



## Modern Theories Analysis related to Municipality Belongings

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### ABSTRACT

This article investigates analyzing modern theories in relation to the municipality belongings. It seems like no loss in terms of legal principles, interests, and things like that municipalities are allowed to possess. On one hand, the principles of this institution are an obstacle to the acquisition. On the other hand, some western countries, including France raised the foundations of law and domestic law, and we have to make it work. This means that the most important principles in public service and public power and public interest have been analyzed in place.

### Keyword:

- ✓ *Modern Theories*
- ✓ *Municipality Belongings*

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## INTRODUCTION

### 1- Theories explaining the municipality belongings :

#### 1-1) Public Power Theory

The view that in the nineteenth and early twentieth centuries was the basis of administrative law, states that public power is the element that determines which of the activities of government are subject to administrative law. It does not have much credibility today because, firstly, this theory is based on the concept of dictatorship and absolute rule and the legal and political systems today have no place; secondly, the concept of public power is so broad and includes actions and activities of all government institutions; and thirdly, the separation between governance and government involvement is accepted today in most military, itself negates the theory of public power.\*

#### 1-2) Public Service Theory

Public service provided is defined in two ways: a substantive definition of its functions in accordance with the public service activities of all public authorities is intended to meet public needs to do so.<sup>†</sup> or all of the actions within the framework of the realization of the rules of the public's right down; second definition in which an institution or organization rather than the nature and objectives of public services, institutions and organizations offering services to public attention. Neither the definition of its strategic position in public law and administrative contracts not deny.<sup>‡</sup>

In general, the notion that social life is essential primitive form existed in the past, but with the development of societies and changes in the role and duties and functions of government (state convert moderator or state police to welfare state) to one of the key concepts of administrative law has become. The government in any society is a manifestation of the common good and although the moral and religious aspects of the economy, but fundamentally a moral institution, religious or economic, but different functions, including maintaining order and security, protection of the fundamental rights of individuals, creating and maintaining solidarity social, provide minimum welfare and so on. In some compelling theories on the way the government has been emphasized.

#### Theory of General Service:

But we talk about the right to municipal ownership in view of the public service. The first question that needs to be answered is to what extent can the idea of public service, and whether any action or behavior can be explained and interpreted in the light of the theory of public service. Obviously the answer will be negative. For public interest theory of government authority is tied to a complex manner and may be exploited.<sup>§</sup>

The issue that we are talking about the issue of whether municipal ownership of such destruction would be justified if it is in line with public service or not. The argument is that public service by the municipal and ownership of

buildings and land agencies for the welfare of their citizens. In qualifying this should be added the texture of the buildings and property of the municipality it may also be interpreted as a public service. For example, when the municipality tries to destroy view to maintaining its cultural heritage In fact, both can justify the resort to do this act of public service. How is it possible to distinguish between these two together in such a way that public services do both. For example, the municipality plans to build a great way to do public service, but this should be worn materials that are unique and only one of which there are and the destruction of ownership. Here it seems that if the old texture qualified by the adjective we emphasize that we have historical value is the possibility of appropriation and destruction of faced hesitated.

#### 1-3) Public interest theory

According to this view, actions, and activities that involve the public interest, such as public services, state institutions are subject to administrative law. More explanation that proponents believe the public interest administrative activities may be aimed at providing "public service" or providing "public interest" is done.

But how should the activities related to public service and public interest recognized from each other, saying that the actions related to the public service should not be subject to the principle of continuity, and never stopped, while activities may be the subject of public interest in lambs since they stopped and delayed.<sup>\*\*</sup>

However, in my opinion, the theory of general interest is also several drawbacks. First, accept the theory of general interest means that the judicial and legislative actions subject to administrative law, it is because these acts are carried out with the aim of public interest. If not the slightest doubt that the actions of judicial and legislative, administrative activities are not included.

Second, as a general actions Private non-profit charities involving public interest, they should also function as our administrative rights. But said earlier this applies primarily subject to private rights and public rights are just some concessions.

