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**EVALUATION OF PUBLIC LAND WITH REFERENCE TO THE CONCEPT OF
PUBLIC INTEREST AND LAND USE PLANNING**

A MASTER'S THESIS

in

Regional Planning

Middle East Technical University

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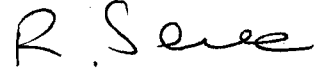
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by

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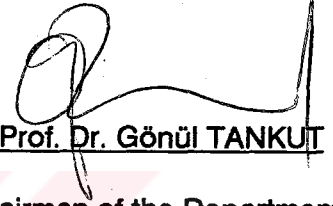
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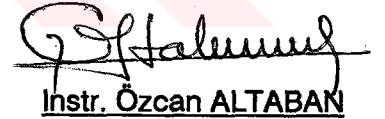
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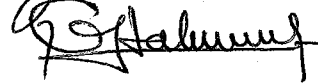
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ABSTRACT

An important problem of developing or underdeveloped countries' cities, as well as, of their planning institutions, is unsuccessful or late intervention of planning to the use of ownership rights on the urban land. Planning -in the process- plays the key role for the development of passive land to economically active urban land by defining the land use rights and regulations, or has an indirect effect during the transformation process. "Urban Development Plan" can be claimed as the legal confidence of the value created on urban land. But it is a fact that, the pressure of land or right owners causes planning institution to lose its acceleration. "Land speculation" is not a problem of only developing or underdeveloped countries, it is still counted as a problem in developed countries by planning institutions. As a result of this fact, problematic and unesthetic urban areas are being developed with their obscure economic and social patterns, as well as with the lack of basic urban services. Meanwhile, Planning seems only a supervising profession of some engineering works in today's large metropolises, where urgent service problems are being solved by engineers in short terms. At this stage, "public owned lands" are the potential planning tools which are directly effective to regulate urban land market, to help solve housing and large scale recreational problems, as well as, to guide the physical macroform development.

The problem, on the other hand, is the absence of long and short term, effective and applicable "Public Land Use Policies" in efficiently managing Turkish Planning Hierarchy today. In this connection, for the solution of current and possible-future urban land use problems, the accumulation and treatment of economic and socially created values on urban land, has to be discussed in a much wider spectrum of mainly Urban Planning, with respect to "Public Interest"

concept; in order to realize the efficient-comprehensive structure of achieving "just and equitable" treatment of urban land values.

For this aim, the concepts which have no absolute definitions but different descriptions, shall be redefined, focusing on theoretical and practical frame of Urban and Regional Planning.

Keywords: Urban Land Use Planning, Public Land, Public Interest

Science Code: 601.06.01



KAMU TOPRAKLARI KULLANIMININ KAMU YARARI KAVRAMI VE KENTSEL ARAZI KULLANIM PLANLAMASI AÇISINDAN DEĞERLENDİRİLMESİ

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ÖZET

Kentsel arazi üzerinde elde edilen mülkiyet haklarının kullanılmasının planlama kurumu tarafından zamanında veya tam olarak denetlenememesi, gelişmekte olan veya geri kalmış ülke kentlerinin en büyük; planlamanın da en temel sorunudur. Planlama, süreç içerisinde kentsel arazi üzerinde kullanım haklarını belirleyerek pasif konumdaki toprağı ekonomik olarak aktifleştirmekte veya dönüşüm sürecini dolaylı olarak etkilemektedir. Hazırlanan belge, "Plan", kent toprağı üzerinde yaratılan değerlerin paylaşımının yasal güvencesi niteliğindedir. Fakat, süreç içerisinde belli kullanım haklarından daha fazlasını isteyen mülkiyet sahiplerinin planlama kararlarını etkileme çabaları karşısında etkisizleştirilmektedir. "Toprak spekülasyonu" sadece yukarıda adı geçen ülkelerin değil; gelişmiş ülkelerin planlama kurumlarının da yakından ilgilendiğı temel sorunlardandır. Bunun sonucunda giderek karmaşıklaşan ekonomik ve sosyal ilişkileri içeren bir "mülkiyet dokusu" ve üçüncü boyutta estetik kaygılardan uzak, temel servisler açısından problemli "Kentsel Yerleşim Alanları" oluşmaktadır. Dolayısıyla Planlama, kısa dönemde acil servis sorunları mühendislik müdahaleleri ile çözülen metropollerde mühendislik hizmetlerini koordine eden bir meslek gibi algılanmaktadır. Tüm bu çerçeve içerisinde "Kamu" elindeki araziler; kentsel toprak piyasasını etkilemede, konut - kira ve büyük ölçekli rekreasyonel problemlerin çözümünde yardımcı ve fiziksel makroform'u yönlendirmede önemli (potansiyel) kent planlama araçlarıdır.

Sorun, bugün Türkiye'de işletilemeyen planlama pratiğı hiyerarşisi içerisinde uzun ve kısa vadede etkin "Kamu Toprakları Kullanım Politikaları"nın yokluğudur. Bu anlamda, güncel ve gelecekte olası kentsel toprak kullanımı sorunlarının çözülebilmesi ve kentsel toprak üzerinde oluşan değerlerin adilane olarak (kamu lehine) paylaşılmasını düzenleyebilecek uygun-kapsamlı ve esnek çerçevenin oluşturulabilmesi için; kentsel toprak üzerinde yaratılan sosyal ve ekonomik

değerlerin birikimi ve paylaşımı "kamu yararı" kavramı ile birlikte Planlamanın geniş bakış açısı içerisinde tartışmaya açılmalıdır.

Tüm bunların ışığında, Şehir ve Bölge Planlama kuramı ve pratiği özelinde kesin tanımları olmayıp, farklı biçimlendirilmiş olan bu kavramların yeniden tanımlanmaları hedeflenmiştir.

Anahtar Kelimeler: Kentsel Arazi Kullanım Planlaması, Kamu Toprakları, Kamu Yararı

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CHAPTER 1

1. INTRODUCTION

General Formulations of the Problematic Structure, Issues and Themes

Basically, the existence of two important phenomena; ownership pattern on urban land and the use of development rights are claimed to have direct effects on the planning institution in the formation process of planning decisions, on the development directions of cities, densities, land use decisions and of urban or metropolitan macroform. This is valid as a matter of different development levels of underdeveloped, developing, and developed countries. Of course, those two are not "The Unique" factors which influence first; the problematic formation of urban areas in the physical dimension and second; the planning institution which tries to realize more liveable - functional urban environment for the sake of improperly defined concept named "Public Interest".

The concept of public interest has only a "**structural definition**"¹ in Jurisprudence, Public Administration disciplines and a conflicting situation with private ownership on urban land in Planning. Public Interest Concept can be evaluated according to several point of views, and different definitions are possible to be explicated. On the other hand, it is impossible to find a properly defined conceptual and practical "subject of Public Interest" in the planning literature;

though, looking for such a "static - practice" explanation is meaningless within sociologically "dynamic" social structure. The concept is comprehensive, as well as the primary element of Planning Theory and its justification are.

Land Use and inevitably "ownership" are the main subjects of Urban Planning. In fact, the origin of which is not based on the "existence or nonexistence of ownership on Urban Land struggle" -this is the subject of different discussions-, but "the use of Urban Land which has complex ownership context and of the surplus value created by the Plans". The values generated on urban land have direct effects on the development of urban physical macroform. Here comes another discussion, if just and equitable reallocation of these values, organization of development rights and of legislative structure, are tried to be achieved for the sake of "Public" under the frame of "Public Interest": why does Planning Institution try to control/regulate all these relationships and value distribution on Urban Land ? or "Why Allow Planners to Do What They Do?"². Meanwhile, conflicts emerge between the meaning of private and public, the use of private ownership rights and public goods and social/public welfare.

As it is pointed above, the concepts related with society and social development are subject to transform within the development process. Public Interest Concept does not remain sociologically stable. A socially accepted public interest phenomena may misplace or transform its meaning in time where another one, which recently has no strong meaning for the public, may gain importance; such as the use of sea-shore under the pressure of national and local touristic development. Same transformation is real for the planning institution and policies. Currently, Comprehensive Planning became static, as the issue change in time, it is not effective as it was accepted, at the practical stage. The concept of Urbanization is subject to rapid changes, and planning interventions to the urban arena have to be capable enough to control this dynamism. Today, Planning is in need of conceptually well defined, flexible policies to be applied. The balance of private and

public interventions in terms of urban land use and urban economics has to be achieved. "The relevance and importance of the economic literature dealing with public goods and market failure have not been fully appreciated by planners in general."³ Because all planning activities are linked by a concern for providing and allocating public goods and argues that a theory of public goods is simultaneously a theory of the justification of planning. Planning institution especially in developing and underdeveloped countries, "fail to resolve this fundamental question: Is planning more likely to promote public welfare than not planning ?"⁴

This thesis is attempts to research on the evaluation of Public Land Use with reference to the concepts of Public Interest and Urban Land Use Planning. The use of public owned lands have gained indispensable importance for the planning of metropolitan urban areas, and the lack of long and short term applicable public land use policies causes not only the transformation of public land to private ownership, but also to the public institutions; which transform these land "dormant". Of course, such transformations have direct effects and guidance, sometimes handicaps on planning decisions.

After this introductory chapter, first; urban land - the main subject of planning institution - will be researched in relation to urbanization and urban growth concepts in the capitalist society, then the formation and ownership of urban land will be dealt with. Reallocation of urban land rent, speculation, institutionalization process of different interest groups and their impacts on planning in the economic representations of urban land market are the last concepts of second chapter.

In the third chapter, public interest concept will be evaluated within the wide frame of planning, law and public administration, and different points of view will be discussed in relation with the difficulties of "conceptual public interest definition" as well as the definition and use of land as a public good. In the light of theoretical discussions of the planning literature, Planning Theory will be criticized with reference to Public Interest Concept.

The need and components of comprehensive public land planning and management policy shall be structured in the fourth chapter as a conclusion. There are two annex parts. First one is the overview of IFHP (International Federation for Housing and Planning) Urban Land Policy Instruments in Turkish Planning Case. A table shall be developed to check the existence of these instruments in current Turkish Planning Institution. Second one is the land records overview of Atatürk Orman Çiftliği (Atatürk Experimental Farm) which is enough to show how the largest public owned land of metropolitan Ankara has been wasted and is still derelict (and dormant), as long as it is the "inventory" example of several articles about "Wasted Public Land".

A small glossary is provided at the end to help the reader who is not familiar with planning and juridical terminology.

CHAPTER 1

NOTES

1. Akıllıođlu, Tekin., "Kamu Yararı Kavramı Üzerine Düşünceler", **Notlanmıř Konuşma Metni**, Dünya Ormancılık Günü Toplantısı, Türkiye Ormancılar Derneđi, 19 Mart 1989
2. Moore, Terry., "Why Allow Planners to Do What They Do", **AIP Journal**, October 1978, pp.387-398
In his article, Moore discusses the role of planning institution and its intervention to the urban arena from the theoretical and empirical point of view with reference to the questions of How and Why.
3. Moore, Terry., *ibid.*, p.388
4. Moore, Terry., *ibid.*, p.388

"... Yıllar önce oturduğum çevredeki fıkara gecekonduların arasında dolaşırdım bazen. Ayakları çıplak, sümüğü akan, kirli entarili, donsuz çocuklar; tek odalı çarpık bir barakanın önünde, odun yakmış çamaşır yıkamaya çalışan başı örtülü kadınlar, yırtık poturlu erkekler, içimi sızlatırdı...

Konuşurdum kendileriyle. Çaresizliklerinin temel nedenlerini anlatmaya çalışırdım.

-- Haklısın bey, haklısın ağabey, der dururlardı. Seçimlerde de silme iktidar partisine oy verirlerdi. Bu çelişkiyi onların bilinçsizliğine yorardım.

Şimdi, vaktiyle kapattıkları gecekonduların arazileri milyonlar ediyor. Hemen hepsi arazilerini inşaat müteahhitlerine devrederek, milyoner oldular.

Oralardan geçerken, şimdi onlar bana sesleniyor:

-- Nasılsın ağabey, bir sıkıntın falan yok ya?

Köyden kent gecekondusuna, kent gecekondusundan da apartmana geçme olanağını onlar görebilmişler ama ben görememiştim."

Çetin Altan, *Gölgelerin Gölgesi*, s.79

Kadri Atabaş, "Batıkent'te neresi?", Bir Yerel Yönetim Öyküsü, (ed: Korel Göymen), Ankara, 1983,ss.127-158

CHAPTER 2

2. URBAN LAND

2.1. URBAN GROWTH AND THE FORMATION OF URBAN LAND

"The growing needs for land for urban areas, (in terms of basically) settlements, transportation and recreational activities, as well as for agriculture to supply food for a permanent growing population, create a feeling that there is a danger of running out of land in the future".¹ "Land is a scarce good"²

It is apparent that, with growing and changing needs, it is even more important to clearly identify "the nature and magnitude"³ of land requirements for future urban development.

"A consequence of this finite supply is that, for certain locations perceived as particularly desirable, the purchase price of land can reach extremely high levels in western society. In two large development schemes in central Paris 'La Defence' and 'Front de Seine', land changed hands at 2.500.000 - 4.000.000 USD/ha. respectively. (Rubinstein, J. M., The French New Towns, Baltimore, The Johns Hopkins University Press, 1978) Since the financial ability to purchase land and the consequent right to influence or control land use may bring considerably power to those who possess it, control of land and land use has been remains a politicaly continuous issue."⁴

On the other hand, the subject of urban growth and the need/importance of urban land can be assumed as one of the favorite problems of developing and

underdeveloped countries. Here we can simply start to show how important the same subject is, in developing countries's case (which are being faced with high yearly inflation rates - more than 60-70 %), by converting the monetary terms of the article above, to the Turkish Case. According to the foreign currency rates of Central Bank of Turkey in September 1991, (1 USD=4500 Turkish Lira (TL) in average), these lands in CBD-Paris cost 11.250 billion--18 billion TL/ha, (1.125.000--1.800.000 TL/m²), where the m² land costs about 3.000.000--5.000.000 TL., in modern CBD, "Kızılay", Ankara, and about 1.500.000--3.000.000 TL. in traditional "Ulus" center, averagely. Land is the most durable and reliable investment tool in developing and underdeveloped countries. Consequently, its raw-price and the costs of any urban development, are always higher where the budget of municipalities is limited and the responsibilities of the planner, who decides all those developments and plays with ownership rights on the "golden" urban land, are socially invaluable.

Land Use Theories are mainly developed in the Western countries or say; developed countries of the capitalist world with their specific conceptual frame of Urban Land. Here, the same difficulty appears in the definitions and justifications of these theories, as we are facing with the constitution of Public Interest. The reflection of different social, economic and political forces, and modes of production on urban land create different complexities of land uses within the Urbanization Process. It is a fact that the urbanization process in the developing countries takes place under more difficult conditions than in the older industrialized countries. The main factors contributing to these difficulties, which directly or indirectly reflected to the problematic metropolitan areas, are a high rate of population increase, especially of urban population, low income per capita and unequal distribution of wealth. ⁵

Urban growth in the third world has occurred and does occur under a great variety of economic and political circumstances; which have constantly changed, particularly during the present century.⁶ This combination of factors in the complex

and interacting structure of growth has produced "enormous variation both morphological and social character"⁷ of especially third world cities. Because of that, today, those countries have the most crowded, dense and problematic (in almost every subsystem) metropolises of the world. Castells claims that, those countries are dependent capitalist countries and naturally they are accepted as the outcomes of capitalist world.⁸ And the "central paradoxes of modern society - that an increasingly affluent society with a rapidly changing technology is generating awkward structural problems and deepening tensions in the process of urbanization".⁹

"The analysis of **Urbanization** is closely linked with the problematic of **Development**, which is also a term that we ought to define. The notion of development creates the same confusion by referring both to a level (technological, economic) and to a process (qualitative transformations of social structures, permitting an increase of the potential of the productive forces). This confusion corresponds to an ideological function, namely, the function that presents structural transformations as simply an accumulative movement of the technological and material resources of a society."¹⁰

Main characteristic of urban land in terms of economic conditions (especially in developing countries where urbanization rate is rather higher) is its "spontaneous character of increasing value".¹¹ Continuous development of urban areas gives locational (advantageous) changes to urban land in urban fringe. It means, the increase of land values. Being owner of an urban land can be maintained to have unriskey investments.¹² At this stage, since the powerful-leading modes are dominating and creating the consumption conditions, Land Use Patterns and the forces shaping them, have to be understood in terms of the development of dominant modes of production.

"Although the argument has been developed here primarily in the context of urban land use, it could equally well have been developed with respect to agricultural or rural areas under the sway of capitalism. (See: Murray, R., '1977-1978', Value and Theory of Rent: Part 1&2, Capital And Class 3, pp.100-122, 4 pp.11-33) Within Capitalism, rent plays a crucial role in the evolution of social form. (Harvey, D., Social

Justice and The City, Arnold Edward Publishers Ltd., London, 1973, p.191) Harvey attributes the relative homogeneity that exist between capitalist city forms to this and, again, similar arguments could be made in relation to agriculture or rural land use patterns. However, rent only exists in a contingent sense, being dependent upon the mode of production and certain institutions relating to property ownership.

