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Law and Agrarian Reform in Costa Rica: The Legislative Phase (Part II)

James P. Rowles

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LAW AND AGRARIAN REFORM IN COSTA RICA: THE LEGISLATIVE PROCESS

JAMES P. ROWLES*

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V. 1960-61: THE AGRARIAN REFORM BILL BECOMES LAW

A. *Consideration of the 1958 Bill*

Following passage of the Law of Economic Encouragement on October 30, 1959 the Legislative Assembly devoted the month of November to reviewing the budget, as they do every year. Due to the fact that the Legislative Assembly does not convene in regular sessions between December and May, no further progress could be made on the land reform bill until May 1, 1960. Furthermore, in view of the vehement opposition of President Echandi, no effort was made to request that he send the 1958 draft Law of Lands and Land Settlement to special session.

Meanwhile, the impetus for agrarian reform had been increasing generally. Fidel Castro's entry into Havana in January 1959 was followed on May 17 by the first Law of Agrarian Reform in Cuba.³⁹³ Beginning in the fall of 1959, moreover, the shifting nature of the Cuban revolution became increasingly apparent.³⁹⁴ At the same time, following the return of the Democratic Action (*Acción Democrática*) Party to power in Venezuela at the end of 1958,

393. Law of Agrarian Reform of May 17, 1959; published in *La Gaceta Oficial* No. 7 (*extraordinaria*) of June 3, 1959. The FAO English translation is found in 8 *FOOD AND AGRICULTURAL LEGISLATION*, No. 2 (Vol. 1).

394. See T. DRAPER, *CASTROISM: THEORY AND PRACTICE* 117-26, 142-46, 224-26 (1965).

developments in that country were closely followed by leaders of the PLN. Ideologically, the *Acción Democrática* was close to the PLN, since many of the leaders of the Venezuelan party had spent their years of political exile in Costa Rica. Consequently, the passage of the Venezuelan Law of Agrarian Reform, on March 5, 1960,³⁹⁵ heightened the sense of urgency felt by the proponents of agrarian reform in Costa Rica, as did the continuing invasions into the countryside.³⁹⁶

When the regular legislative sessions resumed in May, the reformers acted quickly to secure passage of the 1958 bill as soon as possible. On May 2, Deputies Oduber Quirós, Volio Jiménez, and Aiza Carrilio moved that the bill be placed on the agenda.³⁹⁷ Also on May 2, the changing mood of the Deputies was revealed by the debate on the following motion:

That the Legislative Assembly request the Executive to begin negotiations with the *Compañía Bananera de Costa Rica* [United Fruit] so that the latter may return to the State, through sale or exchange, all of those lands which are no longer suitable for banana cultivation, in order [for the State] to establish colonies or agricultural, cattle-raising, or industrial cooperatives in said zones.

After heated debate, the motion was approved.³⁹⁸

On May 4, Daniel Oduber moved to amend the agenda, giving top priority to the 1958 agrarian reform bill. Citing article 48 of the Law of Economic Encouragement, Oduber stressed, in support of his motion, that no acquisition of land could be made by the *Banco Nacional* until the enactment of a General Law of Lands and Colonies. He pointed out that according to the deadline established by article 48 of the Law of Economic Encouragement, the

395. Published in La Gaceta Oficial No. 611 (*extraordinaria*) of Mar. 19, 1960. The FAO English translation is found in 9 FOOD AND AGRICULTURAL LEGISLATION No. 2 (Vol. 1). Some of the reformers, moreover, attended a conference held in Venezuela in April, 1960, sponsored by the government of Romulo Betancourt.

396. Two major conflicts in early 1959 resulted in legislative appeals to the Executive on behalf of the squatters. *Excitativa* of Jan. 27, 1959 (San Juanillo) and *Excitativa* of Jan. 30, 1959 (Sabalito). San Juanillo was a very large conflict; the appeal was approved on the motion of Villalobos Arce. Archivos de la Asamblea Legislativa, Expediente A-10, E-246; (*Excitativa*) and Expediente A-10, E-249 (*Excitativa*).

397. Archivos de la Asamblea Legislativa, Expediente No. 771 [hereinafter cited as Expediente No. 771]. The PLN had won control of the *Directorio* (President and other officials) of the Legislative Assembly on May 1. See ASAMBLEA LEGISLATIVA DE COSTA RICA, 91 ACTAS 15 [hereinafter cited as ACTAS].

398. 91 ACTAS *supra* note 397, at 27-44.

agrarian reform bill had to be passed no later than June 1, 1960.³⁹⁹ The May 4th motion, as amended, provided for immediate consideration of the Committee Report, setting first debate on the bill for Monday, May 9. As a procedural motion altering the order of the day, the motion required a two-thirds vote for approval. The motion was approved,⁴⁰⁰ however, apparently revealing the increasing strength of the reformers.