As explained in the light of the theory of public power municipal and ownership of buildings and land institutions can use its powers in this regard. The use of this power intricate borders today with a discussion of public interest. In fact, what is now the acknowledged setter and legal scholars have emphasized that the authority should be systematic, logical and determined to find areas of implementation. How it is possible, as in government and previous governments, there is no state power and the criteria and indicators to measure and expects its actions in a society.<sup>††</sup>

The important thing benchmarking and indicators for power. In fact, the nature of power and its quality should subject themselves to the rule of law. Rule of law can be examined in terms of form and substance. In the substantive quality of the rule of law is essential. Apostasy according to the tastes

\*John Bell and Sophie Byron, the principles of public law in France, translated by Alireza Asadpour Tehrani, publishing Dadgostar, first edition, 2011, p 145

† Reza Musazadeh, administrative law (1 and 2) General and Iran, emission levels, VII, 2005, Page 118

‡ Ali Akbar Gorji Zand Riyani, Ten Commandments Basic Law: Reflections on the Principles and Basic Concepts of Public Law, Faculty of Law and Political Science at Tehran University Law Journal, Volume 41, Issue 2, Summer 2011, p: 212 and 213.

§ Seyed Mohammad Khamenei, public domain, publishing Tak, first edition, 1991, p. 78

\*\* Shamei, Mohammad, analysis of the nature and consequences of administrative contract in Iranian law, publishing arms, first edition, 2009, p 45

†† Shamei, Mmohammad, analysis of the nature and consequences of administrative contract in Iranian law, publishing Dastan, first edition, 2009, p 129

and ideas of public interest and also is associated with the rule of law. With this perspective, although not rich enough and analysis will be incomplete, but we cannot be oblivious to it. Public interest theory as proposed in French law and about which many have considered incomplete and in light of public power that can be used to evaluate enrichment pointed authoritative institutions. Challenging and controversial concept of public interest. Which is considered to be in favor of public interest and whether it can be regarded as a public good for the benefit of the state. The answer to this question is no, because the consequences can be harmful for people to bring. The excuse that a totalitarian regime that resort, and with one count in favor of the government and people were trying to impose on the people of power and coercion has been criticized.

## **2) The conflict between public interest and private interest**

Justice, security, social progress, the base benefit and the common good of every society. Any act or action, whether by private or public entities and public figures to one of the three pillars impair deemed to be contrary to the public interest. Rights need to supply the public interest in the idea of justice, security, and development and in the case between these three elements, there is a conflict or ambiguity coordinates them properly. In fact, the relativity of these concepts in a society can be conflict and disharmony between them to create and issue among the issues related to the public interest or private interests be considered. Perhaps the best indicator for determining the relative concepts, rules, and policies set by the rulers of a country. Otherwise the differences of opinions and ideas of different schools of thought can at least raise a lot of discussions and debates.

Public interest because it represents the interests of a large group of people who represent the private interests or the interests of a few individuals is to be welcomed. In fact, the philosophy of offering the public interest over private interests is not that the basic aim rights, providing social welfare to private interests above the public interest, therefore, it is only due to present the public interest in favor of a person with the benefit of the conflict, of course, reason dictates that benefit precedence over the interests of the individual. Accordingly individualism school fans might benefit while highlighting the primacy of public interest over private interests of individuals have not been able to deny.

The conflict between public interest and private interest can be an example imagine. "If you have a choice, involves the public interest and the private interest involved is the selection criterion is a must because the foundation is owned by private interests based on the preference of the public interest. For example, if you select a route for the highway, a small number of private individuals should be included land, but leads to environmental pollution is high, but the situation is quite the opposite to be the last choice in the general scheme or security authorities, be considered, because of environmental pollution on public-private interests is preferable.<sup>§§</sup>

So it's important to discuss land acquisition by the municipality should also be noted that the conflict between the two interests, is crucial qualification for the acquisition. But the question is precise criteria and calculated to determine the top benefit or the benefit of the preparation for or what benefit, and which benefit the public good, not private benefit. In fact, the decision-maker is the same government that has the right to rule and the use of public power.