Consequently, there can be **no such thing as a general land use theory**, for urban or rural areas. Rather, theory must be historically specific, relating urban form to different modes of production or stages of development within a given mode of production. Viewed in this context, criticism of, say, Burgess's model as lacking universality are seen to be misplaced. Furthermore, those (such as Sjoberg) who suggests a differentiation between industrial and preindustrial cities (in terms of levels of technological development alone rather than in terms of mode of production, of social relations as well as forces of production) are perceived to hold a rather one sided view."¹³

Urban growth and formation of urban land are the mainpoints of discussions for the solution of problems which are always named as "Physical", (because it is the most impressive effect which can be watched and seen) so, the blame has to be put on the planners. Urban growth is inevitable and its reflection on the physical dimension is the built environment on the ownership pattern according to the development plans prepared by planners. Simply, the need and demand of land for public and private sector's building activity causes the spontaneous rise of land values in urban development process. Because, the physical growth of a city can be assumed as the outcome of inner and outer dynamics¹⁴ and their interactions, on physical space (land) in vertical and horizontal directions. Vertical development of a city is possible within a limit of environmental and economic factors. On the other hand, horizontal development is the result of the saturation of physical structures on a limited part of land. Both development limits are defined by planning rules and regulations. After an economic saturation point, the need for new land occurs. The process of producing urban land is another important factor which naturally causes the increase (or nearly jump) of land prices. ¹⁵

In fact, this is only a simplified explanation of the genesis of current physical space. There can be found more comprehensive and guidance theories of land use patterns in capitalist societies, by researching the phenomenon from a more macro scale:

"... in order to understand land use patterns in capitalist cities, we must begin with an analysis of the inner dynamic of the capitalist mode of production. Related to this, particularly in the context of late capitalism, is the question of the theoretical treatment of the capitalist State in relation to land use patterns - for the state is not located outside of the dominant set of social relations but is rather an integral part on reflection of these. The State is unable to resolve contradictions that arise as a reflection of the predominant Social relationships; instead these contradictions are displaced into the State apparatus, to appear as paradoxes between, say, the intended and actual effects of policies concerning land use control."¹⁶

Another important fact is the common accord of viewpoints on 'the problem creating nature of private ownership on land'. This fact is the prerequisite character of speculative behavior which is another urban development problem against public interest. Changing economic demands within the process of social change, cause the rise of ownership density on urban land.

The formation of urban land can be summarized under three headings:

1. it is located in urban periphery,
 2. it has infrastructure,
 3. it has urban development plan decisions which define future usage of land.
- Land gains urban land definition under those three conditions."¹⁷

On the other hand, the concept of "ownership" as the main point to deal with, gains importance. It is necessary to define the main components of this mechanism. Because like urban planners who are willing to organize the balanced urbanization for the society or to create feasible, liveable environments; jurists and public administrators are dealing with it in legislative perspective. Basically;

"An ownership system must necessarily answer four basic questions;

1. The principle of acquisition, defines the conditions of acquisitive ownership rights.
2. The principle of transfer, shows the conditions of market exchange of the property.
3. The principle of usage, defines the limits and conditions of the property uses.
4. The principles of rectifying, shows the rules and regulations of ownership rectification if the property is transferred or used against first three rules."¹⁸

The development process of ownership rights in terms of the generation of development rights on Urban Land can be overviewed under two headings;

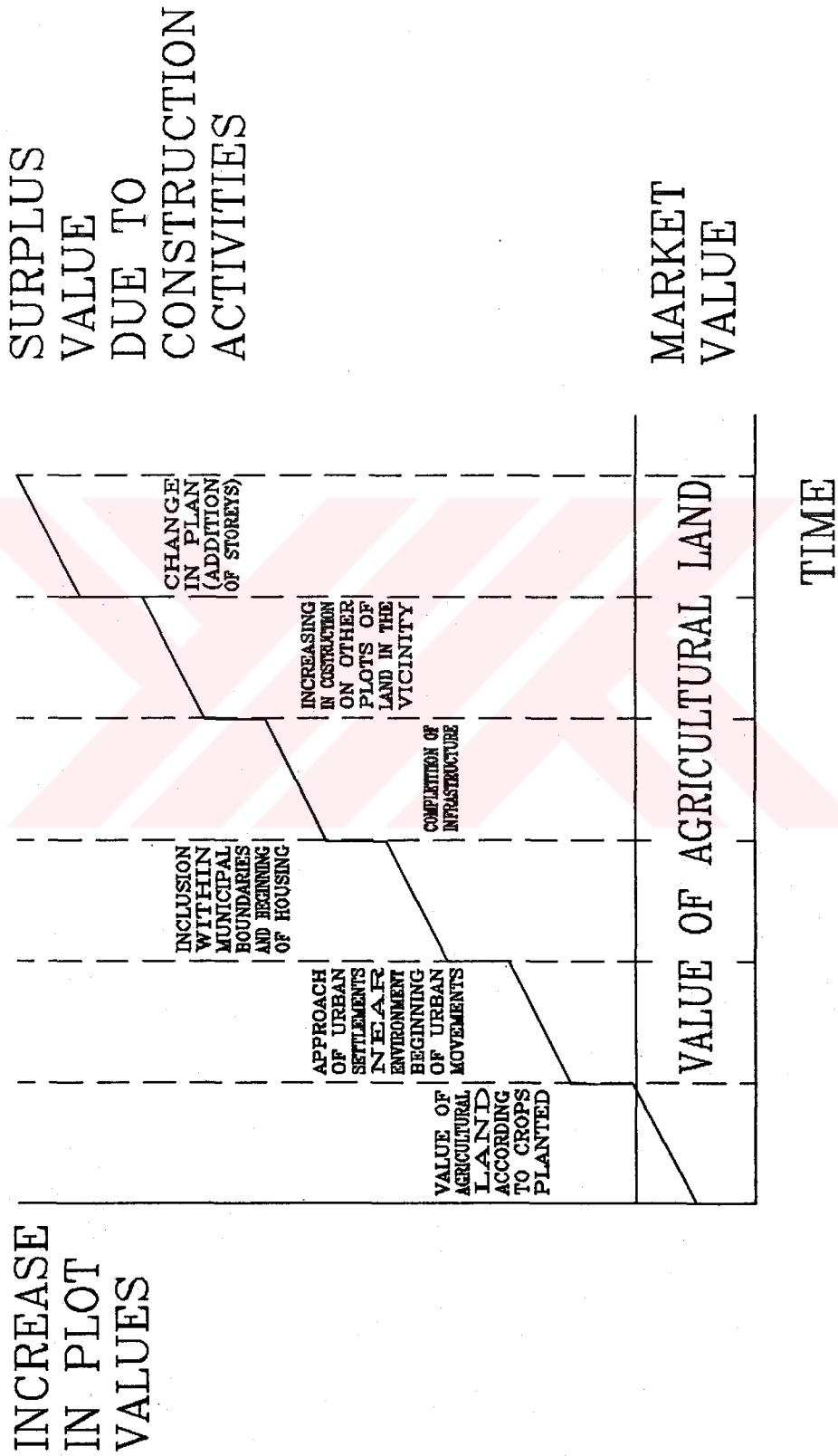
1. The Ownership Pattern (land parcels with their certain development rights, or expectations at a certain price) evolves in time,
2. Planning Intervention to the system either transforms agricultural land at the urban fringe to urban land directly, or the transformation process accelerates indirectly, because of the intervention realized on the neighbour parcels. (see: figure 2.1)

Unless the intervention is realized, the value generated on urban land is being shared by the investors, inequally.

"It appears that **the hidden mechanisms** of income redistribution in a complex city system usually increase inequalities rather than reduce them."¹⁹

Simply the planning activity seems the main transformer in the process, because it generates the urban land. As a result, planning intervention is being realized for the sake of public and the control of development on the urban land, assuming that some parts of the generated values can be returned to the public. Then the Public Interest is claimed to be achieved. But the planning intervention takes place on the shaped/generated ownership context in reality. Planning seems to follow the generation process of ownership on the urban land influenced by social and economic forces. After this intervention, optimal solution (the just distribution) for the public is expected to be found. On the other hand, if planning intervention (guided by short and long term policies, supported by applicable tools)

TRANSFORMATION OF LAND AND LAND VALUES



SOURCE: MIMARLAR ODASI ANKARA SUBESI, "KENT TOPRAKLARI KOMISYON RAPORU",
 MIMARLIK 70/3, MART 1970, P. 56

Figure 2.1.

could be realized before the ownership transformations, real and social costs would be minimized.

2.2. GENERAL STRUCTURE OF OWNERSHIP ON URBAN LAND

"The right of private ownership of land is an integral part of the legal structure of most of the Western countries. Its roots are in the *Roman Law* and the *Code Napoleon*. Article 554 of the Code Napoleon defines ownership as *the right to absolutely free enjoyment and disposal of objects provided that they are not in any way contrary to the laws or regulations.*"²⁰

Ownership rights are always seen as a part of the elementary rights of the individuals and part of individual freedom. Urban Land can be defined as the "complex use value produced collectively by the interpenetrating activities".²¹ These activities can simply be discussed within two major groups: these are households and firms on one side and urban planners on the other side.

"The intraurban locational dynamics of firms and households give rise to persistent breakdowns in the social efficiency and viability of urban space."²²

These separations then contribute for new rounds of planning intervention which are necessarily reactive and "palliative", and themselves lead to new urban problems.²³ The indelible subject is the problem creating nature of ownership mechanism on urban land in terms of its value creating problem potential. This concept has the means to explain with a classification of the users and developers. Essentially the investments on urban land is one of the prime accumulation ways of monetary and social values. Having a land with certain locational advantages in urban area increases the monetary investments especially in dependent economies regardless of inflation (best way to invest on) and the holder reaches a certain rank in socioeconomic order. The crucial point with which planning institution deals, is the redistribution or just and equitable treatment of those values created and used

by (consciously or unconsciously) different institutionalized social groups, for the sake of public interest.

"Four principal functions can be considered for urban land according to owner's interest;

1. It is the locational base of urban functions. These functions may be realized by its owner or the owner may take some value in monetary terms simply by accepting other investors on his land, to earn the rent.
2. If urban land is used for housing activities, it gives its owner the chance to have a place in social status.
3. It protects its owners from inflation.
4. It becomes a tool which lets his owner to get hold of the surplus value created by society." 24

The point is the investments or actions on the land which is becoming urban. Those actions or investments can be realized by individuals and institutionalized interest groups. The Basic cause for this action is possible to understand from;

"In a capitalist democracy, there are essentially two methods by which social choices can be made: voting, typically used to make 'political' decisions, and the market mechanism, typically used to make 'economical' decisions". 25

Another view about the mechanisms or institutions generated in terms of "the value" depending on the urban land ownership is "the manipulated city hypothesis".

"In this view urban land development is not the outcome of the myriad decisions of atomized individuals, each seeking to secure only his own satisfaction. Rather, urban society is seen as an amalgam of special interests, various social formations neighborhood communities, and the like. Members of those interest groups act in concert. Moreover social relations are generally dichotomized into relations between exploiters and exploited. These relations are underpinned by the degree of social power that each group possesses". 26

All these hypotheses can be evaluated within the classical thought of institutionalized social powers in society. Here, we can start with defining the relationship between the socio-economic meaning of ownership and the institutionalized social interest as a power group. Either "manipulated" or "not", each group of interest has a special power on the decision making or programming process of planning. Main tools are the economic power, accumulated in a different economical sphere or generated from the development rights based on ownership of a parcel of urban land; and the ownership rights with the tendencies of development in the future. Ownership rights, on the other hand, are not only simple, but powerful, tools in the economic market in the city. As it was noted above, in the beginning of part 2.2., they are an integral part of the legal structure which keeps the balance between private and public rights in any field of social order. (see: note 27 for detailed evolution examples of the rights of land ownership in the west)

The recent amendments in the Constitutions of different countries are a development of growing understanding of the new concept of landownership in a general sense. But there still exists a gap between the common needs of the society and the individual rights of landowners.

"The understanding of the role of public authority decisions creating urban land value and the double aspect of land as a natural resource of the nation and as an economic good is important for formulating the new concept of landownership. The recently introduced amendments and the land use planning measures limiting the rights of plan use are a first attempt at legal and policy solutions to the special character of land (serving both collective needs and individual rights). Such a double aspect even found its expression in the *Code Napoleon* (according to the understanding of the collective needs of that period). Article 552 originally defined landownership as including all rights above and below the land surface, but 6 years after the publication of this article in 1810, Article 554 was published, limiting the rights of private property owners. This article stated that natural resources (e.g. minerals) below the land surface could be acquired by the public authorities without compensation. So already we see formulated in a clear way the limitation of the rights of absolute landownership in opposition to essential collective needs."²⁸

2.2.1. From the Planning point of view

The main problem, on the other hand, is the "Re-definition of the Ownership Concept on Urban Land". In most of the developing or underdeveloped countries, the ownership pattern regulations have been imported²⁹ from (mainly) Europe or developed West, with related economical and legal aspects.³⁰ "The main social institution which defines the planning concept is the Urban Land Ownership."³¹

Institutionalization is one of the main parts of democratic structure in modern societies. Only an institutionalized social mechanism can afford to take a certain (powerful) place in democratic social order, and decision making process. The aim is the control (or effect) of the authority for the rights of the public or of the institutionalized common interest within the frame of freedom which is given by a democratic society. An institutionalized totality of a certain social relationship is an effective social pressure tool. This body can be formed around an ideological base (Theoretical). The main idea remains; the influence on decision making process.

In countries where technological dependency is effective and the synchronization of technological, economic and social development is still difficult to be achieved within the inner dynamics of the society, the effective social institutions may be dealt with the interest of a certain social group instead of public interest. In fact, those groups³² are the pioneers of institutionalization. The problem is not the degree of efficiency, but the regulation and control of such mechanisms by -again -another institutionalized social skill (profession).

Today planning is trying to achieve theoretically, "just and equitable treatment" for the distribution of the surplus values generated on Urban Land while defending the public interest. Practically, since the planning methods and

languages have been generated and developed according to the interests of current criticized social order (which is a pool of different interest groups on urban land); it is still nearly impossible to plan for "full public efficiency" or "modern liveable urban spaces". Because the process of institutionalization is one of the main determinants of our planning behavior,³³ a social group of urban land owners may acquire enough power to be effective on the urban development decisions or housing market in large cities.

Therefore the concepts of "Urban Land Ownership", "the Share and Distribution of Surplus Value created on Urban Land", "Public Good" within the general framework of Planning have to be redescribed. Otherwise, the planning activity will always follow the visible or invisible behavior of urban land owner under the name of "planning for public". Even the decision of a development axis may be a manipulated decision, because the process is under pressure. If not, the decision will boom the land prices. (There is no equal distribution of unequal interest according to public.) Therefore, neither the development plans, nor the justice for public will be able to be achieved unless "the unjust acquisition of socially generated values on urban land" character of ownership is eliminated.³⁴

"As a consequence, planners tend to lack a systematic understanding of their discipline/profession; of the real constraints imposed on, and the objective opportunities open to their practice. Lacking, as it were, a map of social reality in which they can situate themselves and technical pragmatism. The former robs their practice of its potential effectiveness and their theory of its practical significance. The latter reduces practice to an aimless management of day-to-day bottlenecks and theory to a technical instrumentality of a shortsighted 'problem solving'." ³⁵

2.2.2. Economic Representations of Urban Land Market and The Distribution Problem

Land prices are influenced by many factors. One set of factors concern the changes in the urban economy and society itself, and another set relates to macro-economic factors, principally economic growth and its side effects. These two are both influencing the formation of land prices in urban land market. Their respective importance may vary within the changes of world economy and trends of urban growth. It is accepted that the increase of urban land prices is a world-wide phenomenon. The consequence is the basic fact that the result of this spontaneous market value increase and its leading role in global economy, is more serious in developing countries' cases. It can easily be seen that; "... the greater amount of speculation in land in developing countries has hampered their economic development by syphoning off scarce capital from more productive investment"³⁶.

Land market may also be assumed as an economic pool in the urban arena. As it was mentioned in the previous chapters, the increasing nature of the land prices vary in this pool. City, on the other hand, is the deep-core of the "floating prices". Floating prices are precipitated with the effects of development plan decisions, or this is the solution. Otherwise, the institutionalized or informal interest groups effect and change the directions and dimensions of this precipitation. During this process, certain interest groups are identified as the "actors" of land market or the "players" of the "speculation game".

