to the national economy. The national economy was the major force to justify the legitimacy of the *Windfall Tax Law*. For those who introduced the bill and those who supported it in the Parliament, this law was the best possible way for the Mongolian Government to claim its ownership of the natural resources and to benefit the most from the production of natural resources, as it is pronounced in the Constitution of Mongolia. In relation to this logic, it would be interesting to look at the story of how the Government came to this idea in the first place.

It was a total accident for Mongolia to create and implement the *Windfall Tax Law*. In Mongolia, this law is known as the law of Fortuna's daughter (*Fortunagiin okhiny khuuli*). ‘Fortuna’ is a nickname of Batbayar Nyamjav, an economist and politician, who was a member of the Parliament and the Minister of Construction and City Building at the time of the law. Later rumors say that

Batbayar became a shaman and was performing shamanic rituals in the *State House* and at the Mongolian Embassies in some foreign countries. All of these make Batbayar a nationalist character. In 1992, he started his private business and a company called *Fortuna*. Later, it became clear that the idea of the law came from his daughter, Jargalan, who was studying economics at Columbia University from 2001 to 2004. Many Mongolians, according to Alгаа, were sharing the joke that she learned about the law on the internet, or that the idea came in *Fortuna's* dream, etc. The origin of this law became an example for many people to make fun of the way how the leaders of Mongolia initiate and approve laws without serious research and knowledge. The story also says that, originally, the law targeted copper, but not gold, and particularly the Mongolian and Russian joint venture *Erdenet Mining Corporation*. The law was supposed to help Mongolia to benefit more than Russia. As Alгаа explained it to me, it was unfair to target *Erdenet* and Russia; therefore, by taking the opportunity of the price increase of gold, the Government decided to include both copper and gold.

Unfortunately, besides the increase in the GDP, this law brought a disastrous outcome in gold mining. In my interview with some gold mining company owners and Alгаа at the *Mongolian Mining Association*, everybody confirmed that gold mining companies stopped selling their gold to the *Mongol Bank*, which brought a dramatic expansion in the illegal gold trade in the following years. This is also a problem underlined in the *Mongolian Mining Journal* article. The article calculated that the amount of the production of gold decreased from 24.1 metric tons in 2005 to 17.4 metric tons in 2007, whereas the export of gold fell from 23.8 metric tons in 2005 to 11.5 metric tons in 2007. They also calculated that, within two years, because of the *Windfall Tax Law*, Mongolia lost about 565 million USD from gold exports (*Mongolian Mining Journal* 2008). On 25 August 2009, the start of the major strategic mines made the leaders of Mongolia cancel the *Windfall Tax Law*. In order to pave the way for the agreement with *Rio Tinto*, and its partner *Ivanhoe Mines*, to establish the *Oyu Tolgoi* copper-gold mine, the Government of Mongolia agreed to scrap the 68% *Windfall Profit Tax*. In preparation for the start of *Oyu Tolgoi* production, scheduled for 2013, the Government rescinded the *Windfall Law* in early 2011 (Swire 2009).

Gold production further dropped in the next couple of years due to “the law with the long name” passed in 2009. *Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of the Water Reservoir and Forest Area* is known as “the law with the long name”. This law was key to the success of activists in the river movements. The *Mongolian United Movement of Mongolian Rivers and Lakes* (UMMRL) drafted and lobbied politicians and