The Report of the Committee on Finance and Economic Affairs, rendered on September 18, 1958,⁴⁰¹ reached the floor of the Assembly the following day, May 5, 1960. The discussion was brief. Deputies Sotela Montagne and Cordero Zuñiga, among others, spoke in favor of approving the report, thereby indicating support outside of the ranks of the PLN. Deputy Fournier Jiménez, however, was strongly opposed to both the report and the bill. Noting that he had signed the Special Committee Report in 1959, which contained a chapter on agrarian reform copied from the present bill,⁴⁰² Fournier stated that he had been then, and continued to be opposed to those provisions. Also referring to the deadline contained in the 1959 law for passage of the General Law of Lands and Colonies, Fournier couched his opposition in the following terms:

And I agree that this law should be passed; I consider it necessary, and I shall contribute, as best I can, to securing passage of a law which is suitable for the country . . . [B]ut I cannot agree to a text which I fought against, because I considered it to be extremely dangerous for the interests of the State, and also for the system of property we now live under. For this reason, I am not going to vote for the Report.

Nonetheless, the Report was approved.⁴⁰³

After approval of the Report, Deputy Villalobos Arce moved to postpone the first debate on the bill from May 9 to May 16, in order for the Deputies to have an opportunity to study the bill closely before commencement of the debate. Oduber was initially opposed, suggesting instead that the first debate be set for May 12. Following assurances from Villalobos Arce, however, who stressed that the bill would have top priority as of May 16, Oduber agreed,

399. 91 ACTAS, *supra* note 397, at 71-74.

400. *Id.* at 74; Expediente No. 771, *supra* note 397.

401. See Part One, 14 LAW. AM. 215-17 (1982).

402. See Part One, 14 LAW. AM. 228-29 (1982).

403. 91 ACTAS *supra* note 397, at 83-86.

observing that he believed the first debate could be concluded in a week, perhaps by extending debates into the evening. The motion was approved, and first debate was set for May 16.⁴⁰⁴

The reformers were in for a surprise, however. Due to the lapse of two years without sufficient legislative action, the President of the Assembly ordered that the bill be permanently tabled, in accordance with the last sentence of article 72 of the Rules of Order (*Reglamento de Orden*) of the Legislative Assembly.⁴⁰⁵ Taken by surprise, the reformers were forced to initiate the entire process of legislative passage of the bill once again.⁴⁰⁶

B. *The 1960 Draft Law of Lands and Land Settlement*

Undaunted by the defeat of the 1958 bill on Friday, May 13, 1960, Fernando Volio worked furiously throughout the weekend re-drafting the bill. By Monday, he had a new draft ready.⁴⁰⁷ Sponsored by Volio, Enrique Obregón Valverde, Alfonso Carro Zuñiga, Daniel Oduber, Luis Alberto Monge, Jorge Villalobos Dobles, and Hernán Garrón Salazar, the new bill was introduced in the Legislative Assembly that same day, May 16, 1960.⁴⁰⁸

In the Statement of Considerations accompanying the bill, the sponsors noted that it was basically the same bill that had been presented in 1958, though certain changes had been made. The *Banco Nacional* had been chosen to perform the functions assigned to ITCO in the earlier bill,

until favorable conditions exist for the creation and functioning of the aforementioned institute, which is [the body] recommended by the best principles of administrative science for the carrying out of the reform of our system of land utilization.⁴⁰⁹

404. *Id.* at 86-89.

405. Expediente No. 771, *supra* note 397.

406. The new Committee on Agriculture and Colonies, named on May 5 — when return of the bill to committee was not anticipated — consisted of Otilio Ulate Blanco, Hernán Caamaño Cubero, and Luis Alberto Monge Alvarez. 91 ACTAS, *supra* note 397, at 76 (May 5, 1960).

407. Interview with Fernando Volio Jiménez, Nov. 20, 1974.

408. The introductory Statement of Considerations (*Exposición de Motivos*) and text of the bill are found in Archivos de la Asamblea Legislativa, Expediente No. 2825 [hereinafter cited as Expediente No. 2825], at 1-49; published in La Gaceta No. 119 of May 28, 1960. The draft Law of Lands and Land Settlement [hereinafter cited as 1960 Draft] was introduced by Volio and Oduber, and sent to the Committee on Agriculture and Colonies on May 16. Expediente No. 2825, at 50.

409. Expediente No. 2825, *supra* note 408. President Echandi was opposed to the creation of a new autonomous institution, ITCO, as he had been in 1959. See Part One, 14 LAW.