These interest groups are;

"1. Urban Land Owners

- a. Rural land owners (potential urban land owners)
- b. Estate agencies
- c. Rural land transformers (developers)
- d. Middle class speculators

2. Users

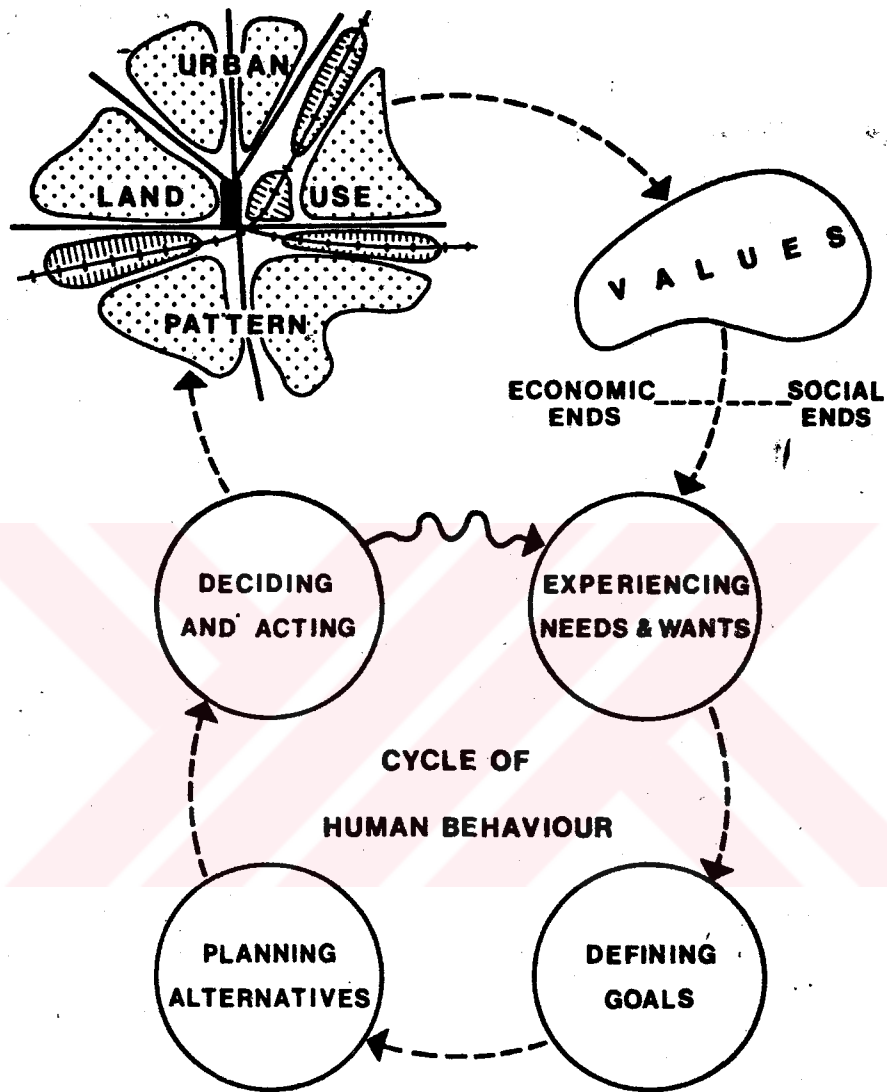
- a. Constructors
- b. Non-constructors, owners
- c. Urban land owners
- d. Renters

3. Organizations and firms of urban development for public."³⁷

Some theories and models have attempted to identify and explain the specific factors influencing urban growth and land values. Before dealing with the value of land and its problem of distribution, a short research on the general structure of land use patterns is helpful to understand all those economic terms on the urban land. Chapin's conceptualization of urban land use structure is based on the activity systems. (Chapin, p.244)³⁸ (Also see figure 2.2)

"He defined these as behaviour patterns of individuals, institutions and firms which occur in spatial patterns. He saw certain individual and group-held values concerning the use of a particular parcel of land or area being put into a particular use. Chapin recognized that culturally determined values influence individual or group behaviour and ultimately, therefore, land use patterns"³⁹

Indeed, the problem becomes complex, when it is considered that the relationship among the variables varies in different countries where levels of economic and social development are also different. There is a difference in the role of the same factors in different categories of cities according to their significance in the country and even in international economic relations.⁴⁰ According to Darin; the basis of Urban Land Value can be discussed under two headings. The first and superior one is **accessibility** (to the job opportunities, and variety of personal, commercial and cultural services), and also **pleasant environmental features** which include both the social and physical environment (such as; quiet, absence of pollution, neighbourhood with a congenial life style).⁴¹ The role of locational factor and accessibility to urban functions may depend on the level of attractiveness of a human settlement. This is the result of the influence of employment and service opportunities. On the other hand, **constructibility** (the possibility of using the land



Urban land use change: the sequence of action and influence of values.

Figure 2.2.

Urban Land Use Change

source: Rhind, David., Hudson, Ray., *Land Use*, Methuen, NY, 1980
p.213

for construction purposes) also determines urban land values.

"It is suggested that investments on infrastructure and public or private services (or the economic cost of land) create the basis of urban land value. The difference in aggregate land values from this economic cost might be seen as one of the basic meanings of urban rent. These investments create a variety of employment opportunities and services which attract people to certain areas more than others. The level of attractiveness creates the demand for space for commercial as well as for residential use in some areas more than in others. **Therefore the process of urban growth creates an additional land rent. This rent is created not by the additional investment of the landowner, as in agricultural land, but by the additional general investment in a large urban area. This additional investment creates the addition to urban land value which the particular landowner gets as land rent.** Therefore, the impact of the land-use policies of the public authority, which play the deciding role in fixing both the land use and the intensity of use, is one of the main factors in setting the urban land value. Taking into account the dominant role of land use in setting the land value, the term *value* is used mainly to underline the kind of land use (residential, commercial, industrial and recreational land values). Land *price* may be defined as land value expressed in monetary terms in the market economy."⁴²

At the same time, some other factors also influence land values. In a perfectly functioning free market, the demand and supply define the price. Due to the peculiar character of the land market, however, the law of supply and demand does not function here as with other goods and products. The expected land use and expected demand (which is an outcome of development plan decisions) have an influence on the land market, as do the taxation policy (which is more important in the western countries because it is difficult to find a proper compensation mechanism and a taxation policy for differentially valued urban land in developing countries), the rate of interest and various other factors. The land price is therefore an expression of land value and a result of supply and demand in the framework of the peculiar conditions of the land market.⁴³

Several models have been proposed which attempt to describe for intra-urban land use patterns. "Perhaps reflecting the complexity and variety of forces at

work shaping these patterns", such models of urban land use have arisen in a variety of social science disciplines; "such as, sociologists, economists and human geographers have all contributed to attempts to answer vexed questions concerning urban land use patterns, perceiving this from their own particular disciplinary standpoints"⁴⁴ More recently, approaches to urban land use patterns have been developed which cut across and challenge those conventional disciplinary boundaries. Although, there are many models which have been developed to understand "urban socio-spatial structure", well known-basic models are; Burgess (1925) "Concentric Model", Hoyt (1939) "Sector Model", and Harris & Ullman (1945) "Multiple Nuclei Model". (for detailed review see: Johnston, R. J., Urban Residential Patterns, Bell, London 1971). Here, the main point is the meanings and uses of these models. Because "at different times and in different places, claims have been made as to the validity of the various models. Blumenfeld (1949), Jones (1960), Smith (1962), Haggett (1966), Robson (1969)"⁴⁵

In addition to the "price" and "value" terms produced by Darin, Harvey uses "use value" and "exchange value of land" definitions. The distinction of use value and exchange value is easy to see; "a house, for example, is simultaneously a use value (a place in which to live) and an exchange value (a commodity that can be exchanged either directly, via money, for other commodities. This distinction had been an issue of continuing concern to preceding generations of political economists"⁴⁶.

After these discussions of urban land according to both side, the investor and the planner; another important but "abstract" subject, "public interest", will be overviewed to get the "concrete" planning definitions in the third chapter.

CHAPTER 2

NOTES

1. Darin-Drabkin, Haim., **Land Policy and Urban Growth**, Pergamon Press, Oxford N.Y., 1977, p.23
2. Rhind, D., Hudson, R., **Land Use**, Methuen, NY., 1980, p.3
3. Darin-Drabkin, Haim., *ibid.*, p.23
4. Rhind, D., Hudson, R., *ibid.*, p.3
5. Darin-Drabkin, Haim., *ibid.*, p.76
Since 1920 the developing countries have had a rate of urban population growth considerably exceeding that of developed countries. From 1940 to 1960 the urban population increased by an average of 4,5% per year, in the former, and by only 2,0% in the latter. In the large cities (over 500,000) the difference even more 6,9% per year increase as compared to 2,6% per year in the same period.

Drakakis-Smith, Davis., **Urbanization, Housing and the Development Process**, St. Martin's Press, N.Y., 1980, p.3
Between 1800 and 1900 the total city population of Europe (incl. Russia) increased by some 4.3 millions whereas in the less developed countries of Asia the urban population has risen by 160 millions in just the last twenty-five years.
6. Drakakis-Smith, Davis., **Urbanization, Housing and the Development Process**, St. Martin's Press, N.Y., 1980, p.17
7. Drakakis-Smith, Davis., *ibid.*, p.17
8. Castells, M., **The Urban Question (A Marxist Approach)**, Edward Arnold Publishers Ltd., GB., 1977, p.39
9. Harvey, D., **Social Justice and the City**, Edward Arnolds Publishers Ltd., London, 1975, p.55
10. Castells, M., *ibid.*, p.19
11. Tekeli, İhan., "Mülkiyet Kurumu, Kamu Yararı Kavramı ve İmar Planları Üzerine", **Planlama**, 88/2, s.8
12. Tekeli, İhan., "Mülkiyet Kurumu, Kamu Yararı Kavramı ve İmar Planları Üzerine", **Planlama**, 88/2, s.8
13. Rhind, D., Hudson, R., *ibid.*, p.239

14. Inner dynamics can be defined as increasing population (demographic increasing and changing modes of communication (social and cultural), and economic. Outer dynamics are mainly related to the economical and/or the administrative role of the city in regional or national scale.
15. Keleş, Ruşen., 100 Soruda Türkiye'de Kentleşme, Konut ve Gecekondu, 100 Soruda Dizisi, No: 30, Gerçek Yayınevi, Ankara, 1983, s.65
16. Rhind, D., Hudson, R., ibid., p.239
17. Tekeli, İlhan., ibid., s.7
also; Darin-Drabkin, Haim., ibid., p.170
"Some of the unique qualities of land which distinguish it from other goods are:
a. Land is physically undepreciable and is not influenced by time,
b. Land is not transportable,
c. Land is limited in quantity,
d. Land is a long term investment tool and a basis for savings."
18. Tekeli, İlhan., ibid., s.6
19. Harvey, David., ibid., p.52
20. Darin-Drabkin, Haim., ibid., p.411-12
21. Roweis, S. T., Scott, A. J., "The Urban Land Question", **Urbanization and Urban Planning in Capitalist Society**, (eds: M. Dear, J. Scott), Methuen Co. Ltd., p.xvii
22. Roweis, S. T., Scott, A. J., ibid., p.xvii
23. Roweis, S. T., Scott, A. J., ibid., p.132
24. Tekeli, İlhan., ibid., s.8
25. Arrow, K. J., **Social Choice and Individual Values**, Wiley, 1951, p.1
26. Roweis, S. T., Scott, A. J., ibid., p.132
27. Darin-Drabkin, Haim., ibid., p.412-15
"Ownership rights are always a part of the individual freedom. Such a conception of private ownership arose in opposition to the rules of Feudal society, where a feudal lord had supreme rights of ownership, especially land ownership, and all tenants in the area paid him fees. In feudal society, an individual exploiting land had the right of land use, but not the right of ownership. **It is for this reason that rights of private ownership -especially of land- are so carefully defended today by such large part of the population.**

With the socio-economic development of the nineteenth and twentieth centuries, absolute ownership rights of land began to be in conflict with the new needs of the society and economy. In agriculture, the right to dispose of land freely resulted in the excessive parcelling of plots by the joint heirs surviving the owner. In many countries and in most cases, parcelling brought about agricultural units too small to be used for a farm. Parcelling thus became one of the most important problems needing solution. Recent legislation in most countries limits the right to divide land and allows for the intervention of the public authority to reorganize such property in order to set up efficient agricultural units.

The high rate of urban growth posed the problem of the close interrelationship of different land uses and the need by the public authorities to provide land for the general public purposes. The growing role of the state in the economy and society led to greater intervention in different fields of economic and social development, and therefore **controlling land use during rapid urbanization**.

With the period of rapid urbanization the liberal concept was restricted, as it became necessary to take into account not only the rights of the individual but the needs of the society. These two essential factors are the basis for the concept of landownership that is followed in almost all countries. But there exist important differences in the relationship between these two factors. The socioeconomic structure of the country and the rate of urbanization and industrialization influence which is to be the dominant factor. Most of the countries with centrally planned economies introduce collective landownership but also insured individual land use rights. Countries with free market economies emphasize private landownership as a basis for legislation, but insure the right of the state to limit the private ownership rights of the individual if the land is needed for a public purpose.

The constitutions of developing countries are influenced by several factors. Among the most common are the impacts of traditional, communal or tribal landownership which are sometimes mixed with the modern concepts of state ownership of natural resources. On the other hand, also exercising an influence is the liberal concept prevailing in the free market countries about the individual's right to private property, including land ownership.

The former colonial rulers and the concepts which existed in the home countries created a heritage in some of the developing countries, which has influenced patterns of landownership. The former British colonies used the system of Leasehold, where most of the land still belonged to the Crown. This concept where the Crown represented the collective needs of the society is mixed in Moslem countries of the former Ottoman Empire with the concept of *miri* land. According to this concept lands which are not cultivated for 3 years are returned to the state.

...

In the free market countries of Europe and North America, the recent process of rapid urbanization of the growing role of the state in providing essential services for society influenced the concept of urban land ownership. The Constitution of the *Italian Republic*, 22 December 1947, exemplifies the double character of land as it recognizes the freedom of private economic initiative and private property only in so far as these do not conflict with the public interest (Article 41-42). Moreover, the Constitution establishes the right to enact

legislation to control and limit these freedoms in such a way as to insure the social function of land. In particular, Article 44 states that *with a view to a rational exploitation of the soil and the establishment equitable social relations, the law imposes obligations and restrictions on private land property*. Also, Article 30 of the *Spanish Constitution* of July 1945, after declaring that *private property is recognized and protected by the State as a natural means of accomplishing the aims of the individual, the family and the society*, adds that *all forms of ownership are subordinate to the needs of the Nation and of the common welfare*.

The Constitution of *Federal Republic of Germany* articulates the two concepts of land ownership in Article 14 which reads: *The rights of ownership and of inheritance are guaranteed. Their contents and limits shall be determined by the laws. Property imposes duties. Its use should also serve the public weal*.

The differences in the concept of land ownership in some countries are expressed mostly by emphasizing either the rights of the individual or of the society. The Constitutions of *Taiwan*, *Indonesia* and *Chile* express the limits on individual rights and consider land as a natural resource of the nation..."

Related subjects and comments of **Turkish Constitution** can be found in the third chapter. For detailed information, see: Akıllıođlu, Tekin., "Kamu Yararı Kavramı Üzerine Düşünceler", **Notlanmış Konuşma Metni**, Dünya Ormancılık Günü Toplantısı, Türkiye Ormancılar Derneđi, 19 Mart 1989.

28. Darin-Drabkin, Haim., *ibid.*, p.418
29. Here "imported" means the close interactions with the developed Capitalist West which caused dependent economical development. The reflection of it in the third dimension is the formation of problematic cities -today's metropolises- in the process of dependent development during the early and medium stages of Industrialization.
30. Tekeli, İlhan., personal interview
31. Tekeli, İlhan., *ibid.*, s.6
32. Those may be named as "actors of urban land development and speculation".
33. Tekeli, İlhan., *ibid.*, s.6
34. Tekeli, İlhan., *ibid.*, s.10
35. Roweis, T. S., "Urban Planning in Early and Late Capitalist Societies: Outline of a Theoretical Perspective", **Urbanization and Urban Planning in Capitalist Society**, (Eds: M. Dear, J. Scott), Methuen Co., Ltd., NY, 1981, p.159
36. Darin-Drabkin, Haim., *ibid.*, p.88
37. Tekeli, İ., Gülöksüz, Y., Okyay, T., **Gecekondulu, Dolmuşlu, İşportalı Şehir**, Cem Yay., İstanbul, 1976, s.303
38. Rhind, D., Hudson, R., *ibid.*, p.213

39. Rhind, D., Hudson, R., *ibid.*, p.212
40. Darin-Drabkin, Haim., *ibid.*, p.167
41. Darin-Drabkin, Haim., *ibid.*, p.168
42. Darin-Drabkin, Haim., *ibid.*, p.168-69
"While the urban land is a good belonging to society, because the value is created not by individual effort, but by the investments and planning decisions of that society, this value is usually expropriated by private individuals."
 (p.170)
43. Darin-Drabkin, Haim., *ibid.*, p.169
 also see: Harvey, David., *ibid.*, p.160,
"Contemporary Urban Land Use theory is in a peculiar state."
44. Rhind, D., Hudson, R., *ibid.*, p.172
45. Rhind, D., Hudson, R., *ibid.*, p.183
 also see: Gittus, E., "The Structure of Urban Areas: A New Approach", *Town Planning Review* 35, 1964, p.13
"The former theories and techniques of urban analysis have lost much of their validity. There is need for new emphasis on the variability of urban structure and this involves the need for an empirical rather than a theoretical approach to the situation. . . . It is conceivable that it . . . might fail, but in view of the impasse that has been reached in this field from the starting point of general theory, it is well worth making".
46. Rhind, D., Hudson, R., *ibid.*, p.228

Harvey, David., *ibid.*, p.153

Harvey also notes that the distinction between the use and exchange value was a prevailing source of concern for the political economists of the nineteenth century.

"It provides the starting point for Ricardo's Principles of Political Economy and Taxation as well as for Marx's Capital."

The original definitions come from Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 1776, (New York: Modern Library Edition, 1937), p.28

"The word *Value* , it is to be observed, has two different meanings, and sometimes expresses the utility of some particular object, and sometimes the power of purchasing other goods which the possession of that object conveys. The one may be called *value in use*, the other *value in exchange*. The things which have the greatest value in use have frequently little or no value in exchange; and on the contrary, those which have the greatest value in exchange have frequently little or no value in use."

Again, in Rhind and Hudson (p.229-30) criticises these definitions as follows;

"Harvey argues that contemporary attempts to account for urban land use patterns one-sidedly focus attention either on the use value aspects of land (through the study of houses as places in which to live) or on the exchange value characteristics (the market exchange system) but with little conception of how the two might be related. Thus, for example, various models of land use patterns (Burgess, etc.) while varying in their relative sophistication, are essentially descriptive of aspects of use value. While valuable, they can not yield up a theory of urban land use. Use value may provide a conceptual underpinning of these traditional geographical and sociological analyses of urban land use patterns, but the concept used in such a way as to exclude such analyses from the sphere of investigation of political economy. Again, land use models generated from neoclassical economics focus on the exchange value characteristics of land to the exclusion of use value, except in so far as this is represented in the formal relationship between these proposed by Jevons. Harvey cautions us not to allow this crude assumption concerning the relationship between use and exchange value to deceive us into thinking that real problems have been resolved. Rather they have been obscured. Amplifying this point in a discussion of the inadequacy of neoclassical models of the urban housing market, Harvey continues *if a commodity depends upon the coming together of use value and exchange value in the social act of exchange, then the things we call land and housing are apparently very different commodities depending on the particular interest groups operating in the market.* If such a conclusion is valid with respect to the housing market, then it is true *a fortiori* for the urban land market in general, characterised by competition between different uses, and hence to urban land use theory as a whole.