successfully managed to approve the law on 16 July 2009. The law banned mining exploration within 200m of rivers and forests. This affected hundreds of mostly gold mining companies and licenses. In 2012, the Government listed 789 exploration licenses and 346 mining licenses that had been granted before the law was adopted. According to the new law, all of these had to be cancelled. From around early 2000, it took over ten years of peaceful protests, hunger strikes and endless debates for environmental protestors to achieve this success. In 2001, Munkhbayar, who was chair of the citizens' representative meeting of Tsagaan-Ovoo *sum* (district) government, Dundgovi aimag, and five others from the eight neighboring *sum* governments of Dundgovi, Ömnögovi and Övörkhangai provinces along the River Ongi, Ongi River Movement (ORM, Ongi golykhon khödölgöön) was the first to be started. In 2005 and 2006, 11 local river movements formed the Mongol *nutag minu evsel*, which literally means *My Mongol Homeland*. It was also known in English as the *Homeland and Water Protection Coalition* (HWPC) and the *Mongolian Nature Protection Coalition* (MNPC). It was a success story of Munkhbayar to unite eleven different movements. They successfully managed to close down 35 gold mining companies which were operating along the Ongi River. This success brought Munkhbayar the prestigious *Goldman Prize* in 2007. MNPC was dissolved in 2008. In my interview, Munkhbayar explained that five of the movements disagreed to use arms and pistols, and many of them decided to continue their movement through 'responsible mining' by creating a tripartite contract between the mining company, the local government, and the local movement. The remaining six movements re-organized as the *United Movement of Mongolian Rivers and Lakes* (UMMRL), which was formed in 2008. In 2011, the leaders of UMMRL incorporated ten other movements, mostly with strong nationalist agendas, and established the *Fire Nation Union* (FNU) to take fiercer political actions (cf. Snow 2011; Byambajav 2014; Simonov 2014). On 2 September 2010, members of UMMRL were shooting at the Chinese *Puraam Mining* and the Canadian *Centerra Gold* company equipment. In October 2010, UMMRL and FNU sued the Government for the improper implementation of the law. In the meantime, on 4 June 2011, UMMRL and FNU organized the herders' cavalry protest and shot arrows at the *State House* and broke a window to pressurize the government to implement "the law with the long name".

Their appeal trickled down to a district court but, in October 2011, the Supreme Court ordered the Government to enforce the law and compensate the mining companies affected by the law. As a result, their licenses were frozen, mining operations were interrupted, and not all but some gold mining companies stopped operating and closed down. The Government of Mongolia had to compensate at

least 647.3 billion tögrög (about 460 million USD at the rate of September 2012), while the GDP was less than 500 billion tögrög (Bold-Erdene 2013; Fehrbach 2013). The large sum made the Government unable to compensate the mining companies; therefore, the Government of Mongolia eventually had to amend the law in order to escape from the compensation. Protestors organized an armed protest at the *State House* entrance on 16 September 2013. Activists chose this day because the irregular session of the State *Great Khural* (Parliament) was planning to amend several laws including “the law with the long name”. Munkhbayar explains that it was not a sudden incident; instead, it was a sign of desperation to protect the environment and the pastoral livelihoods in the mining areas.

In the years of tense environmental protests, in 2010, Elbegdorj Tsahia, the President of Mongolia, for the sake of the national security purposes, introduced a ban on issuing exploration licenses and on the assigning of the already issued licenses. It was a moratorium to create a better regulation and organization of mining licenses and to amend the *Minerals Law* and to find a resolution to the corruption and errors in the issuance of some thousands of licenses, and the overwhelming sales of land in the form of mining licenses (Ninjsemjid 2012). His moratorium lasted for about four years until 2014. As a consequence of the above laws and the presidential moratorium, the amount in the production of gold further dropped to 5.7 metric tons in 2011, whereas the gold export plummeted to 2.6 metric tons (Resource and Petroleum Authority of Mongolia 2015, 7–8). The Bank of Mongolia purchased 15.23 metric tons of gold in 2005, which was the all-time highest number. This amount dramatically dropped to 2.12 metric tons in 2010, 3.31 in 2011, and 3.34 in 2012.²

All of the above laws put strong constraints on liberal policies. Although their impact on the economy was sparse, and the fights were fierce, the above outlined concerns are neatly tied to the wider agenda of the nation-building which expands beyond the importance of the national economy and the employment of neoliberalism, which attracts enormous public attention. The above discussed laws and political decisions may seem violating for those who promote neoliberalism, and seem tame for those who promote the State control, they violate some principles of neoliberalism by creating State ownership; granting authority for the local governments, increasing tax, banning and stopping mining operations in the river and forest areas, and passing a moratorium on the issuing