## **3) The conflict between the government and private interests**

In this case, the subject of the project, as they provide the benefit of States, against the rights and interests of private persons. In terms of substance, the difference between this assumption and assuming there before and in this case the considerations mentioned earlier, the government is superior to private interests because different laws regarding the possession of this important has been mentioned. The main question that arises here is whether the public interest and the government are two separate category, or it can be assumed that one of them? Seems to assume a public interest and the government cannot know very well fulfill the public interest and debate about the acquisition, under the authority and oppressive government. This means it is possible the government on the pretext of protecting the rights of people and oppression to impose his authority and community interests with the interests of public one thinks, and this will by the government of abuse of power.

### **A) Losses**

Equity takeovers law is too limited to social interests. In Islamic law, which governs the disposal of the rule is apparently limitless owner, there is a rule that is sometimes at odds with the rule logical relation between the rule and no harm, public and private, that is my way rule may sometimes be established, without the harm and losses exist. And sometimes the harm and losses, the absence of property rights, property rights may be used, along with not injurious to others, but sometimes rule and rule enforcement, conflict is caused, for example, in the case of products based on its proprietary domination you will own the land and build the class and thus prevent solar radiation to neighboring buildings, or cause overcrowding at the site and disrupt their welfare, here is the conflict between the rule and <sup>§§</sup>Article 132 of the Civil Code, which states that: "nobody can capture on your property that requires caused losses to the neighbors ..." this is also overseeing but

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<sup>§§</sup> In the Quran, there are verses that directly forbids the infliction insist, for example, in verse 231 of Surah Baqarah reads: " If divorced women kindness and and who does injustice have the same "In this verse the men to hurt and violate the rights of women to hold them and refuse to divorce them, is In the same Sura, verse 233, or the phrase " Do not get hurt and the mother does not live him his son and heir like such case ... "On the " present verb root verb that is known and therefore" mother and child "The parents subjects, or present verb root verb of passive and active parents are runners, which means that parents should not be self-harm or attempt to harm or the parents cannot afford to cause losses brought child and heir (heir to inherit the parent or child) have the same task, the prohibition of harmful states. In other verses indirectly by denouncing the acceptance or rejection of harm, the harm to self or others is prohibited. For example, in verse 13 of Surah Hajj said: " Those who claimed harm it closer to evil than good and evil Lord Intimates "In verse 12 of Surah Nisa In this context, states:" ... After payment of legacies bequeathed or religion other than disadvantages ... »

However jurists in the discussion of the rule are often cited in this respects the traditions and rarely have verses from the Qur'an. These traditions in this regard, there are numerous traditions that have been narrated in different ways and in all of them the term "not get damaged not harm" mentioned. The most famous legend is narrated by Abu Ubaidah Zurarah and footwear, with a few differences in quoted. In Sunni books also expressions "not get damaged not harm "As the hadith of the Prophet.

the last part of this article provides: "Did you capture that as much as conventional and his loss is to meet a need "so the material the neighbor set limits on losses and more will be explained.

A person may inherit your property, which are as following: As a result, losses do not enter the exception that in this case, the rule government and there is no law in this matter, whether conventional or unconventional, such as the one in his large villa sound of their TV lift.

That would not be harmful and too conventional. In this case, the first rule is thus here too conventional to the owner will not be allowed even to meet a need or solve the detriment of its own. To determine capture as much as conventional or not, should be referred to local custom. It is possible to build a five-story building at the local, conventional and elsewhere, be considered unconventional, often to water the garden with short distances to the wall of the neighboring house, detriment, may in urban homes, unconventional and in rural households conventional considered. Of course, if there are mandatory rules, the convention will be front and its compliance is mandatory. If the municipal regulations, restrictions in apartments have been considered.<sup>\*\*\*</sup>

That would harm other and at the same time, it is usual that in this case, if the property owner of their possessions in common so that the losses to meet a need or. For this, capture of the damage is the non-logged- for example, if a city is not responsible for sewage disposal with the permission of the authorities, well dug on his property standards, but these wells can contaminate well water. on the other hand the possibility of waste neighbors in a different way is not possible, or if you your car on the would be allowed capture nuisance neighbor's home and park the car in park and car parking somewhere else, this capture will be permitted, but if at par with other losses, to meet a need or does not meet the essential owner, will not be allowed. Such changes in the legal term "abuse of rights" shall be called. For example, even though the owner has the possibility to connect their wastewater to municipal sewage pipes, insisting on maintaining the well from which well water is contaminated neighboring wells.