...

The conclusion which Harvey draws from his critique of existing approaches to urban land use is readily anticipated: if the problem with these is their one-sided treatment of land use, what is required is a Marxist analysis which brings together use value and exchange value in a dialectical relationship."

CHAPTER 3

3. URBAN LAND USE PLANNING IN THE CONTEXT OF OWNERSHIP AND THE MEANING OF PUBLIC INTEREST CONCEPT

In this chapter, Public Interest and its conceptual meaning in the Planning shall be overviewed. More detailed critiques of Planning Theory can be found at the fourth chapter in the lights of Urban Land and Public Interest discussions.

3.1. PUBLIC INTEREST CONCEPT IN GENERAL

The concept of Public Interest has been discussed by jurists, political scientists and planners in the literature. It is a common point of discussions, where "ownership" and its social meanings are the main subject matters. Because of this, different opinions at different levels in each discipline have evolved. Here, the point is to identify the content, frame and use of the concept in planning which changes the ownership pattern (individual interest) for the sake of public.

Every society may be considered as the combination of different elements and as a living organism. It has its own essence and characteristics with aims and interests. The nature and speciality of these aims and interests and the justification

of them (if they are true or false, positive or negative, right or wrong, etc.) are closely interrelated with each other.

Planning, here, is considered as a "social tool", which shows and regulates (organizes) possible alternative ways (possible alternative scenarios) of achieving social aims.

3.1.1. An Overview of The History of Public Thought(*)

A brief overview of historical development will give some clues about the dilemma of private and public interest concepts. The development of the 19th century public law is said to be constructed on the dilemma of state and the individual. The subject is "the agreement model of the private and public interests".¹ The main point to look at the historical development is the evaluation of the facts and relationships with all the related concepts and values comprehensively. The "enlightenment period" is also important for the development of the "planning thought" like the development process of all other scientific based thoughts. Of course, the name was not "planning" but, today, we can identify the efforts spent for the innovation of the natural order which is tried to be used to create "full social order" or "organized-wealthy society". The aim was the usage of "applied reason" for scientific reasonability. The order in nature and the order in society were not a "taboo" anymore; and the human-being was capable enough to understand and to represent them scientifically. The metaphysical or religion based explanations have lost their importance. Simply, the same thing happened for the structure of society and the state, as well as, all the rights and regulations related with them.²

Public interest is a reaction to Common Goodness (Le Bien Commun) after 1789 French revolution. The political thought of revolution was accepting that the concept of public interest (L'interet General) as a rational and realist concept, has taken the place of common goodness concept (le bien commun) which was

accepted as irrational and metaphysical. ³

The development of Unitarian view starts with Plato and Aristoteles. Aristoteles defends that every being looks for perfection; society, just like the individual, also tries to reach goodness which is the last aim (cause finale), while perfection constitutes the totality (unitary).

"The main Unitarian points of view can be obtained from Aristoteles' philosophy; that common goodness or public interest is the totality of the individual interests. They both have the same essence and quality. Being against one of them means the same for the other. Individual, society and the state follows the same route. (They are the reasons of themselves and each other.) Public interest is a common aim which is desired by all kinds of private or common function". ⁴

After the French Revolution, or generally, in the Enlightenment period; public interest was considered as an outcome of the rights and interests represented by "Social Contract" (Rousseau). This was the rejection of pre-democratic state's public interest concept, and its new definition, started to gain importance, in an understandable, rational way. It was accepted that individual interests could be in a conflicting situation with public interests. The public interest is not the totality of individual interests, it is something different and has its own essence. So it has a different structure than the elements which constitute it. This became the origin of another view called public interest as common interest. Public interest is defined and restricted by laws, where law or public interest is superior.

Today public interest is not a general measure for public works or services anymore.

3.1.2. The Structure Of Public Interest Phenomenon

Public Interest is a "multi-functional" concept. It is used in different areas for the definition of different sub-concepts related with the society (named as public) or everything which is commonly accepted by the society.

"In law, it is used to confirm or verify the existence of the state, to check the convenience of the works done for public according to the law and it is one of the main causes to restrict basic rights and freedoms." 5

On the other hand "the content", "subject" or "the matter" of the concept does not clearly or properly exist. Its definition can be or is made morphologically. So it can be claimed as elastic not static. Another important aspect is the compound structure of the concepts. The definitions of "public", "society" and "interest" terms are not enough to identify the compound term of "public interest".⁶

Political scientist Glendon Schubert declared in 1960, after a lengthy study called *The Public Interest* that *there is no public-interest theory worthy of the name* . He acknowledged that he had *criticized the public interest theories of other persons without making any attempt to do something positive by suggesting a public-interest concept of my own* and he rejected the view that there ought to be a theory of the public interest.

In 1962, Prof. Frank Sorauf, in a paper entitled *The Conceptual Muddle*, found discussions of the concept mired in a *semantic chaos*. Sorauf claimed that criticisms of vagueness and ill-definition: *apply to few concepts in political science as aptly as they do to the public interest.... Clearly, no scholarly consensus exists on the public interest, nor does agreement appear to be in the offing. Not only do scholars disagree on the defining of the public interest, they disagree as well about what they are trying to define : a goal, a process, or a myth.*

And Anthony Downs concluded that; *the term public interest is constantly used by politicians, lobbyists, political theorists, and voters, but any detailed inquiry about its exact meaning plunges the inquirer into a welter of platitudes, generalities and philosophic arguments. It soon becomes apparent that no general agreement exists about whether the term has any meaning at all, or, if it has what the meaning is, which specific actions are in the public interest and which are not, and how to distinguish between*

them. "7

The morphological definition of the concept can be identified hypothetically, that the laws are all supportive to the concept of public interest. It is supposed that the legislative authority aims to protect the public interest with each law; every function of the state is for the public (as accepted - by definition); unless the opposite is verified.

There are different kinds of opinions about "public" and "public interest" via the concept of "state". If the content of public interest concept is not clear or difficult to identify, the concept can not be taken into "scientific consideration", as long as it has an "irrational" structure.

"... the public interest can be maintained as a contemporary fiction-tale or myth. In political science, based on this hypothesis, the public interest is also identified by some opinions as the tool which is used to sacrifice the state, so that; to support the political government. (Nizard, Eisenmann, Charlier)." 8

Today, the concept has to be re-evaluated to construct contemporary meaning of it. Changes in the context of social science and public administration create the necessity of re-evaluation of Public Law as well.⁹

3.2. CLASSIFICATION OF DIFFERENT PUBLIC INTEREST VIEWS

Basically, there are several different classifications of public interest views in the literature. From a general point of view; two main classifications are possible to obtain: the Unitary and Individualistic views.¹⁰ According to Unitary Views, there exists a public interest which directly relates to every individual in the society. Society has its own aims to realize, which are different than individual's (Organismic view). Or, there are commonly shared interests in the society and they are valuable than other interests as long as they are commonly shared (Communalist view). Individualistic views, on the other hand, defends that; public interest is the totality of

individual interests. Decisions of the majority are enough to identify the interest for the public.

A different classification made by Held, will be followed to overview.¹¹ According to this; there are three different views: Preponderance Theories, Public Interest as Common Interest, and Unitary Views.

3.2.1. Preponderance Theories

"Discovering what the preponderance is on a given issue is sometimes thought to be a matter for observation in a way analogous to that which one would use to observe physical forces, or to ascertain prevalent opinions on various issues. Or it may be taken to depend upon a summing up of some kind of or an aggregation of various magnitudes orderings representable numerically. According to many of these theories, it is possible to discern a greater or lesser magnitude of interest and of public interest, a higher or lower position on a scale."¹²

According to Preponderance theory, society is accepted as a sub-being, and dependent phenomenon. Individual, on the other hand, shows the basic preponderance. Although there are some differences between the theories of Preponderance, the main subject of them is the individual and its utilities, more than the society's. Public Interest is tried to be defined according to individual interest. There may be conflicts between individual or common interests, (and the meaning of utility may be accepted as "true" according to the individual or common,) but; the final definition will be an outcome of the powerful majority in society. Hobbes defends public interest to be the opposite of individual. Individual's behaviour in the society aims to have a social profit, they are logically and empirically prior to the others.¹³ Hume uses the terms public interest, common interest, public utility and public good not necessarily synonymously. But throughout his discussion, he suggests that to judge a given action, policy or arrangement in the public interest is to judge that is advantageous for a preponderance of the individuals affected.¹⁴ He also

pointed out that ethical values could not be researched or judged by logical-scientific way. Public Interest exists and has an importance, because its superiority is accepted by the common. According to Bentham, a community is the collection of individuals, so, its interest (public interest) will be, simply the Sum of individual interests (Superior Sum). The Community is a fictitious body, composed of the individuals ... Nature has placed mankind under the governance of two sovereign masters: *pain and pleasure* It is for them alone to point out what we ought to do, as well as to determine what we shall do.¹⁵ Samuelson presents the case for avoiding a host of problems by bypassing the use of cardinal utilities all together. According to him, Utility was used in a behaviouristic, in a psychological, in a physiological, and in an ethical sense. Utility of an individual can be measured by Ordinal values. (Welfare= $F(\text{Utility}_1, \text{Utility}_2, \text{Utility}_3, \dots, \text{Utility}_n)$) Kenneth Arrow supports this view. He argues that, interpersonal comparison of utilities has no meaning relevant to welfare comparison.¹⁶

As a result, Preponderance Theories deal with the Community as a collection of individuals, and Public Interest is accepted as a problem of scale. There can be no aim of society itself, meaningful and important aims (either shared or not), are the individual aims, utilities and interests. The prerequisite is the acceptance of an interest by the majority as "public interest".

3.2.2. Common Interest View

The acceptance of conflicts between individuals and groups and their interests is the main point of this view. At the same time, the Individual's Utility which is shared by common is accepted as Public Interest. Summation of individual interests has no meaning for the public, because there are other interests of individual in the society which are not conflicting with each other (i.e. safety, health, etc.), namely, Common. Another important characteristic of this view is the

acceptance of equality of Public Interest with State in the meaning. The State exists for the public and all actions of the State, are accepted as for the public interest.

Most traditional Common Interest ideas were produced by Rousseau. He confronts the deficiencies of preponderance theories in his consideration of the obligations of men to obey authority.¹⁷ The meaning of public interest is, for Rousseau, quite briefly stated, the Common Interest, or the interests which all men have in common. In his view, in contrast to that of the preponderance theorists, the Law originally (establishing government) must, itself, be in the common interest, or based upon unanimous consent, if it is to be capable of serving the public interest and not only the interests of those with a superiority of force or opinion.¹⁸ A majority vote may be taken to indicate that which is in accordance with the general will or in the public interest. "But majority vote is for Rousseau a sign of, but not the source of, the public interest."¹⁹ Same interpretations of Common Interest are used in Welfare Economics (Pareto Optimality, the welfare of a group of individuals may be considered to increase if at least one individual in the group is made better off-in terms of their utility values- without anyone being made worse off).

On the other hand, it is difficult, nearly impossible, to define "public interest" by using "abstract" definitions such as "equality" or "impartiality" and to define a Common Policy for the interests accepted as common in the reality, where "concrete" interests are conflicting.²⁰

3.2.3. Unitary View

According to the theories in this group, the public interest is a moral concept. There is a unitary scheme of moral judgements which should guide every individual at a given time and place, although these individuals may be unaware of it.²¹ Public interest is accepted as a normative and political decision which depends on the value judgements of society. If an action or decision of an

individual is in conflict with the public interest which is accepted as rational and valid in social sense, this action or decision has not the public convenience; and public interest is always superior. Traditional theories of Unitary view take their roots from Plato's conception of the common good.

"The relation between public interest and individual interest, rather than simply that between a statement about each, and its negation, may be understood in the same terms. Since an assertion that something is in the public interest is a claim that it is right or good, and since an assertion that something is in the interest of an individual is, also, a claim that it is right or good, if the two are both true, and hence valid, they cannot conflict."²²

For Plato, it is fundamental that genuine values are in harmony, not in conflict. Again, the objective of any polity is moral goodness for Aristotle, as for Plato. Further representations have been developed by, first Hegel, then Marx and Engels.

"Hegel goes so far as to argue that; *in whatever way an individual may fulfil his duty, he must at the same time find his account therein and attain his personal interest and satisfaction.* In the state, the universal interest and individual interest are united. For Hegel, then, if public interest be taken in contractual sense, it is to be replaced by public interest in the sense of the interest of the state, which is the universal interest and at the same time the true interest of the public and of all individuals."²³

And for Marx;

"Marx's objection to *the modern representative state* is that it is based on pure self-interest and has become, as he and Engels put it, *a committee for managing the common affairs of the whole bourgeoisie.* It has destroyed what satisfactions, misguided as they were, had been possible in feudal society, and substituted the rampant pursuit of raw individual interest. In such a state; *the proleterian is without property... Law, morality, religion are to him so many bourgeois prejudices, behind which lurk in ambush just as many bourgeois interests.* In order to correct the situation, they counsel the proletariat to take the power, temporarily representing its interests as the interests of all. At this stage a wider interest will be imposed on a narrow one in

deadly conflict with it. But the transformation is to be carried out for the sake of achieving, and they predict that the proletariat will in fact eventually succeed in achieving a society in which interests no longer conflict."²⁴

The common point of Unitary views is the acceptance of agreement of individual interest with the public interest. There exists a "superior" public interest concept which is to be used to define if all the individual interests are "true" (convenient for the public), or not.

3.3. SOCIAL DEVELOPMENT AND THE NEED FOR PUBLIC POLICIES

Before dealing with the public interest concept and its application in planning, the nature of ownership and the ways of creating and holding the socially created values on urban land have to be redefined.²⁵

The main points of discussion must take place around the perception of public interest concept by the planners, or in the planning institution. The common belief that "urban development plan automatically realizes the public interest" has lost its conceptual meaning with the development of interactions between planning and social sciences. This was the "legacy" of the term when planning was supposed to be the practice of architecture and engineering.²⁶

As it was mentioned above, social outcomes are also the subjects of social change within the development process. These changes may be radical but, generally slow and in the form of transformation, when the society is concerned. A static conceptual definition can not be capable enough to cover this dynamism. The legal procedure has to be comprehensive and open to renovations as much as, planning tools and models have to be.

The Place of Public Interest Concept in Constitutional Organization will be dealt in the following parts.

3.3.1. Public Interest: The Hypothesis based on;

The Constitution is based on the hypothesis that "the law -in general- is the public interest (by definition)", this is the principle which was the first time formulated in French Public Law after 1789 revolution, then accepted by Turkish Public Law.²⁷ According to this view, (whatever is its contents) every law constructed by the legislative authority is accepted suitable for public interest.

There are six main categories identified in the meaning of the public interest concept, according to the Turkish Supreme Court's decisions;

1. It is a general and extensive concept,
2. Public interest is in harmony with social interest,
3. Public service is public interest,
4. Public interest is the cause of limitation,
5. Public interest is social interest, superior, changeable,
6. Public law is a functional concept in every field of administrative law.²⁸

3.3.2. Public Interest: Special Constitutional Organization;

There are certain definitional differences of the concept in 1961 and 1982 constitutions. In the new one (1982), there was made a different organization under the "public interest" title. 3rd subheading of the "social and economic rights and duties" part of "basic rights and duties" heading is named "public Interest". Under this heading: "the usage of sea-shores,i.43", "land ownership,i.44", "agriculture, stock farming and the workers of these sectors, i.45", "expropriation,i.46" and nationalization,i.47" are located.

According to jurists and political scientists, this is an interesting situation because, the Public Interest Concept has been defined or identified in its contents in opposition to its classical morphological definition.

"If the location of the item is considered, *the usage of sea-shore* can be accepted as a *basic right*. But it is not pointed out clearly. In the 43/2nd item of the constitution, only *the respectation of the public interest in the usage of the sea-shore* is considered. Whether the usage of the sea-shore is a basic right for every citizen, or not, depends on how it is interpreted." 29

This opinion guides some supreme-court decisions such as the prohibition of private coastal development constructions. Supreme Court decisions define the contents of public interest, so, that qualifies and classifies actions, if they are acceptable as public interest by referring to the Constitution.

3.3.3. Public Interest: Limitation of Basic Rights;

"Public interest is taken as a *cause* for the limitation of basic citizenship rights in both 1961 and 1982 constitutions. But in the first one (1961), only "ownership, i.36", "expropriation, i.38", "nationalization, i.39" and "freedom of work and agreement, i.40" were the special limitation causes; where *public interest* is accepted as the cause of limitation for all basic rights in the second one (1982)."30

The point is the difference in the meaning of public interest. While it is accepted to be a "special cause" for limitation in the 1961 constitution; it is a "general cause" in 1982. It automatically affects the definitions of public interest in both constitutions. In 1962 constitution, the contextual definition was important for the public interest to be used as a special item. In the 1982 constitution, on the other hand, the morphological definition gains importance. "There is no difference to say *can be limited for public interest* or *limited with the approval of the law*". 31

3.4. WHY DOES THE PUBLIC INTEREST-SOCIAL INTEREST DILEMMA EXIST ?

In both constitutions, the concepts of Public and Social Interest are used in a way that creates a differentiation between them.