2. *Mongol bankind tushaasan altny hemjee 10 khuviar össön baina* (Gold sold to the Bank of Mongolian increased by 10 percent). *Bank of Mongolia*. Accessed 27 March 2018, <https://www.mongolbank.mn/news.aspx?id=1711&tid=1>

of exploration licenses and on the assigning of the already existing licenses. Some of these decisions and laws which tamed the extent of neoliberalism were temporary, some of them were scrapped and amended, while some of them still remain, which makes and 'unmakes' neoliberalism. This makes the situation of Mongolia neoliberal to a certain extent and not neoliberal to another extent. Concerns presented in the above laws and political decisions extend beyond the matter of national economy and neoliberalization. Therefore, I ask the following questions: What makes people initiate the above outlined laws, and what makes the Parliament and the Government approve those? What are the factors making these laws happen? These questions require that I should broaden my framework of neoliberalism to a larger project. This larger project that attempts to encompass neoliberalism is the nation-building, which embraces all sorts of different matters (besides the economy) that are imagined to build the nation. I suppose that neoliberal consequences in the economy collide with other matters in the building of a nation, which I shall demonstrate in the final section.

Contesting consequences in the nation building

The above discussed materials from 1990 to 2017 present several chronological processes – to exit the Socialist state-regulated economic system, to establish a free market and a liberal economy, and then to return to the tendency to regulate and control the economy and markets, and, finally, to revert back to the tendency to deregulate. Different agents, such as the President, the Prime Minister, members of the Parliament, technocrats, scholars and protestors actively participated in and influenced the above discussed processes by resisting, negotiating, navigating, managing, and testing different strategies. More precisely, in a very general big picture, the Mongolian State has been trying different models to bargain between the State and the firms (Vernon 1971; Moran 1992; Wilson 2015). All of them seemed to prioritize and privilege not only the matters of the national economy, but also many other national matters and interests. It is usually the neoliberal reformers and the democrats who commit to the prioritizing and privileging of the national economy, while many others, such as the technocrats, scholars, protestors and some politicians, often privilege some other matters of the national importance. This is not what Appel finds in her discussion of the national economy in Equatorial Guinea. She writes that not only in Equatorial Guinea but also elsewhere, the economy is 'the privileged object' in official discourses (2017, 294). But, in the case of Mongolia, even official discourses suggest that I should not restrict my understanding

of the economy to the imagined concept of the national economy that officially presents the national scenario of the economy. This is the main reason why Appel (2017) warns not to be restricted to the generic and imagined concept of the national economy which tends to explain everything in the official discourses. To understand the whole scenario in detail, we should look at what is happening beyond the official, beyond the economic, and beyond the national. There can be diverse factors and agencies in each of the above laws I have presented. They can be cultural, historical, religious, or even personal, they may have to do with the interest and the agency of individual actors to promote, influence, or reject the above discussed laws. Plus, all of the above listed bills and laws can have individual reasons to be initiated, promoted, or rejected. For example, it is common in Mongolia to suspect that all the above processes to promote or to reject the above discussed bills and laws serve a particular interest of individual actors, such as politicians, protestors, and mining company owners. I do not completely reject such suspicions, but it was impossible for me to anthropologically discover, reveal and discuss the truthfulness of such suspicions. It should be something that can be done by some other expert investigations. What I can do as an anthropologist is to depart from the imagined official discourse of the national economy, as Appel suggests, and to shed light on other social, cultural and historical matters in the nation-building narrative.

Jeffrey Wilson (2015) underlines the importance of the political matter in the discussion of the national economy. Ganbold and Ali (2017) correctly identified some cultural aspect and the nomadic way of life and identity in the tendency to reject the mining economy. This section sheds light on two other contesting matters in the nation-building project. One of the two is the reconstruction of historical incidents to protect the land, natural resources, environment, locality, territory, and sovereignty. The second one is a conceptual continuity of the natural resource policy in the legal system. Both of them make major constructions to promote and justify laws, regulations and political decisions I demonstrated in Part Two of my paper. The consequences of the laws in Part Two are often identified as resource nationalism (Ganbold and Ali 2017, 10), resource curse, populism and myopic policy (Reeves 2011, 182). But, in fact, on the other side, I find prioritization and preservation of the indigenous culture, history and legal continuity, which are not expected to be undermined by the national Government. I argue that the 2006 *Minerals Law*, the *Windfall Profit Tax Law*, “the law with the long name”, and the presidential moratorium were all by-products of the reconstruction of the historical experience and the continuity in the legal system.