Second, the Statement noted that various proposals made by the National Geographic Institute (IGN) had been incorporated into the text of the law. Finally, attention was called to a new transitory provision establishing that a new chapter on (Administrative) Land Courts (*Tribunales Administrativos de Tierras*)⁴¹⁰ be drafted by a Special Committee to be named by the Legislative Assembly; the Special Committee was to submit its draft within one month after the promulgation of the law. The Statement continued:

These courts shall be responsible, in a preferential and specialized manner, for all of the agrarian problems which are presented in connection with the Law of Lands and Colonization which we are today proposing.⁴¹¹

In conclusion, the statement stressed that the present bill was "the result of serious study of our agrarian conditions [*realidad*] carried out by national technical experts from the Ministry of Agriculture and Industries." Finally, the sponsors expressed the following:

We are confident that the Assembly will accord the greatest consideration to our bill, and will expedite its progress because of the high purposes which it pursues, and because it is a bill with which, in essence, the Chamber and national public opinion have been familiar for more than three years.⁴¹²

In redrafting the bill, Volio included many of the provisions contained in the 1959 Law of Economic Encouragement, which represented an improvement over the 1958 draft. In addition to the changes suggested by the National Geographic Institute

AM. 220-21 (1982).

410. Administrative courts form a separate branch of the judiciary in Costa Rica. Their decisions should be generally subject to review on cassation to the Supreme Court of Justice; but there exists in practice some dispute and considerable uncertainty as to whether this is actually the case. See Retana, Part One, 14 LAW. AM. 200 n.135 (1982). The decisions of the new agrarian tribunals are subject to the appeal of cassation. Law No. 6734, Part One, 14 LAW. AM. 172 n. 33 (1982), arts. 58-61.

411. Expediente No. 2825, *supra* note 408, at 1-2. The provision referred to was Transitory Article 19 of the bill. See Law No. 2825, Transitory Art. 16 (extending the period to three months). The provision was eliminated by art. 7 of Law No. 3042 of Oct. 4, 1962 (law creating ITCO); published in La Gaceta No. 228 of Oct. 10, 1962. The provision was dropped on the motion of Fernando Salazar Navarrete, during the hearings of the Committee on Government and Administration. Archivos de la Asamblea Legislativa, Expediente No. 3042, at 218 (July 19, 1962). Fernando Salazar, it is worth noting, was the brother of the first Director of ITCO, José Manuel Salazar Navarrete. See Law No. 6734, Part One, 14 LAW. AM. 172 n. 33 (1982).

412. Expediente No. 2825, *supra* note 408, at 2.

(IGN)⁴¹³ and those proposed in the 1958 Report of the Committee on Finance and Economic Affairs,⁴¹⁴ which he had drafted, Volio also made some additional changes of sweeping importance.

Among the provisions drawn from the Law of Economic Encouragement was article 5(a) of the new draft, dealing with the transfer of state lands to the Section of Lands and Colonies of the *Banco Nacional*.⁴¹⁵ By changing one word, Volio established that it would be the Bank which made the ultimate decision on such transfers. As modified by Volio, article 5(a) provided:

. . . The Executive is authorized for this purpose to transfer to the *Banco Nacional de Costa Rica*, at the request of the latter and through the agency of the Office of the Attorney General, those lands which are considered necessary for the purposes of this law, within a period of six months to be counted, in each case, from the date on which the corresponding transfer by the Executive is *requested* (emphasis added).

The 1959 law had provided for transfer within six months of the date such transfer was *decided*. Because no one focused on this change during the legislative proceedings, Volio had the last word on this issue, which had provoked vehement debate in 1959.

At the same time, the sweeping principles contained in article 48, paragraph 2 of Law No. 2466 (Law of Economic Encouragement) were incorporated into article 6 of the new draft, which established the powers and obligations of the Board of Directors of the Bank in connection with the Section of Lands and Colonies. The copied provisions included: 1) study of all titled farms in the country of more than one thousand hectares in area;⁴¹⁶ 2) study of the possibility that the excess areas so revealed revert to the state;⁴¹⁷ 3) power to authorize expropriation of all uncultivated

413. Among those changes was article 1(c), including as a basic goal of the law the elaboration of an accurate cadaster of the country, a provision eliminated from Law No. 2825. See Letters from IGN to the Committee on Finance and Economic Affairs of the Legislative Assembly, Sept. 30, 1958 and Dec. 22, 1958, in Expediente No. 2825, *supra* note 408, at 51-67.

414. See Part One, 14 LAW. AM. 215-16 (1982).

415. 1960 Draft, *supra* note 408, art. 5(a). The provision is found in Law No. 2825, art. 16(a) (1974 ed. art. 41(a)). Cf. Law No. 2466, art. 43(b). See Part One, 14 LAW. AM. 229-30, 236-38 (1982).