"The ownership right can only be limited for public interest and the use of it can not be regardless of social interest. (1961/i.36, 1982/i.35) and in the item 165 of 1982 constitution its been said: In plans ... investments the respectation of the social interest is the point. This shows that the legislator accepts these terms to have different meanings"³²

There are different opinions about the dilemma between public and social interests. But the common view (according to Akilloğlu) (the public interest in its narrow definition), is the measure for limitation of the ownership right, and it gains a general structure (frame) which includes all the social values in its wide definition. On the other hand, according to other opinions public interest is the representation of the governing class (government) interests, where the social interest is the common interest of the people living all over the country.³³ Or these two concepts are the same in their basic meanings and represent the common interest of society.³⁴

There are some other concepts used together with public interest as "social interest", "common interest", "common wealth", and "social wealth".

"The common point of all these concepts is the description of an interest which is different than private interest, and supreme. The real differentiation is between the private and public interests rather than public and social." ³⁵

3.5. URBAN LAND USE PLANNING AND URBAN LAND POLICY

Planning studies have to ensure that the collective interests of communal, as well as individual interests of its members are taken into account in decisions about urban development. The objectives that planning studies try to achieve can be distinguished in two:³⁶ First "it takes account of the effect of particular developments", means the protection of amenity of the whole community when it is threatened by individual actions. Second, "the term 'planning' implies taking account of the implications of current decisions for the future." ³⁷

In general, the critiques of ownership on urban land give meaningful clues to understand the (evolution of) limitation of private ownership and public interest concepts especially in urban planning. These critiques are the results of "Land Use Planning" concept, because, the ownership mechanism gives certain rights to the owner on the property, but how to use these rights effects not only the owner but the society as a whole. Here, "the ownership of property and its use become limits to the other citizen's freedom to use their own property or ownership". After the "limitation" of the right to use property has gained importance, the concepts of "public use" and "public interest" started to develop.³⁸ The important point is the multi dimensional character of the property with its owner. There exists no simple relationship between them. The existence of triple - legal relationship is true between the owner, the owned and the society. It is generally accepted that this right can be limited for the society (public interest).

Like the concept of "public" and "public interest", the definition of ownership might be considered as a "raw definition". The meaning of the concept gains importance as an outcome of social development level. According to the social development level, these concepts get their proper meanings both theoretically and practically. Otherwise, there will be inevitable commentary problems in the practical use and the conceptual meanings both concepts. ³⁹

From the planning point of view, urban land use planning can be handled as a mechanism or comprehensive tool developed to ensure the balanced, feasible and legal use of land for both the private developer's and public's interest in urban environment. It is the totality of alternative plans, financial and legal policies with institutionalized tools. (i.e., special land development institutions)

On the other hand;

"the last 30 years of experience in Turkey of rapid urbanization process lived after II world war have pointed out the necessity of serious and conscious urban land policies and it is clear that the lack of these policies costs a high social price."⁴⁰

Under these pressures, the duty of planning institution is the economical, optimal, balanced location and organization of urbanization on physical space.⁴¹

"At the heart of the activities we call urban development and urban planning is the need to institutionalize some form of collective action."⁴²

and also;

".. indeed the central position of land in economic and social life - quite apart from the political heat generated by the issue of land - has generally led to considerable State Intervention, both direct and indirect, in land use control and the land market. In Britain the perceived importance of the inter-relationship between the supply of development land and proper patterns or urban and regional development has led to much legislation intended to produce effective state control of land for the development process. The most recent significant -if short lived- addition to this legislation was *the Community Land Act*, intended both to skim-off the development values for public benefit and to give local authorities the statutory powers, though not the finances, compulsorily to purchase land need for development. ... As a consequence of this State involvement, regulation of land use is, for some people, their job and their ambition: at least some influential British Planners such as Ash, see their primarily role as ensuring *the proper use of land* . Coppock and Gebbett expressing this as; *although ... town and country planning is now extremely wide-ranging, the control of land use remains its essential basic function.*"⁴³

3.5.1. Urban Land Policy

"Urban indicates to do with Human Settlements (large cities as well as small villages) with the extension of purely *countryside* activities or considerations (agriculture, forestry, countryside recreation and military activities, countryside conservation, etc.). Land will denote the land as such, - including water - as a plot, a property or an item of real estate, as well as the use of that land (with the exceptions mentioned above). A correct definition of the word *Land* in this connection is very important, but at the same time very difficult. All interest in land items from the use which can be made of it: to construct something on it, to use it for agricultural, forestry, mineral-extracting or recreational purposes or to leave it idle. Policy is the term which is used to indicate *the way, as accepted by decision takers, to attain one or more given goals.*"⁴⁴

Before going further in urban land policy, meanings of the terms shall be defined. These definitions are made by IFHP (International Federation for Housing and Planning) which is also an example of these institutions; which produce policies as a part of urban land use planning. The meaning of Urban land-use and related problems vary as the meaning of ownership system according to the development levels of societies and the social institutions develop. The meaning of an "efficient land use or urban land policy" will be different in different societies. It is "to achieve the redistribution of agricultural land (Latin America)", or "to assist or substitute traditional urban planning procedures in trying to cope with urban renewal problems (Europe), and problems of urban sprawl (North America)" or "to be an important instrument of general socio economic policy, for instance by making possible the upgrading of squatter settlements (Africa and Asia)".⁴⁵

There is no unique urban land policy as there is no unique theory of urban land use planning. Development of different policies or packages of goals and instruments must have the basic aim to realize an efficient - comprehensive institution of urban land and the reallocation (planning) of the values.

"... a land policy will never be more effective than what the instruments which are used permit it to be - especially so if most of the goals of such a policy are to be found in the socio - economic field. It must also be noted that a successful land policy is dependent on the political will of the decision takers concerned and on the effectiveness of the existing administrative system and its civil servants." 46

and,

"Policy may be defined as a set of measures aiming to achieve the goals formulated by the public authorities."47

It is also important that urban land policy is a political question. In any country, in every degree of the decision making process about public involvement to the land market requires strong political support. This support is important for the definition of goals or the realization of defined goals. Both instruments, and goals may be identified in the market economy countries with weak public profile where the market rules also effect the political decisions; and very strong public profile in eastern block socialist countries where political planning governs the market. Here, between these two extremes different kinds and levels of individual vs. public profiles are possible to obtain. The interesting subject is the changing social and political structure of almost all East-European Socialist countries, beginning from early 1990's. This will of course closely effect the public policies as well as land policies, because, private ownership on land has started to be accepted by these countries. If strong - long term urban and regional land policies can not be supported by policies, the problems of urban land ownership will arise like in the third world countries.48

The eventual formulation and choice of a particular land policy has to be based on a complete custom of the political and technical attainability of a certain set of goals and instruments to achieve them.

"Actually there are several good reasons why it is useful and even necessary to be very specific about goals underlying an adopted overall land policy:

- clearly formulated goals can show what type of future one is aiming at;
- the necessity of trying to clearly formulate their goals will force the political decision

takers to discuss more essential, long term matters rather than continue concentrating on short term details;

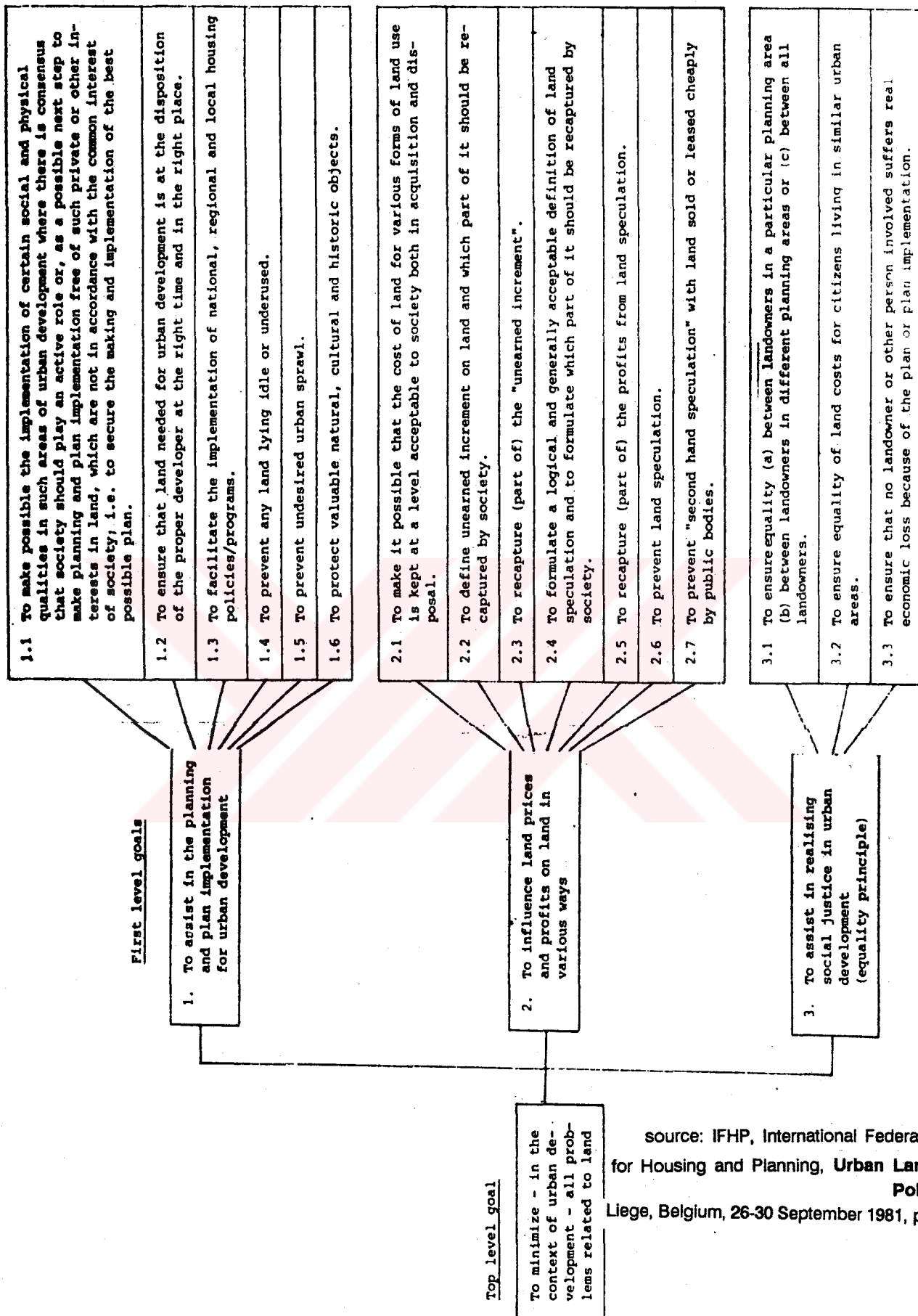
- any political debate on land policy will sooner or later involve a discussion on what instruments are acceptable in a certain country: such discussions will be rather meaningless without a set of clearly formulated goals as a starting point;

- when faced with a choice between different instruments, an important criterion must be the relative effectiveness of each measure with regard to the goals that have been formulated;

- clearly formulated goals lower the risk of misunderstandings and of wrong decisions as a consequence thereof." 49

The classification of Goals on Urban Policy by IFHP are given in figure 3.1. Goals are mainly classified in three levels. (Top, first and second) Here, the list of instruments of urban land policy are provided in table 3.1.50





source: IFHP, International Federation for Housing and Planning, Urban Land Policy, Liege, Belgium, 26-30 September 1981, p.1

Figure 3.1.

Goals on Urban Land Policy IFHP

table 3.1. LIST OF INSTRUMENTS OF URBAN LAND POLICY:

A. PLANNING INSTRUMENTS

Actions taken on the basis of planning decisions

1. Public planning monopoly
 2. Building prohibitions, restrictions
-

B. TAXATION INSTRUMENTS

Actions taken through the imposition of charges

3. Property taxes on real estate
 4. Annual site value taxes
 5. Taxes on the increment in land value
 6. Income taxes on land
 7. Taxes on commercial sale of land
 8. Taxes on building rights
 9. Penalty taxes on vacant lots
 10. Exemption from taxes when land is sold to public authority
 11. Land transfer duties and taxes
 12. Development charges (planning charges)
 13. Collection of servicing or betterment charges
-

C. MARKET INSTRUMENTS

Following the rules of the free market compensating the owners with usual market value

14. Land acquisition on the open market
 15. Exchange of land
 16. Selling of land
 17. Making use of private, semi-public or public development companies
 18. Advance servicing of development land
-

D. FINANCIAL SUPPORT INSTRUMENTS

Loans and Subsidies granted or regulated by public bodies

19. Land acquisition loans or subsidies to local authorities
 20. Special conditions for loans for land acquisition
 21. Land price conditions for housing loans
 22. Compensation payment by state or municipal bonds
-

E. ADMINISTRATIVE INSTRUMENTS

Actions based on the legal power of the public authorities to establish their own rules

23. Nationalization of urban land
24. Municipalization of urban land
25. Compulsory handing over of streets and other public areas to the local authority without compensation
26. Recapture of unearned increment in expropriation
27. Limitation of land acquisition rights
28. Regulation of land prices
29. Limitation or cancellation of constitutional building rights
30. Expropriation
31. Pre-emption right
32. Compulsory replotting
33. Land division measures to support plan implementation
34. Official building appeal regarding unbuilt lots
35. Laws to protect areas of natural beauty and of historic value
36. Special regulations for specific urban areas
37. Land banks (at national/regional/local levels)
38. Land pooling
39. Leasing of land
40. Development agreements
41. Necessary information on land and land transactions (land register)
42. Proper valuation of urban land
43. Competent staff for urban land policy
44. Effective administration in land questions
45. Land policy programs for local authorities
46. Informations on the goals and measures of urban land policy
47. Research in the field of urban land policy

The planner should be sure that the process of effective synthesis between economic, social and spatial aspects is "explicitly directed towards operational ends."⁵¹ Another proposal for the classification of land policy measures has been developed by Darin-Drabkin, which is referred to table 3.2.⁵²



table: 3.2. CLASSIFICATION OF LAND POLICY MEASURES

A. LEGAL MEASURES INFLUENCING PRIVATE LAND USE DECISIONS

A.1. LAND USE PLANNING FIXING SPACE FOR DIFFERENT PURPOSES IN NATIONAL, REGIONAL AND LOCAL FRAMEWORK. National and Regional long run planning fixing areas for urban, agricultural, recreation use. Local medium term plans for the detailed allocation of land for different uses within the planned urban area.

A.2. ZONING CONTROL SPECIFYING PERMITTED LAND USES AND DEFINING NORMS FOR DIFFERENT LAND USE CATEGORIES. The fewer the number of categories the more freedom for developers and less control.

A.3. SUBDIVISION OF CONTROL THROUGH REPARCELLING THE PRIVATE SITES ACCORDING TO THE APPROVED DEVELOPMENT SCHEME. Transfer to the public authority of land needed for public purposes. (Germany and Japan examples.)

A.4. PLANNED ALLOCATION OF LAND FOR DIFFERENT URBAN PURPOSES THROUGH FIXING NORMS FOR COLLECTIVE NEEDS IN RELATION TO POPULATION LIMITS. (green space, public services)

A.5. A GREATER DEGREE OF ZONING, OBLIGATING THE USE OF LAND ACCORDING TO THE DEVELOPMENT SCHEME WITHIN A FIXED TIME PERIOD.

A.6. CONCENTRATION OF PUBLIC INVESTMENT IN INFRASTRUCTURE WORKS IN SOME AREAS, FORBIDDING BUILDING ACTIVITY OUTSIDE SPECIFIED SITES. (declaration of some areas for future development)

A.7. PRIORITY PURCHASE RIGHTS FOR PUBLIC AUTHORITIES IN CASE OF THE LANDOWNER INTERESTED IN SELLING HIS PROPERTY.

A.8. EXPROPRIATION AND COMPENSATION METHODS AND PROCEDURES.

B. TAXATION METHODS

B.1. PROPERTY TAXES

B.2. TAXATION ON LAND PROFITS

B.3. TAXATION FOR PLANNING PLANNING PURPOSES. (Taxes on vacant land planned for urban use or insufficiently used according to planned scheme. Introduction of a higher rate of tax for holding a site unused in spite of the planning.

B.4. EVALUATION METHODS AND PROCEDURES

C. LAND ACQUISITION BY PUBLIC AUTHORITIES

C.1. INFRASTRUCTURE WORKS CARRIED OUT BY THE PUBLIC AUTHORITIES IN ORDER TO SUPPLY BUILDING LAND TO THE MARKET.

C.2. LAND ACQUISITION BY NATIONAL, REGIONAL AND LOCAL PUBLIC AUTHORITIES TO CARRY OUT THE PLANNED DEVELOPMENT SCHEMES.

C.3. LAND ACQUISITION FOR CARRYING OUT SHORT TERM DEVELOPMENT SCHEMES.

C.4. ADVANCE LAND ACQUISITION FOR CREATING RESERVES FOR FUTURE URBAN DEVELOPMENT AS WELL AS FOR OTHER PURPOSES (recreation)

CHAPTER 3

NOTES

(*) The main reference of this chapter, especially of the chronological research of Public Thought, is Akıllıođlu, Tekin., "*Kamu Yararı Kavramı Üzerine Düşünceler*", *Notlanmış Konuşma Metni*, Dünya Ormançılık Günü Toplantısı, Türkiye Ormançılar Derneđi, 19 Mart 1989 and Held, Virginia, *The Public Interest and Individual Interest*, Basic Books, NY., 1970, for the classification of different public interest views.