Reconstruction of history

For organizing an armed protest against the State, Munkhbayar and four of his colleagues were sentenced and given one to ten years prison terms. The court found those environmental protestors guilty for blackmailing (Criminal Law, Article 149.3), terrorism (*zandalchlahk*) (Criminal Law, Article 177.1 and 177.2), and for illegally obtaining, as well as possessing guns and explosives (Criminal Law, Article 185.2).³ Some sources in the media claim that, at the end of the court sentence, Munkhbayar said: “What is the need for gold if there is no water; What is the need for life, if there is no country?” When I asked Munkhbayar about this phrase, he told me that he had said something like this, but not exactly in the form of an aphorism. He thinks that it is some journalist and media who put it in a nice poetic structure. Yet, he also admits that he knows this phrase from the historian B. Baljinnyam who claims that this is what Genghis Khan said (cf. Shiirev 2017).⁴ Munkhbayar also acknowledges two other historical phrases with a similar meaning, which he says he also learned from some historians and their works. One of them says *Gazar ulsyn ündes* (Land is the source of the State) which is claimed to be what a Xiongnu emperor Modu Chanyu (234–174 BC) once said. The other says *Minii nutgiin gazar shoroonoos burkhan guisan ch büü ög* (Do not give away my land even if god asks for it) which is claimed to be what an Oirat ruler Galdan Khan (1644–1697) said. Learning history was actually what Munkhbayar says he was doing in prison. He was imprisoned for two years and was released from prison on 5 November 2015, as a consequence of the new Law on Petition (*Örshööliin tukhai khuuli*). When I visited his home in the countryside in the winter of 2016, he showed me some of those books he was reading. It was two volumes of the teachings of Genghis Khan published by a famous Mongolian historian. Munkhbayar keeps them on the altar next to the portrait of Genghis Khan. Munkhbayar explains that the contents of all of these phrases are adopted and declared in the Constitution of Mongolia, and he and his colleagues only attempted to accomplish the duty of the Mongolian citizens to protect the country, as it is declared in the Constitution.

Besides Munkhbayar, many other movements acknowledge and popularize these phrases. For example, on 26 January 2015, the *Bosoo Hüh Mongol* (Standing Blue Mongol) movement, in collaboration with some other movements, organized a mass strike to resist a gold mining operation in the sacred mountain Noyon, in

3 Erüügiin khuuli (Criminal Law). *Legal Info*, accessed 27 March 2018, <http://www.legalinfo.mn/law/details/11634>.

4 <http://unuudur.mn/article/94583>.

the North of Mongolia. In the strike, the organizer printed and hoisted the phrase *Minii gazar shoroonoos Burhan guisan ch büü ög* (Do not give away my land even if god asks for it) on about three-meter-tall and 15-meter-long background.⁵

I do not intend to trace the historical roots of the above phrases. But what interests me is the historical construction of land, territory, sovereignty, nation and State in the use of these phrases. I must note that the consequence of neoliberalism popularizes these phrases and gives rise to the reconstruction of many other historical incidents. The reconstruction of history only appears in the case of phases referenced to Mongolian aristocratic rulers, but also in historical incidents. Environmental protestors, scholars and economists (Batsuuri 2016) often make analogies between situations in the contemporary Mongolia and some historical incidents. For example, Munkhbayar traces the history of his attempts to protect the environment to some the *altny haruul* gold patrols and resistance against mining in the times of Qing, on which I shall elaborate below.

From around the mid-eighteenth century, under the rule of the Qing Empire, aristocrats and nobles, such as Zasagt Khan and Sain Noyon Khan, established and organized *altan-u haragul*, which literally means 'a gold patrol'. This was to protect wild animals, herbs, gold and all other natural resources in general from illegal exploitation and smuggling of migrant Chinese and Russians (Nasanbaljir 1964; Banzragch 2004; Tuya and Battomor 2012). In contemporary Mongolia, the history of the gold patrols remains as a heroic duty to protect the sovereignty and well-being of Mongolia, which inspires members of the nationalistic environmental movements. They often present themselves and justify their actions by using the historical case of the gold patrols. Although, in contemporary Mongolia, it is often understood to have been established and organized by the *Ard* people of Mongolia under Qing; in fact, it was established and funded by the aristocratic rulers of Mongolia, and it was legitimized by the Qing authorities. Moreover, this was not only to protect the local environment and resources, but also the territory and sovereignty from foreign threats.