In Article 40 of the constitution "abuse of right" has been banned, this Article stipulates: "No one can exercise his rights in a way injurious to others or detrimental to public interests" Of course, this principle diagnostic criteria "abuse of right" does not provide for search and criteria should note that Article 132 of the Civil Code. Although this provision is to capture the owner of the immovable property itself and it would be a disservice to neighboring But it can be due to the unification of criteria, and according to the Article 40 of the constitution, the sentence of all adverse possession of the owner (whether immovable or movable property it is and whether it is harmful to neighboring or other) extended provided that the conditions set out in Article 132 is accumulated.<sup>†††</sup>

So if the owner of the seized property to fair value and to meet a need or solve their losses from damage to non-

logged and it is not responsible, but if you capture his delete riot is to meet the two conditions of not, and damage as to no need to be responsible. "Abuse of right" is not only to civil liability but can be damaged, in addition to compensation eliminate the source of loss and prevent continued damage also apply to the court, so that filling holes or repairing a culvert that would the disadvantage ask. Judicial precedents suggest that it is.<sup>‡‡‡</sup>

You may be asked ahead on the issue of private property owned by the people and how it can be examined in relation to the base and relevance to the municipality belongings how can the analysis and evaluation. In response to this question must be said that the Islamic legal system in general, the rules are and what facilities and either a signature for all can be used in different situations. Thus, it can be admitted to the integrity and completeness of Islam.

As you know, in Islam can be allowed to separate rules to public rights and private rights. Basic rules of the legal system in Islam, like other branches of law in the Roman-Germanic If you can see subscription basis and concept. In this case, the general rule is the rule can also be said that not only monitors and governs relations between the people together, but also to relationships between people and the government is concerned. Regarding the acquisition of private property people also find it relevant that the harm to another should be accepted.

#### B) Expediency

The word means good interest, the interest, and anti-corruption. So in a basic definition, means anything that is deemed to be in favor of man against corruption, which means losses have been applied. The good and evil in this sense, is of benefit and harm, whether private or public, and less immediate or future. For example, profits, enjoyment and convenience, health and so on have been deemed contrary, ignorance, loss, pain and suffering are evil. But for all the good and evil of religion cannot be the cause of the verdict and effective. Because there may be something to enjoy and temporary or short-term comfort while in the future, the origin of the loss and inconvenience and reverse some of the losses and immediate source of important benefits, but in the future.<sup>§§§</sup>

Imam Ghazzali writes in the definition of interest:

"The word is to attract the interest of expediency or harm and is called the law of supply goals and objectives. Therefore, the legislator aims to provide interest will be counted and anything that will strengthen the intentions of the legislator is called corruption."

As more clear, expedient in the interest of the so-called sharia scholars that the god is considered to his servants. This benefit is the preservation of religion, soul, mind, generation, and their property. So the purpose of the interest that is due to religious orders and legislation will be based on the interests of legal provisions that are of interest to law and legislation of laws and regulations as well as to maintain the interests of the religious. Chief among these benefits is mentioned five cases.

\*\*\* Gorji, A.Akh, the principles of public law, public law Masters Course notes, the second semester 2007- 2008, p. 34

††† Mohmmaadi, Khalil, land acquisition by the state and municipalities, master's thesis martyr Beheshti University, 1996, p. 45

‡‡‡ Safaei, Hossein, basics of civil rights (Volume I), published Mizan, 2010, p. 175.

§§§ Mohammadi, Abolhassan, Understanding the fundamentals of Islamic law, publication of Tehran University, Eighth Edition, 1997, p. 229.

4) Associated with the acquisition of the mayor  
Acknowledging the argument that the sentence imposed within the provincial government and the Islamic ruling itself requires a separate essay and work in this area still has some disappears unclear points, which according to can be viewed concluded that social interests and the good things that the good society is left without it, society experiencing hardship because if you leave it caused hardship and social needs of society is entitled. Although about Islam in society is expedient to keep us out of the question because of the interest of preserving Islam is unchanging principles that various changes and cyclical changes would never prescribed sentence is wrong than the. Perhaps the words of Imam Khomeini, the supreme leader and the ruling government are the primary provisions can be carried on means.