1. Akıllıođlu, Tekin., "*Kamu Yararı Kavramı Üzerine Düşünceler*", *Notlanmış Konuşma Metni*, Dünya Ormançılık Günü Toplantısı, Türkiye Ormançılar Derneđi, 19 Mart 1989, s.6
He also gives reference to Said, *Hukuk-u Siyasiye*, Dersaadet 1326 (1910), s.7, "Efrad mi heyet-i ictimaiyeye yoksa heyet-i ictimaiye mi efrada hizmet etmelidir ?"
2. Tekeli, İlhan., CP 511 Planning Theory, *Unpublished Lecture Notes*, METU, RP Graduate Program, 1988
3. Akıllıođlu, Tekin., *ibid.*, s.6
"Le Bien Commun is the common concept of the political history of pre-industrial European societies. This concept has lived from the Greek Sites to the Roman Empire and Middle ages with the same attribute then fed the monarchies till 1789."
4. Akıllıođlu, Tekin., *ibid.*, s.6
"These ideas were the milestones of Roman Laws. Ciceron defended public interest as the common concept of public and private laws. Also, St. Thomas d'Aquin was defending that the social goodness was the common aim of society and individual in a unitary way, in middle ages. Social Goodness was the representation of *Sacred - Goodness of God* in the earth."
5. Akıllıođlu, Tekin., *ibid.*, s.1
6. Akıllıođlu, Tekin., *ibid.*, s.1
7. Held, Virginia., *The Public Interest and Individual Interest*, Basic Books, NY., 1970, pp.1-2
8. Akıllıođlu, Tekin., *ibid.*, s.2

9. Akıllıođlu, Tekin., *ibid.*, s.8, means the Constitution and Public Law and, s.14
"Today, the basic feature of public interest is its discussable character. Because contemporary public interest concept is transformable and rational so, has a causal relationship with democratic state structure."
10. İlgen, Ali., "Kamu ve Toplum Yararı Kavramlarına Bir Yaklaşım", *Yayınlanmamış Yüksek Lisans Tezi*, ODTÜ, Şehir ve Bölge Planlama Bölümü, Ankara, 1978, s.9
For the original classification, see: Meyerson, M., Banfield, E., *Politics, Planning and the Public Interest*, Free Press, 1955, p.322
11. Held, Virginia., *ibid.*, pp.49-162
12. Held, Virginia., *ibid.*, p.49
13. Held, Virginia., *ibid.*, p.53
14. Held, Virginia., *ibid.*, p.57,
İlgen, Ali., *ibid.*, s.13
15. Held, Virginia., *ibid.*, p.64
16. Held, Virginia., *ibid.*, p.70
17. Held, Virginia., *ibid.*, p.100
18. Held, Virginia., *ibid.*, p.105
19. Held, Virginia., *ibid.*, p.105
20. İlgen, Ali., *ibid.*, p.33
"According to Friedmann, those, who support their actions with the increase of Public Interest are hiding the real effort to increase their private ones...Being impartial in the race of Rabbit and Turtle will guarantee the Rabbit to win the race."
Original source: Friedmann, John., "The Public Interest and Community Participation", *JAIP*, Jan., 1973, p.2., p.5
21. Held, Virginia., *ibid.*, p.135
22. Held, Virginia., *ibid.*, p.137
23. Held, Virginia., *ibid.*, p.147
24. Held, Virginia., *ibid.*, p.148
25. Tekeli, İlhan., "Mülkiyet Kurumu, Kamu Yararı Kavramı ve İmar Planları Üzerine", *Planlama*, 88/2, Aralık 1988, s.10

26. Tekeli, İlhan., **Planlama**, ibid., s.10
"This has been started to be verified as if the planners were trying to emphasise their values to the society as public interest ? Whether the public interest is a camouflage for the individual interests ?"
27. Declaration of Human Rights, item 6: "The Law is the representation of common will."
28. Akıllıođlu, Tekin., ibid., ss.10-11
29. Akıllıođlu, Tekin., ibid., s.3
30. Akıllıođlu, Tekin., ibid., s.4
31. Akıllıođlu, Tekin., ibid., s.4
32. Akıllıođlu, Tekin., ibid., s.6
33. Dođanay, Ümit., "Toplum Yararı ve Kamu Yararı Kavramları", **Mimarlık**, Temmuz 1974, s.5
34. Keleş, Ruşen., "Kıyılar ve Toplum Yararı", **Yayınlanmamış Bildiri**, Kıyılar Kollokyumu, 6-8 Aralık 1983, Trabzon
35. Akıllıođlu, Tekin., ibid., s.6
36. Australian Government, **Urban Land Problems and Policies**, Department of Urban and Regional Development, Canberra, 1974, p.3
37. Australian Government, ibid., p.3
38. Tekeli, İlhan., "Mülkiyet Kurumu, Kamu Yararı Kavramı ve İmar Planları Üzerine", **Planlama**, 88/2, s.7
Here, Tekeli explains the critique of ownership mechanism which has been developed or identified after the institutionalization of Liberalist ownership which also formed social relationships in the society. And the liberalist system could not overcome the unequitable treatment of welfare.
39. Tekeli, İlhan., ibid.,s.6
İlhan Tekeli deals with the ownership concept from the historical point of view of the development and meaning of ownership concept in a social structure. (from feudal to liberalist point of view) In this thesis, as it is mentioned in chapter 1, the meaning of public will be evaluated more than the general development of ownership mechanism. .
40. Tekeli, İ., Gülöksüz, Y., Okyay, T., **Gecekondulu, Dolmuşlu, İşportalı Şehir**, Cem Yay., İstanbul, 1976, s.303
41. Akçura, Tuđrul., **İmar Kurumu Hakkında Gözlemler**, ODTÜ, Ankara, 1982, s.42

42. Roweis, T. S., "Urban Planning in Early and Late Capitalist Societies: Outline of a Theoretical Perspective", **Urbanization and Urban Planning in Capitalist Society**, (Eds: M. Dear, J. Scott), Methuen Co., Ltd., NY, 1981, p.160
43. Rhind, David., Hudson, Ray., **Land Use**, Methuen, NY., 1980, p.4
44. IFHP, International Federation for Housing and Planning, **Urban Land Policy**, (Pre-congress report of the IFHP Working Party), International Congress, Liege' Belgium' 26 - 30 September 1981, p.7
45. IFHP, *ibid.*, p.7
46. IFHP, *ibid.*, p.10
47. Darin-Drabkin, Haim., **Land Policy and Urban Growth**, Pergamon Press, 1977, p.183
48. Cumhuriyet Gazetesi, 11 Temmuz 1991
 "There are serious land ownership problems in Berlin after unification. Privately owned lands in the east sector are becoming real. These lands were privately owned before the Russian invasion and the construction of the wall. In fact, ownership had been changed hands during 3rd Reich by the force of Nazis. Today hundreds of people from different places of the world are applying to new German government to get their old ownership rights. The problem on the other hand is the reallocation of currently urbanized land and its rent. For example; who really owns the Television Tower or Brandenburg Gate? The grandchildren or children of Nazis or before them old Jewish families? How to calculate the current value to be reallocated? Who will pay? The new German Public?"
49. IFHP, *ibid.*, p.11-12
50. IFHP, International Federation for Housing and Planning, **Urban Land Policy**, (Pre-congress report of the IFHP Working Party), International Congress, Liege' Belgium' 26 - 30 September 1981
51. Darin-Drabkin, Haim., *ibid.*, p.186
52. Darin-Drabkin, Haim., *ibid.*, pp.186-88

"Medeni hiçbir memlekette esbabı ictimaiye ve tabiiyeden naşi arazide vukubulan fevkalade tezayüdü kıymet alelittlak eshabın malı addolunamaz. Nefselemirde bu kıymet doğrudan doğruya beldelere veyahut cemiyetlere aittir. Birçok hükümetlerde bu gibi mümtaz araziye mutadın 8 - 10 misli vergi tarhedilmekte veyahut arazii mezkune bilahare yüksek fiyatlarla satılmak veyahut uzun müddetlerle icara verilmek suretiyle belediyeler tarafından istimlak olunmaktadır. Esasen kıymeti asliye eshabına tediye kılındığı cihetle, ortada mağdur olan kimse yoktur. Vesaiti müştereki ictimaiyeden mütevellit müstesna kıymetlere cemiyetin sahib olmasından daha meşru bir hak mutasavver değildir."

Fehmi Yavuz, Ankara'nın İmanı ve Şehirciliğimiz, SBF. Yay., Ankara 1952, ss. 17-19

"Medeni hiçbir ülkede, toplumsal ve doğal nedenlerden ötürü topraklarda görülen olağanüstü değer artışı genellikle mülk sahiplerine bırakılmaz. Bu doğrudan doğruya belediyelerin, ya da toplumun olur. Birçok hükümetlerde bu gibi ayrıcalıklı topraklara alışılanın 8 - 10 katı vergi kesilmekte, ya da sözkonusu topraklar sonradan yüksek fiyatlarla satılmak ya da uzun süreli kiraya verilmek üzere belediyeler tarafından kamulaştırılmaktadırlar. Başlangıçta gerekli olan değer ilgiliye ödendiğinden haksızlığa uğrayan da yoktur. Toplumun ortak çabalarından doğan ayrıcalıklı (müstesna) değerlere toplumun sahip olmasını yasalar, ahlak kuralları ve kamuoyu doğru bulur."

Fehmi Yavuz, Kentsel Topraklar, SBF. Yay., Ankara 1980, s.27 (583 sayılı '24 Mart 1924' "Ankara'da İnşası Mukarrer Yeni Mahalle İçin Muktezi Yerler İle Bataklik ve Mergazi Arazinin Şehremanetince İstimlakı" hakkında özel kanun hazırlanması için tartışmalardan)

CHAPTER 4

4. CONCLUSION: PUBLIC LAND IN PLANNING, THE NEED FOR COMPREHENSIVE AND DYNAMIC PUBLIC LAND PLANNING AND MANAGEMENT POLICY

(a theoretical discussion with reference to Planning Theory)

At the end, a theoretical discussion of current planning institution and its tools with reference to the problematic situation of Urban Public Land seems necessary. From a basic point, almost all Planning Theory discussions deal with the questions of What, How and (sometimes) Why. Here, we can start with a quick overview of what we have had beginning from the first chapter.

Main discussions of this chapter is constructed on the questions of how to plan, and for whom we are planning, who really use the public land, and why to plan (which is comprehensive enough to cover all other scale questions) in a general sense. On the other hand, **unidentified nature** of the concepts; first, Public Interest, then Land and Land Use Theory always make difficult to reach the **properly drawn, applicable definitions** which could be used at every stage of planning activity for the public.

"Though planning theory has provided planners with numerous models of how, it has given only meager attention to the development of models describing why."¹

Here, Moore strongly pointed out that the development of a comprehensive theory which explains the rationale for planning in terms which are intelligible to both practising planners and the public, for whom the planner is planning², is important. (At this point, the definition of planning gains importance as well.) Is planning a supervising-profession for engineering works? or is it the writer of alternative future scenarios at the very top scale, for the public (sometimes despite of public)? or can it be identified as "the use knowledge to modify certain conditions so as to increase the likelihood of achieving a desired result"³ Definition is important as long as, the justification depends on it. In fact, all planning activities are linked by a concern for providing and allocating public goods and argues that a theory of "public goods" is automatically a theory of the justification of planning.

"..Unfortunately for planners, that presumption of *planning is good and necessary*, is not always shared by the public for whom they are planning. Planning encroaches on what traditionally have been individual rights. Those reluctant to have their freedoms constrained by the dictates of planners argue that planning unambiguously reduces their personal welfare and probably reduces welfare of society as a whole. Other professions, such as medicine and engineering, are not plagued by the incredulity of their clients. In fact, the presumption is in the opposite direction: doctors and engineers are assumed to provide benefits to society and are encouraged to practice their professions. ... Planners are not supported by such a consensus. They are ambroiled in a conflict about the basic legitimacy of planning. Their supposed constituents are dispersed among the continua between plan and no-plan, between public and private, between socialism and capitalism."⁴

In another word, what is the necessity of interventions to existing order? The answer may be given in several ways. "It is a fact that human settlements have been intervened to shape in the history. Physically, developing Western city started to force its existing macroform limits in early 20th century."⁵ So, our first answer is the need for

physical regulations according to the developing technology and to the needs of new socio-economic relations. This is a basic need. And second, developing economic order creates the market to be necessarily intervened. Otherwise values generated on "urban" will be shared unequally or market mechanism solves this problem according to its own rules. That means, the distribution of publically generated value, will be realized in a way which is not "just and equitable" for the public. Planning, on the other hand insists on that, it is necessary to achieve this just and equitable distribution or reallocation especially where private landownership constitutes a basic element of the society's values. ⁶

".. The inability of the market mechanism to allocate resources efficiently when externalities are present has posed a major problem for economic theory. From a policy viewpoint, it has provided a rationale for public interference with the market mechanism and it has also led into the thorny question of who should be responsible (and how) for the production of public goods. ... Almost all extensive literature has focused on allocation problems and very little attention has been paid to distributional effects, mainly because any theory of the distribution of external costs and benefits involves these ethical and political judgements about the best distribution of income which most of us prefer to avoid. The economic theory of external effects does not tell us all we want to know when it comes to distribution"⁷

The role of planning here is to achieve "social justice".

"The concept of social justice is not an all inclusive one in which we encapsulate our vision of the good society. It is rather more limited. ... Social justice is a particular application of just principles to conflicts which arise out of the necessity for social cooperation in seeking individual advancement."⁸

How does Planning reallocate these values for the sake of public? After these market explanations, let us return to our main subject: Public lands are indispensable elements/tools of planning institute to control and guide metropolitan development. But there exist some problems for the proper use of them. If we summarize the abstract case, we get the question of; how to classify or measure

the "proper use" for the terms which (themselves) are "unproperly" defined.⁹ In the concrete case, the speed and acceleration of rapid urbanization have a direct effect on the transformation process. The effects of developing world will mostly be affective on the developing countries's urban areas. How does Planning regulate and organize these trends for the sake of public?

"Planning literature recurrently distinguishes between *substantive and procedural* planning theories (Hightower 1969, Faludi 1973). Substantive theories in planning are concerned with *what* -the phenomena which planning does or should influence. Procedural theories of planning are concerned with *how* -the process of planning. Neither group of theories is concerned with *why* - the reasons planning may be a legitimate use of public resources. The very fact that these theories exist and are concerned primarily with observable and measurable phenomena implies that somewhere it already has been decided that these types of planning activities are justified. Substantive theories assume the issue has been resolved previously. An example of procedural theories can be found in the debate concerning the relative merits of a planning document as opposed to a planning process. *The Master Plan was the planner's wooden stake and silver bullet whose magical powers achieved their ultimate expression and respectability in the 1960s.*"¹⁰

In general, planning has been justified as a discipline which guards the public interest. Planners are assumed either, to possess values of social utility that they should be charged with the responsibility of societal design, or to have some special ability which allows them to interpret the multitude of individual preferences and synthesize them into a collective public interest.¹¹

After these discussions, our investigations have to be directed to the existing procedure of planning with reference to public land use. Main subjects of transformations which will be evaluated in Turkish Planning Institute appear as follows:

- * the transformation process of public land
 - public - public transformations
 - public - private transformations
 - private - public transformations
 - public - private -then- public transformations (late planning intervention)

- * existing institutions and their efficiency
 - lack of synchronization between planning authorities (municipalities, SPO (DPT), Land Office)
 - lack of detailed reliable land-data base

- * existing legal perspective and its efficiency
 - expropriation law
 - taxation - compensation

First it is useful to take a rapid-look at the ownership structure shown at figure 4.2., and the legal procedure of figure 4.1.12

Privately owned lands can be transferred between private individuals in the forms of selling at market, inheritance and donation. They may be bought, expropriated or donated to public. Public land is also possible to be transferred to private with sellings and conditional-sellings or accomplished facts such as, legalization of Squatters. Within the Public Institutions, public land -in fact- the use right can be transferred.¹³ The legal perspective is possible to obtain as shown at table 4.1.