The duty to protect land, territory and natural resources expanded at the beginning of the twentieth century when Qing officials decided to transform Mongolia to a strategic buffer zone against the encroachment of the Russian Empire into a profitable region through a combination of agricultural land reclamation and mining. The term 'source of profit' (*li yuan*) was adopted to describe the Mongolian soil (Jackson and Dear 2016, 349; cf. Sneath 2001; Dear 2014, 245–247). The first large-scale multinational mine in Mongolia under the Qing was

5 For photos, visit <http://mass.mn/n/27208>. Last accessed 22 March 2017.

known as Mongolor. Financed by the Russian, Belgian, and Qing capital, it was also staffed with French engineers, American hydrologists, Russian, Chinese and Mongolian miners, and it became operational in March 1900 (Tuya and Battomor 2012, 68–70; Jackson and Dear 2016, 350; cf. Dear 2014; Bonilla 2016). From the beginning, the company was facing fierce resistance of the Mongol aristocrats and the local population. Not only against this company but, in general, the Mongol aristocrats and civilians exposed strong resistance against mining operations and the policy of the Qing authorities to exploit natural resources in Mongolia. There were several issues regarding the complaints and resistance against mining. Ya. Sodbaatar (2013) published extensive archival documents on the resistance against mostly Russian and Chinese gold and coal mining operations and the operation of Mongolor. According to these materials, it was common to complain that mining is “incompatible with the way of living and the locality” (*aj törökh arga, oron nutagt kharshiltai*) (ibid., 31–33, 48, 53, 54, 55). Most of those documents reveal complaints which suggest that mining operations destroy land and pasture and violate the local people’s belief in the land and water spirits. All of the complaints found mining operations as foreign to the Mongolian culture, not only in the sense that Russians, Chinese, and other foreigners operate it, but also in the sense of being destructive to the mobile pastoralist way of life, as well as the Buddhist and shamanic beliefs.

Continuity in the legal system

In Mongolia, historical constructions, such as the above, are not something that has suddenly emerged due to the resource economy boom. Such tendencies are largely adopted and constructed in the Law, regulations, and Constitutions. The first mining regulation, which was passed at the times of the theocratic government of Mongolia (1911–1921), banned mining operations in the sacrificial areas. Then, the first Constitution of the Mongolian People’s Republic, passed in 1924, declared that “natural resources are the property of people” (*ard niitiin khöröngö*), and explained that this is the way how it had been since the past.⁶ Most importantly, the Constitution explains that it is important to acknowledge, privilege and preserve the Mongolian traditional customs and teachings (*zan surgaali*) regarding natural resources. This historical and cultural construction was further reinforced and validated in the course of the development of the

6 *Ankhdugaar ünsen khuuli* (The First Constitution), *Tüükh Niigem Blog*, accessed 27 March 2018, http://tuuh_niigem.blog.gogo.mn/read/entry361153.

Socialist system of State ownership. The constitutions of 1940⁷ and 1960⁸ of the MPR declared that natural resources are “*ulsyn ömch ard түмний khöröngö*”, which literally means the wealth of the nation or country and the property of the people. The Constitution of Mongolia of 1992 declares, except for being given to the citizens of Mongolia for private ownership, the land, as well as the subsoil with its mineral resources, forests, water resources and wildfowl, shall be the property of the State (*törtin ömch*). Moreover, the Constitution also states that natural resources should be under the authority of people (*ard түмний медel*) or the public and the protection of the State (*töriin khamgaalt*).⁹ Although there is a small change from *uls* (country and nation) to *tor* (State) in 1992, during the Socialism years, the term *uls* often indicated the State. This is precisely what Munkhbayar proposed in his explanation. According to him, the State did not accomplish its duty to protect land and natural resources from mining destructions, and his movement repeatedly and fiercely demanded the Government to accomplish its duty. As I mentioned in the previous section, even the Supreme Court found that the Government had failed to accomplish its duty to protect. Munkhbayar also explained to me that this was exactly the same reason for the court not to sentence him and his colleagues when they first shot at mining company equipment on 2 September 2010. But, in the second incident of the armed protest against the State, the logic of the Law did not help. Munkhbayar thinks that this has to do with the difference between the mining company and the State, since the former was the target of the first incident, while the latter was the target in the second incident.