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Although not in the interest of preserving Islam, obligatory or forbidden by order of opposition if it is within reason not to have society's interests precedence over individual interests, but if respect for the common good requires the opposition to the ruling of the sentence required should see that what type of sentences?

If proven principles and provisions of Islam should ignore the social interest and the interest of the victims did not, but if the sentence of changing laws that form of executive orders is fixed, the social interest on the contrary it is that the executive in this time must be some other way, ruling must meet in order to maintain social interest. For example, if the community demands that Multilane highway to be created, if the construction of this highway is the land Anfal, the reason should be expedient, covered fulfilled because we are not faced with any legal dilemma, but if someone lands on highway construction site people and the need to build it as necessary and is not an emergency, here expediency of private ownership is necessary to oppose the imposition of a sentence in which case the warrants if the property of the fixed and unchangeable in all times and places know the regardless of pulling the highway. But if you follow the proven principles scholars believe that this property is part of a range of materials that can be used to maintain interest requires ignore it.

This view, according to public and state laws requires public concern over privacy and recognizes the need to conclude that public entities in this case it is not obliged to comply with the detection of the owner's. Instead of seeing and sensing the good of society and people leave income for the owner and have taken them, must expediency of the day.

Although he owns in accordance with the principle of equality of people against the imposition of public affairs, are entitled to compensation<sup>††††</sup>, but in principle free to transfer their property rights to public institutions whatsoever and, as noted, the legislator has in determining the amount of compensation that attract agreed the Malik is necessary<sup>††††</sup> and not in the disposition of property, executive devices.

An earlier comment that the basic law on the rights of the preferred size, can be criticized and considered to be without foundation, as most authors disagree municipal rights in accordance with the laws, freedom of the will of the will and the divine legislator has as and have chosen. But with regard to the principles of public law and jurisprudence of government, municipal agreements with owners may not devoid of strength and flavor be said that implementation of the plan from the start negotiating with the owners, is evident. Private owners plan to oblige to transfer the property subject to the requirements of the public's rights to privacy superiority and supremacy of public interest over private interests. Public service is one of the tasks the government with the aim of providing public interest. Establishment of order, of ways and streets and public spaces, green spaces, etc. Among the numerous needs is provided by the state as it is normally necessary measures should be taken. Now if to meet these needs, rights and interests between public and private rights and interests conflict comes despite the principle of respect for private property, the principle of priority public interest demands that the government provided compensation, has protested the right to personal privacy.

#### 5) Suggestions and Conclusion

If the municipality needs and can property owned by a citizen of the acquisition and of course meet the need or the benefit of your statutory rights to acquire citizenship must return again and have property in the possession of the property by the municipality must have fashion law and with full compensation is a legal form of legal fees will damage the legitimacy estate acquisition.

Governments in contemporary societies have to use their public power. The use of this power must be accompanied by justification, in other words "legitimize". The power is in your nature can take various forms.

General and administrative law related issue is that it is the municipality belongings. If at least part of the public nature of Iran's legal system is rooted in the theories presented in French public law principles and codes and rules cannot be disregarded these as well. On top of these theories have been proposed, the theory of public power and public interest, which is the same as it had been earlier in Shiite Jurisprudence and Islamic rule invoked in lace. Because the ideas raised in the French legal system in the history of its design challenges, including violations of human rights in the exercise of public power and its affiliated entities have Rvbrvr not maintain that the needs of citizens. But this objection with the balance between the public interest in Islamic jurisprudence and there are private interests have been eliminated. After the Islamic principles in every aspect seems more defensible and can meet the needs of the government and people of immovable property owned by them. In this paper, it must be said municipal task requiring compensation is based on the public interest community and its commitment to the rule of law and the foundation will be interesting to way.

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†††† Pour Johari, Kamran Examine Article 50 of Law Program and Budget approved 1972 1, Isfahan Province Bar Association newsletter, Issue 5, December 2006, P. 13.

†††† Article 3 regarding the purchase and acquisition bill.

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