Now, let us see the sub-headings concerned above as main subjects of transformations in details with examples and the problems caused by lack of public land use policies of neither governmental nor local scale. Transformation of public land between public institutions is an important subject especially for metropolitan scale development decisions. A defined top level goal of (such as; metropolitan green belt) development plan, is mainly supported by the location and use of public lands within the plan boundaries. But the changes of ownership (in the meaning of use rights by public institutions) affect the plan decisions. In fact the appropriation

PUBLIC LANDS

LANDS UNDER THE DISPOSAL
AND AUTHORITY OF STATE

.DORMANT LANDS
.SEA SHORES
.NATURAL RESOURCES

COMMON GOODS OUT OF
MUNICIPAL BORDER

PRIVATE GOODS OF PUBLIC
(PRIVATE GOODS OF THE STATE)

.NON-APPROPRIATED PRIVATE GOODS
OF PUBLIC TREASURY
.APPROPRIATED GOODS OF
PUBLIC TREASURY
.LANDS OF THE PUBLIC INSTITUTIONS
NOT BELONG TO GENERAL BUDGET

LANDS OWNED BY URBAN
DEVELOPMENT INSTITUTIONS

.LAND OFFICE
.PROPERTY AND CREDIT BANK

MUNICIPALITY OWNED LANDS

.MUNICIPALLY USED LANDS
.COMMON GOODS
.LAND USED TO GUIDE URBAN DEV.
.EXPROPRIATIONS (LAW 775)

PRIVATE LANDS

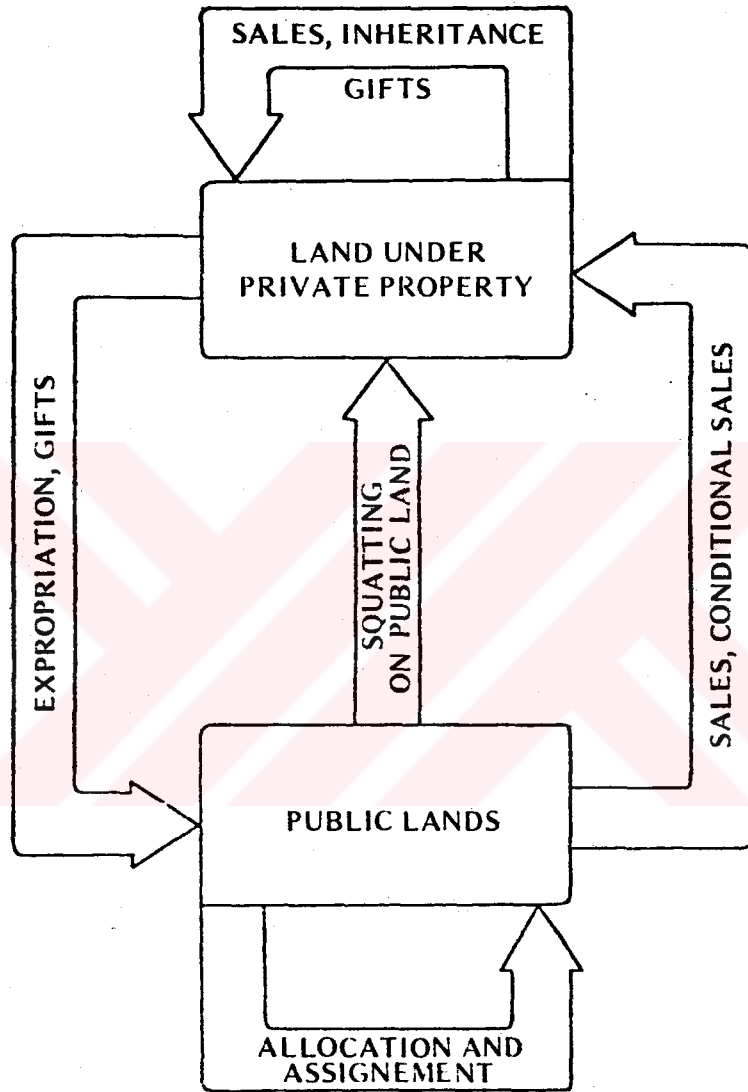
SQUATTERS

PRIVATE GOODS

.RURAL
.URBAN

SHARED PRIVATE GOODS

FIGURE 4.1. TYPES OF URBAN LAND OWNERSHIP
SOURCE: ABŞB, ANKARA 1985 - 2015, ODTÜ ŞBPB ÇALIŞMA GRUBU, ANK., 1987,S.88



TRANSFER MECHANISMS IN LANDOWNERSHIP

Figure 4.2.

Transfer Mechanisms of Land Ownership
 source: ABŞB, Ankara 1985 den 2015 e, ODTÜ ŞBPB Çalışma Grubu,
 Ankara 1987, s.88

TABLE 4.1. LEGAL PERSPECTIVE OF URBAN LAND OWNERSHIP TRANSFERS

TYPES OF LAND	LEGAL INSTRUMENTS
<p>A. PUBLIC LAND</p> <p>A.1. <u>Lands under the disposal and authority of State</u> Dormant Lands, Sea-shores, natural Resources</p> <p>Forests</p> <p>Ancient Remains</p>	<p>Civil Law i/641 Law 6785 ad.i/7</p> <p>Constitution i/169 Forestry Law 6831 i/17-47</p> <p>Law 1710 i/3</p> <p>"That they can not be subject of any private ownership"</p>
<p>A.2. <u>Common Goods Out of Municipal Border</u></p> <p>A.3. <u>Private Goods of Public (Private Goods of the State)</u></p>	<p>can be sold: State Ajudication Law 2886 i/74 non-appropriated private goods of public trasury appropriated private goods of public trasury dated 1983 (agreement forced of law) 178 Lands of the Public Institutions not belong to general budget</p>
<p>A.4. <u>Lands owned by Urban Development Institutions</u></p>	<p>Land Office dated 1969 law 1164 Property and Credit Bank</p>
<p>A.5. <u>Municipality Owned Lands</u></p> <p>Municipally used lands</p>	<p>Municipality Law 1580 i/159-160, i/19/6, i/15-68 Housing and Squatter Laws 5218, 5228, 6188, 7367, 775</p>

TYPES OF LAND	LEGAL INSTRUMENTS
<p>Common Goods Land used to guide Urban Development</p> <p>B. PRIVATE LANDS</p> <p>B.1. <u>Squatters</u></p> <p>B.2. <u>Private Goods</u> Rural Urban</p>	<p>Expropriations Law 775</p>

of a public property can only be annulled with the same legislation which constructed it. After the annulment, this public property becomes the private property of Public Treasury (so, it can be sold) or it is appropriated to another public use." ¹⁴ The problem on the other hand arises in the interdependence of decisions taken by different authorities in the metropolitan scale. "Public lands appropriated to the ministry of defence are possible to be sold according to a special Law dated 1961, in Ankara" If the Ministry of Defence decides to sell its lands, it will directly affect the land use scheme of the proposed plan. Here, the problem of ownership is possible to be solved by Land Office; the problem on the other hand, is the existence of no alternative, short and long term supportive-legislative Public Land Use Policy. The transfer may occur in another form like in the case of, AOC. Atatürk Experimental Farm's Land has started to change hands beginning from 1938 (detailed information can be referred to Annex 2) by military organizations. On the other hand, today, neither provincial nor metropolitan municipalities have this kind of policy even to locate any public investment. Decisions are taken independently and local models are tried to be developed.

Urban Land Policy is a comprehensive subject with its components. They are: (definitions by HABITAT, Vancouver Conference, 1976)

- Land Resource Management
- Control of Land Use Changes
- Recapturing Plus Value
- Public Ownership
- Patterns of Ownership
- Increase in Usable Land
- Information Needs

The logical and practical link between goals and instruments is the most important point. Today, it seems as the main problem in Turkish Planning Case. Unless the clear and well defined goals in short and long terms are developed, the

partial solutions and generation of unique models collapse, institutions transform in a negative direction.¹⁵

Major handicaps can be summarized as the interdependency of decision takers in terms of public institutions. There exist no supra-level body for the synchronization of public land use decisions in the planning process, or procedure. In fact the procedure used today can be named "comprehensive", but, in a sense, away from "flexibility". Harmony can only be obtained with more "structural" procedures. If we do not deal with the usual personal and budget sources for a while, the lack of reliable interactive data-base and legal structure is the other point missing in planning institutions. Existing legal base is not capable enough to solve interactive problems related with land and ownership. There is a need of more interactive, institutionalized legal procedure support to land policy.

It is clear to see that "public interest" is an "abstract" concept. Urban Development Plan is the tool which inspires the soul to make the concept "concrete" and "applicable" in reality. As it is true for the Law; that "every law brings justice" definition is static and not applicable; "plan is not the public interest alone if it has no policy and instruments which support it".

CHAPTER 4

NOTES

1. Moore, Terry., "Why Allow Planners to Do What They Do ?, A Justification from Economic Theory", AIP Journal, Oct., 1978, p.387
2. Moore, Terry., *ibid.*, p.387
3. Moore, Terry., *ibid.*, p.387
4. Moore, Terry., *ibid.*, p.388
5. Günay, Baykan., "Farklı Planlama Yaklaşımları, Şehir Planlama Eğitimi İlişkileri", *Yayınlanmamış Bildiri*, Türkiye 13. Dünya Şehircilik Günü Kollojyumu, İstanbul, Kasım 1989, s.2
6. Darin-Drabkin, Haim., *Land Policy and Urban Growth*, Pergamon Press, Oxford N.Y., 1977, p.416
"The new approach was formulated by Fred Bosselman and David Callies in the report prepared for the council on Environmental Quality as *The Quiet Revolution in Land Use Control*. In this report they underline the new approach in the following words:
If one were to pinpoint any single predominant cause of the quiet revolution it is a subtle but significant change in our very concept of the term *Land* , a concept that underlines our whole philosophy of land use regulation. Land means something quite different to us now than it meant to our grandfather's generation. Its new meaning is hard to define with precisions, but it is not hard to illustrate the direction of the change. Basically, we are drawing away from the 19th century idea that land's only function is to enable its owner to make money. ... The idea that land is a resource as well as a commodity may appear self-evident, but in the context of our traditions of land-use regulation it is a highly novel concept. Our existent systems of these land use regulation were created by dealers in real estate interested in maximizing the value of land as a commodity. ... The traditional answer to the question, *Why regulate land use?* was to *maximize the land values.* "
7. Harvey, David., *Social Justice and the City*, Arnold Edward Publishers, London 1973, p.59
8. Harvey, David., *ibid.*, p.97

9. Rhind, David., Hudson, Ray., **Land Use**, Methuen, NY, 1980, p.4
"Proper use may be variously interpreted: in the USA, information on land use is a statutory requirement for various purposes under the National Environmental Policy Act, the Coastal Zone Management Act, the forest and Rangeland Renewable Resource Protection Act etc."
10. Moore, Terry., *ibid.*, p.389
and Günay, Baykan., *ibid.*, s.3
"...and planner was the brave defender of public interest, on the other hand public participation was not concerned."
11. Moore, Terry., *ibid.*, p.390
"Planners are not ignorant of the fact that planning only can be justified ultimately in terms of net social welfare; *does planning provide benefits to society that exceed the cost of the resources planners consume?* (Altschuler 1965, Branch 1970, Skjei 1976) They have not avoided purposively the central question -they inadvertently have assumed it away. Is planning's worth worth to the public greater than its costs? Yes, answer the theories, because it is rational, efficient in the public interest and expands personal freedom. In the absence of empirical evidence, this response is clearly tautological. Planning literature has not provided an adequate theory from which to begin an empirical investigation of planning's contribution to public welfare"
12. Tekeli, İlhan., "Kent Toprağında Mülkiyet dağılımı ve El Değişirme Süreçleri", Ankara 1985'den 2015'e, (ODTÜ ŞBPB Çalışma Grubu), ABŞB, EGO, 1987, s.97-104
13. Tekeli, İlhan., *ibid.*, s.89-90
14. Tekeli, İlhan., *ibid.*, s.89-90
15. Such as Land Office (Arsa Ofisi). This institution was established to solve all the problems related with urban land. And all the goals and instruments are possible to be found in its legal structure. But it has been transformed as a part of Ministry of Finance and used as an institution to sell public lands in free market to create financial resource for the ministry. In the legal perspective, municipalities have no effect on these sellings.

TABLE A.I.1. LAND POLICY INSTRUMENTS OF IFHP IN TURKISH CASE

	TURKISH CASE	EXISTING LEGAL TOOL
A. PLANNING INSTRUMENTS		
Actions taken on the basis of planning decisions		
1. Public planning monopoly	UNCOORDINATED	DPT, MUNICIPALITIES
2. Building prohibitions, restrictions	PLAN DECISIONS	
B. TAXATION INSTRUMENTS		
Actions taken through the imposition of charges		
3. Property taxes on real estate	EXISTING	DEFINED FOR 5 YEARS PERIODS
4. Annual site value taxes	NOT EXISTING	
5. Taxes on the increment in land value	NOT EXISTING	
6. Income taxes on land	NOT EXISTING	
7. Taxes on commercial sale of land	NOT EXISTING	
8. Taxes on building rights	NOT EXISTING	
9. Penalty taxes on vacant lots	NOT EXISTING	
10. Exemption from taxes when land is sold to public authority	PARTIALLY	IF THE PROPERTY IS REGISTERED CULTURAL REMAIN
11. Land transfer duties and taxes	PARTIALLY	AMOUNT IS SO SMALL
12. Development charges (planning charges)	NOT EXISTING	
13. Collection of servicing or betterment charges	PARTIALLY	"ŞEREFİYE"

<u>C. MARKET INSTRUMENTS</u>	TURKISH CASE	EXISTING LEGAL TOOL
Following the rules of the free market compensating the owners with usual market value		
14. Land acquisition on the open market	EXISTING	ARSA OFFICE
15. Exchange of land	EXISTING	
16. Selling of land	EXISTING	
17. Making use of private, semi-public or public development companies	EXISTING	
18. Advance servicing of development land	PARTIALLY	SEMI PUBLIC COMPANIES
<u>D. FINANCIAL SUPPORT INSTRUMENTS</u> Loans and Subsidies granted or regulated by public bodies		
19. Land acquisition loans or subsidies to local authorities	NOT EXISTING	SMALL SCALE IND. DISTR.
20. Special conditions for loans for land acquisition	PARTIALLY	
21. Land price conditions for housing loans	NOT EXISTING	
22. Compensation payment by state or municipal bonds	NOT EXISTING	
23. Nationalization of urban land	NOT EXISTING	
24. Municipalization of urban land	NOT EXISTING	
25. Compulsory handing over of streets and other public areas to the local authority without compensation	EXISTING	
26. Recapture of unearned increment in expropriation	NOT EXISTING	
27. Limitation of land acquisition rights	EXISTING	"ŞERH"

	TURKISH CASE	EXISTING LEGAL TOOL
28. Regulation of land prices	NOT EXISTING	
29. Limitation or cancellation of constitutional building rights	PARTIALLY EXISTING	AS PLAN DECISION NOT AN INSTR
30. Expropriation		
31. Pre-emption right	PARTIALLY EXISTING	AS PLAN DECISION NOT AN INSTR
32. Compulsory replotting		18TH ARTICLE
33. Land division measures to support plan implementation	PARTIALLY EXISTING	AS PLAN DECISION NOT AN INSTR
34. Official building appeal regarding unbuilt lots	PARTIALLY EXISTING	ARSA OFF. AND 775. LAW
35. Laws to protect areas of natural beauty and of historic value		
36. Special regulations for specific urban areas	PARTIALLY EXISTING	
37. Land banks (at national/regional/local levels)	PARTIALLY EXISTING	ARSA OFFICE
38. Land pooling		
39. Leasing of land	PARTIALLY EXISTING	ARSA OFF. AND 775. LAW (25 YR
40. Development agreements	PARTIALLY EXISTING	UNIQUE MODELS
41. Necessary information on land and land transactions (land register)	NOT EXISTING	
42. Proper valuation of urban land	PARTIALLY EXISTING	NO SPECIALIZATION
43. Competent staff for urban land policy	NOT EXISTING	NO SPECIALIZATION
44. Effective administration in land questions	NOT EXISTING	
45. Land policy programs for local authorities	PARTIALLY EXISTING	
46. Informations on the goals and measures of urban land policy	NOT ENOUGH	
47. Research in the field of urban land policy	NOT EXISTING	

METROPOLITAN ANKARA MILITARY INSTITUTIONS LAND USES

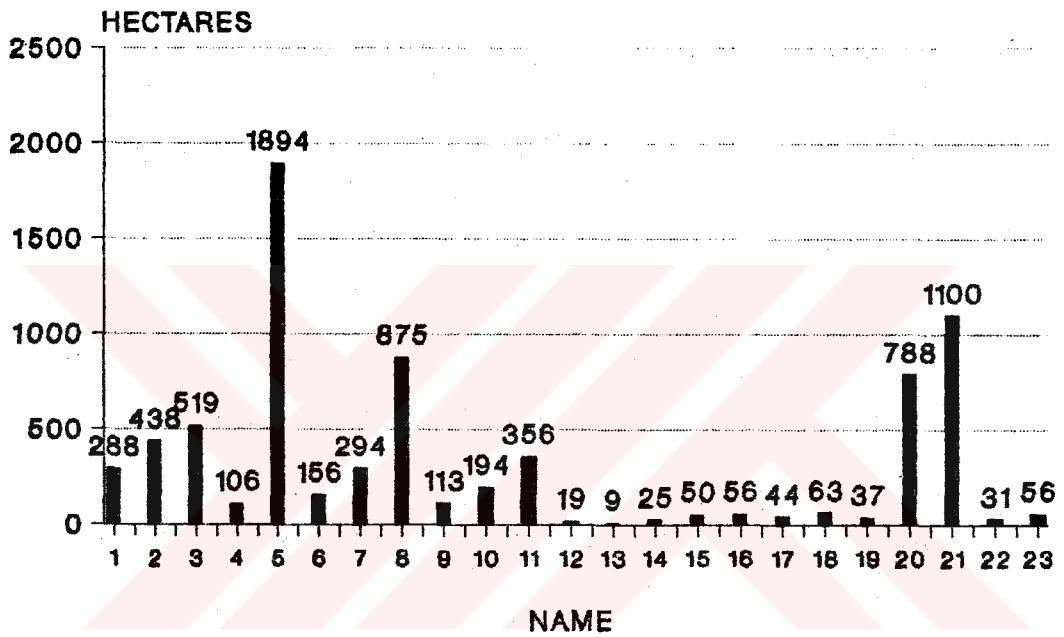


Figure A.II.1. Land Uses by Military Organisations in Ankara

LIST OF LAND OWNED BY MILITARY INSTITUTIONS

1. Etimesgut Airport
2. Jandarma (Güvercinlik)
3. Jandarma (İncek)
4. Radar
5. Zırhlı Birlikler Eğitim Tümen Komutanlığı
6. GATA (Gülhane Military hospital and medical academy)
7. 50001 Mamak Ana Mühimmat Deposu
8. Mamak Muhabere Okulu (Communication Tech. School)
9. Harita Genel Komutanlığı (Beytepe)
10. Sincan
11. Harb Okulu (Military Academy) - Deniz Kuvvetleri (Navy Headq.)
12. Kara Kuvvetleri Komutanlığı (Land Forces Headq.)
13. Jandarma Lojmanları (Anittepe)
14. Hipodrum karşısı
15. Muhafız Alayı Atış Poligonu (Yeşilkent)
16. Muhafız Alayı Atış Poligonu
17. Muhabere Okulu (Çukurca) (Communication Tech. School)
18. Eski Cephanelik (Eskişehir Yolu)
19. Radar (Eskişehir Yolu)
20. Mürted
21. Tüsaş
22. Gazi Ordu Evi
23. Anıtkabir

Source: Askeri Alanlar Ana Planı, Ankara BŞB., Nazım Plan Şube Müd.,
(Sorumlular: Kudret Kayı, Melek Şenses, Fulya Eren, Zeynep Konak)
Ekim 1990 - Eylül 1991

same source for figure A.II.1.