The above outlined articles, laws, and constitutions do not simply declare the State control and approve the national or people's ownership of land and natural resources. But this also protects people's belief, feelings and customs attached to the land and localities they inhabit. In other words, deep in the hearts, there is shared intimacy and feeling of people, not as individuals, but as a group or a nation. Therefore, it is about acknowledging and protecting the historically and culturally shared principles, rationale, belief and feeling, instead of undermining them. This also explains why all of the above listed laws that strangled the principles of neoliberalism were initiated, promoted and passed in Mongolia.

In brief, as it has been reconstructed, in the last two hundred years, Mongols intensely developed the sense of protecting not only the natural resources, but

7 *BNMAU-iin үндсэн khuuli 1940* (Constitution of the MPR 1940). *Gogo*, accessed 27 March 2018, <http://tnus.blog.gogo.mn/read/entry378803>.

8 *BNMAU-iin үндсэн khuuli 1960* (Constitution of the MPR 1960), *Tүүikh Niigem Blog*, accessed 27 March 2018, http://tuuh_niigem.blog.gogo.mn/read/entry363795.

9 *Mongol ulsyn үндсэн khuuli* (Constitution of Mongolia), *Legal Info*, accessed 27 March 2018, <http://www.legalinfo.mn/law/details/367>.

also the environment, territory, locality, the pastoral way of life and religious beliefs during the occupation of Qing, and in the times of theocratic government, and then the sense of the State and people's ownership as well as the control of natural resources during the Socialist period. All of these were employed in the Communist construction of Mongolian history (cf. Kaplonski 2004, 7), where all the above were lumped in the understanding of the freedom, liberation, and independence movements. In Post-Socialism, this tendency was further employed in the discussion on protecting the country and its sovereignty and wealth from the domination of the global neoliberal economy. Clearly, this reconstruction of history, culture and legal concepts cannot suddenly change in the last two decades of the market economy; instead, it turns to a source of power to tame the extent of neoliberalism. For Mongolian policymakers and people, it is impossible to reject or even undermine those reconstructed historical experiences and legal practices and immediately establish an ultimately neoliberal market-oriented political institution that can generate the liberal economy.

Conclusion

Sara Jackson (2014) writes about the way how a transnational corporation builds the nation in Mongolia. Unlike her work, this chapter shows how the nation-state attempts to restrict the transnational corporation's building of the nation in Mongolia. To show this, the present chapter discusses some key processes of the development of the mining economy in Mongolia. The first part illustrates the rapid development of the liberal economy, the market and gold mining from about 1997 to 2006. The liberal *Minerals Law* approved in 1997 enabled rapid growth in the mining sector and the funding of the emerging nation. The law was called the *Black Law* by some technocrats who resisted the law. The main complaints against the law note that it was made by foreigners with the support of the *World Bank*, and that the law violated the Constitution of Mongolia. These technocrats and those who supported them achieved some political advantage towards the 2000s, and finally managed to amend the law by introducing more State control. From around the same time, some other bills were adopted and approved by the Parliament, such as the 68 percent *Windfall Tax Law*, "the law with the long name" to protect the environment and locality, and the presidential moratorium on mining licenses. Some identified these consequences as 'resource nationalist' and 'resource curse'. However, we can discover some other major historical, cultural and legal factors directly and indirectly conceptually supporting those consequences which were

given the names 'resource nationalist' and 'resource curse'. In the final part of my paper, I have demonstrated a reconstruction of history to protect land, natural resources, environment, territory and sovereignty, as well as continuity in the legal system on land and natural resources. I argue that those are alternative historical, cultural and legal consequences in the building of the nation-state which tames and indigenizes the neoliberal paradigms adopted in the nation-building.

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