ATATURK EXPERIMENTAL FARM LAND RECORDS RESEARCH

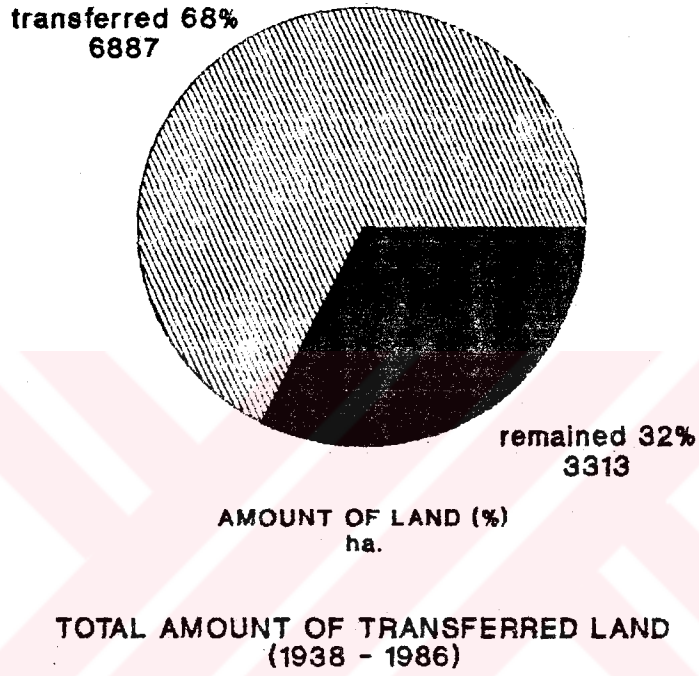


Figure A.II.2.

AOÇ Total Amount of Transferred Land
source: AOÇ, Ankara BŞB Nazım Plan Şb. MÜd. 1991
(Sorumlular: Kudret Kayı, Feza Subaşıoğlu)

ATATURK EXPERIMENTAL FARM LAND RECORDS RESEARCH

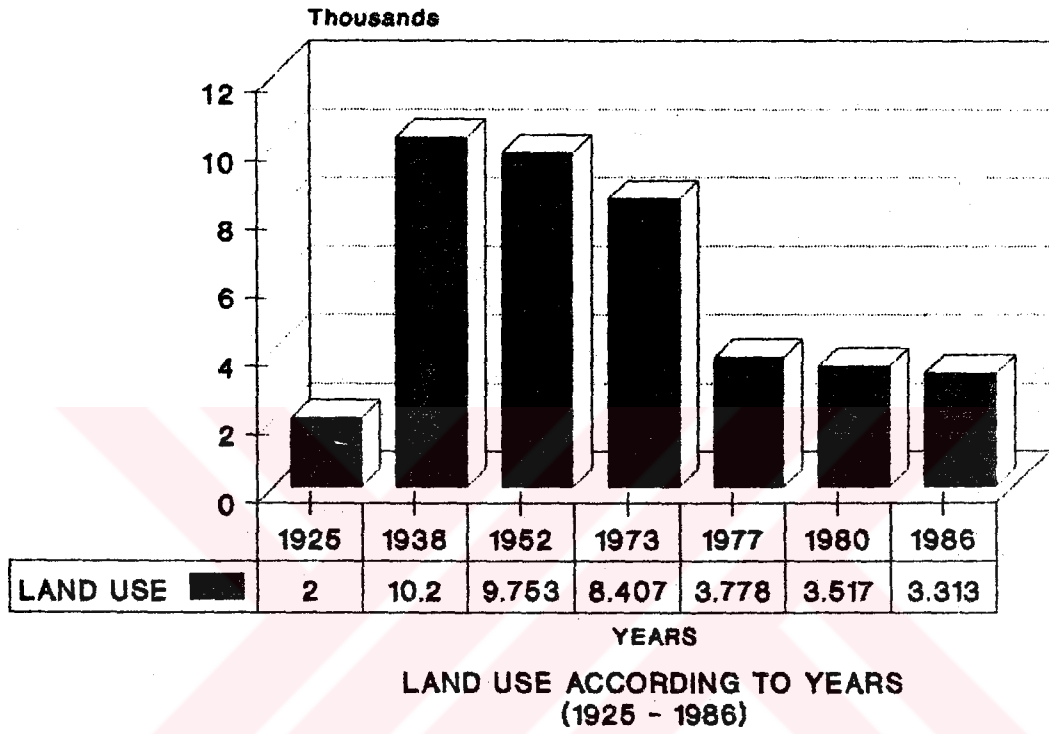


Figure A.II.3.

AOÇ Land Use According To Years

source: AOÇ, Ankara BŞB Nazım Plan Şb. MÜd. 1991

(Sorumlular: Kudret Kayı, Feza Subaşıođlu)

ATATURK EXPERIMENTAL FARM LAND RECORDS RESEARCH

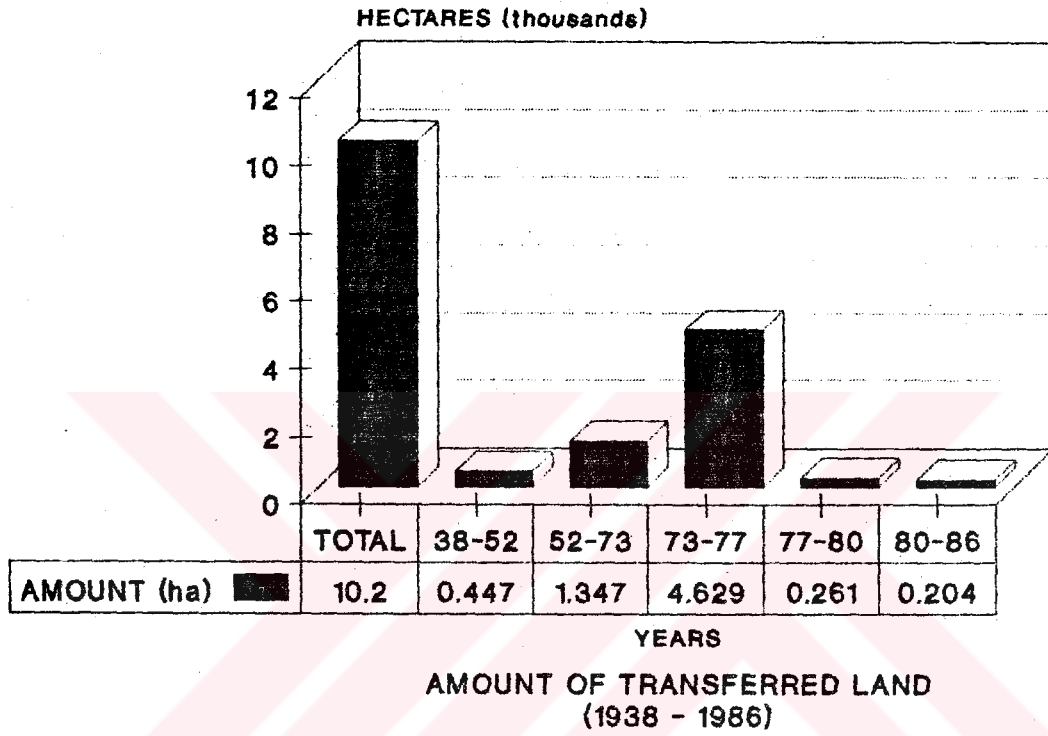


Figure A.II.4.

AOÇ Amount of Transferred Land

source: AOÇ, Ankara BŞB Nazım Plan Şb. MÜd. 1991

(Sorumlular: Kudret Kayı, Feza Subaşıoğlu)

ATATURK EXPERIMENTAL FARM LAND RECORDS RESEARCH

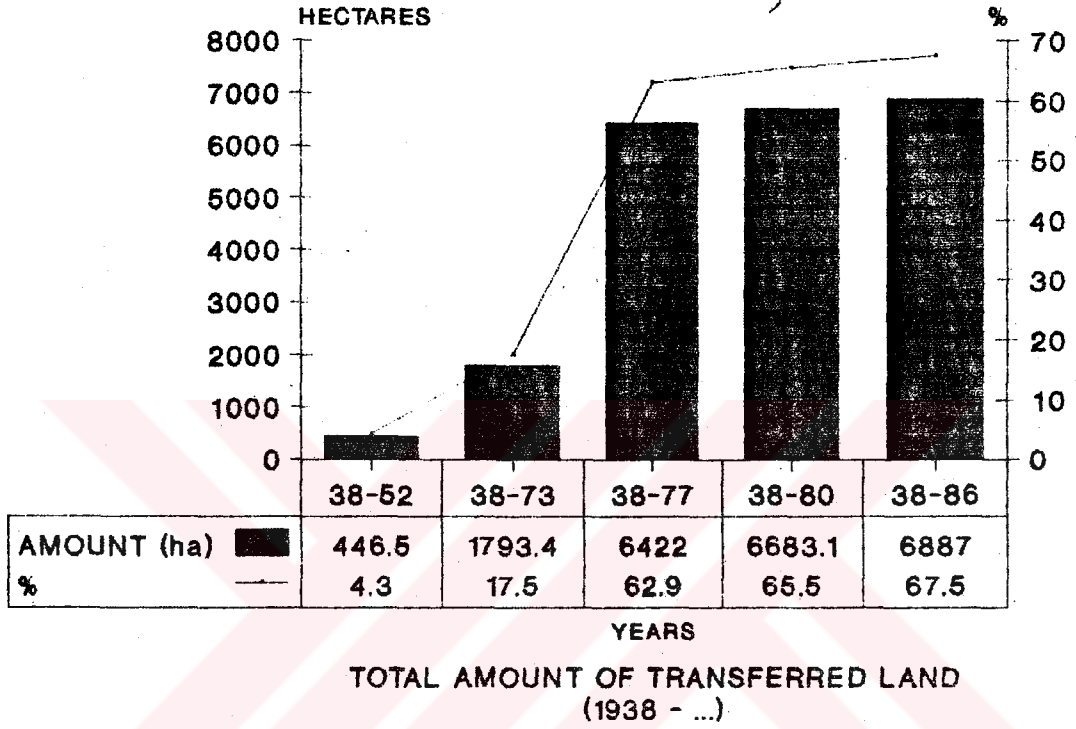
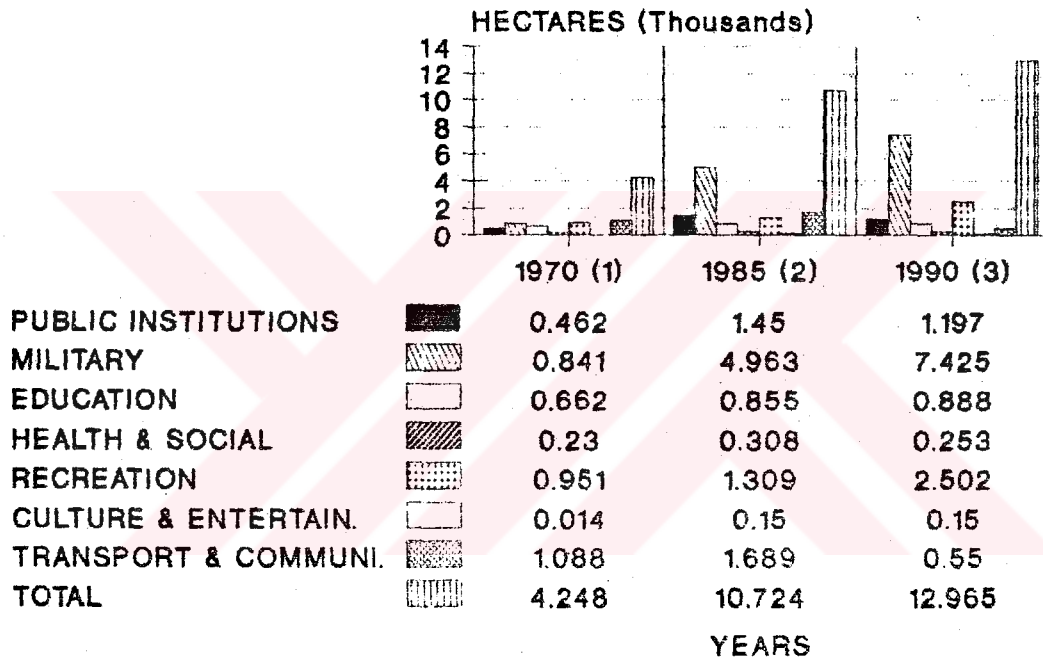


Figure A.II.5.

AOÇ Total Amount of Transferred Land and %
source: AOÇ, Ankara BŞB Nazım Plan Şb. Müd. 1991
(Sorumlular: Kudret Kayı, Feza Subaşıoğlu)

METROPOLITAN ANKARA PUBLIC INSTITUTIONS LAND USES



Source: ABSB, Ank. 1985 - 2015, ODTU
Çalışma Grubu, 1987, s.41

Figure A.ii.6.

Public Land Use in Ankara

source: ABŞB, Ankara 1985 den 2015 e. ODTÜ ŞBPB Çalışma Grubu,
Ankara 1987, s.41

INSTITUTIONAL USE	1970 (1)	1985 (2)	1990 DEVELOPMENT PLAN PROPOSAL(3)
PUBLIC INSTITUTIONS (*)	462.06	1450.00	1197.00
MILITARY USE (**)	841.50	4962.50	7425.00 (***)
EDUCATION	661.68	855.43	888.00
HEALTH AND SOCIAL INST.	230.10	308.00	253.00
RECREATION OPEN SPACES AND SPORT (****)	950.60	1308.75	2502.00
CULTURAL AND ENTERTAINMENT ACTIVITIES	14.35	150.00	150.00
TRANSPORTATION AND COMMUNICATION ACTIVITIES	1087.79	1689.00	550.00
TOTAL (A) (B)	3406.58 4248.08	5761.13 10723.63	5540.00 12965.00

PUBLIC LAND USE IN ANKARA

- (1) 1970 Land Use includes 33 Urban sub-regions. (Ankara Nazım Plan Şeması Özet rapor, s.72, Tablo.6.2.32)
- (2) 1985 Land Use Survey includes 72 sub-regions of transportation.
- (3) Proposed land uses which are contributed in 27 planning sub-regions of total 52 in 1990 Development Plan Schema. (Ankara Nazım Plan Şeması Özet rapor, s.27, Tablo.2.2.2)
- (*) International Level Services are included.
- (**) ABŞB İmar Dairesi, Nazım Plan Şube Müd., Askeri Alanlar Ana Planı, 1991, (K. Kayı, M. Şenses, F. Eren, Z. Konak)
- (***) 1990 situation, not proposed.
- (****) Parts of Atatürk Experimental Farm within urban macroform are also included. (649 hectares)
(AMANPB Nazım Plan Raporu, s.317, tablo.6.2.8)
- (A) Excluding Military Uses
(B) Including Military Uses

(please refer to fig.4.8)

SOURCE: ABŞB, ANKARA 1985'DEN 2015'E, ODTÜ ŞBPB ÇALIŞMA GRUBU, ANK, 1987, S.41

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GLOSSARY

fels. felsefe
huk. hukuk
lat. latince

abstract	(fels) soyut
act	(huk) kanun, birşeye toplumsal meşruiyet veren
action for nullity	(huk) iptal davası
accomplished fact	(fait accompli) emrivaki
adjudication	ihale
a fortiori	(lat) daha kuvvetli bir sebeple, (huk) emsalen
agrarian	tarımsal, tarım kesimine yardım amaçlayan
agreement forced of law	kanun hükmünde
amendment	islah, (huk) kanuni yolla yapılan değişiklik
annulment	iptal
appropriation	tahsis
cause finale	asıl hedef
civil law	medeni kanun
Codé Napoleon	1804 yılında yürürlüğe giren Fransız medeni kanunu
common goodness	(Le Bien Commun) ortak iyilik, 1789 devrimi öncesi kabul gören kamu yararı görüşü
common interest	(~social interest) ortak yarar (~toplum yararı)
common interest theories	ortak yararcı teoriler
concrete	(fels) soyut
Constitution	anayasa
constitutional	anayasal, yasa ile korunan

derelict land	bir dönem kullanılmış, kentsel transformasyona adapte olamadığı için terkedilmiş, konumsal önemini yitirmiş, boş kent toprağı, (huk) emsali metruke
donation	bağış
dormant land	hiç kentsel kullanıma açılmamış, yapılaşmamış toprak
inheritance	veraset
juridical	(huk) adli
jurisprudence	(huk) hukuki, hukuksal (açıdan)
jurist	hukukçu, hukuk uzmanı
just and equitable	hakça, adilane
Le Bien Commun	ortak iyilik, (bkz: common goodness)
legislator	(huk) kanun yapıcı, yasa koyucu
L'interet General	1789 devrimi sonrası ortak iyilik (le bien commun) görüşünün yerini alan rasyonel kamu yararı görüşü, çağdaş kamu yararı görüşlerinin temeli
public domain	kamu arazisi, (huk) halkın malı
public interest	kamu yararı
public treasury	hazine
public wealth	kamu huzuru, refahı (public weal)
preponderance theories	çoğulcu görüş teorileri

state adjudication law

devlet ihale kanunu

supreme court

anayasa mahkemesi

unitary theories

bütüncül görüş teorileri

**under disposal and
authority of State**

devletin hüküm ve tasarrufu altında

L6785, i/7

6785 sayılı kanunun 7. maddesi

L3194, add.i/8

3194 sayılı kanunun ek 8. maddesi