416. 1960 Draft, *supra* note 408, at art. 6 (22), copied from Law No. 2466, art. 48 para. 2(a). See Law No. 2825, art. 17 (22), para. 1, first sentence (1974 ed. art. 30 (20), para. 1); and *infra* pp. 484, 488-89.

417. 1960 Draft, *supra* note 408, at art. 6 (23); reproduced in Law No. 2825, art. 17 (23), but subsequently eliminated. Cf. *id.*, art. 17 (22) para. 2 (b) (1974 ed. art. 30 (20) para. 2(b)).

lands monopolized (*acaparadas*) by those unable or unwilling to cultivate them;⁴¹⁸ 4) study of the possibility of distributing free land to landless *campesinos*;⁴¹⁹ and 5) preparation of a draft law establishing a progressive tax on uncultivated lands, and presentation of the same to the Legislative Assembly.⁴²⁰ In addition, the provision of the 1959 law giving preference to the solution of squatter conflicts⁴²¹ was copied and incorporated into the new draft.⁴²²

Volio's modifications, however, were not limited to included provisions from the 1959 law. He also made several substantial changes of his own, the most important of which had to do with expropriation. First, he dropped the requirement, contained in earlier drafts, that squatters must have been in open and peaceful possession for more than one year before the Bank could intervene to resolve the conflict.⁴²³ Volio retained the procedure of appraisals established in the 1958 bill,⁴²⁴ while adding the changes — including expropriation — suggested in the Committee Report which he himself had drafted.⁴²⁵

Despite the fact that a much more expeditious procedure leading to expropriation had been included in the Law of Economic Encouragement,⁴²⁶ the 1960 bill retained the cumbersome procedures which had been included in the 1958 bill.⁴²⁷ According to

The provision was taken from Law No. 2466, art. 48, para. 2(b). See *infra* pp. 434-35.

418. 1960 Draft, *supra* note 408, at art. 6 (24), copied from Law No. 2466, art. 48 para. 2(c). See Law No. 2825, art. 17 (24); and *id.* (1974 ed. art. 30 (12)).

419. 1960 Draft, *supra* note 408, at art. 6 (25), copied from Law No. 2466, art. 48 para. 2(e). Cf. Law No. 2825, art. 17 (14), which was subsequently eliminated. The powers and internal organization of the Institute are now governed by Law No. 6735, Part One, 14 LAW. AM. 172 n. 33 (1982), arts. 8-31.

420. 1960 Draft, *supra* note 408, at art. 6 (26), drawn from Law No. 2466, art. 48 para. 2(f). Cf. Law No. 2825, art. 16(d)-(g); and *id.* (1974 ed. art. 41(d), (f) para. 2-3 and art. 42).

421. Law No. 2466, art. 45. See Part One, 14 LAW. AM. 227 (1982).

422. 1960 Draft, *supra* note 408, at art. 8; reproduced in Law No. 2825, art. 19 (1974 ed. art. 43).

423. See 1955 Draft, art. 73; 1958 Draft, art. 72; Law No. 2466, art. 46, para. 1. Elimination of this provision was maintained in 1961. See Law No. 2825, arts. 68-69. However, it was restored in 1964 by Law No. 3336, Part One, 14 LAW. AM. 214 n.190 (1982).

424. See Part One, 14 LAW. AM. 213-14 (1982).

425. See *Id.*, 215-16 (1982).

426. Law No. 2466, art. 47. This provision was repealed by art. 117 of the 1960 Draft. See Law No. 2825, art. 160 (1974 ed. art. 184). Article 47 provided, quite simply, that if agreement could not be reached for the sale of the lands, the bank was to request their expropriation. See *id.*, 222, 230-31, 245.

427. 1960 Draft, *supra* note 408, at arts. 68-74. Cf. Law No. 2825, arts. 75-81 (1974 ed. arts. 99-105). The current streamlined expropriation procedures are contained in Law No. 6734, Part One, 14 LAW. AM. 172 n. 33 (1982), arts. 63-77.

these provisions, copied from the 1958 bill and Committee Report, if no agreement between the squatters and the owner could be reached at a special meeting called for that purpose,⁴²⁸ the following procedure was to be followed: 1) the Bank was to request an appraisal by the Tribunal of Appraisals (*Tribunal de Avaluos*) of the National Tax Office;⁴²⁹ 2) once the appraisal was carried out, the Bank was to notify the owner, who had fifteen days to accept or reject the appraisal;⁴³⁰ 3) if the owner or the squatters disagreed with this appraisal, the Bank was to carry out a new appraisal at its own expense;⁴³¹ 4) either the owner or the squatters could request the Tribunal of Appraisals to revise its appraisal, provided they did so before the Bank had completed its own;⁴³² 5) if the owner accepted the appraisal of the Bank, the squatters were bound by it;⁴³³ 6) if the owner did not accept either the final appraisal of the Tribunal of Appraisals, or that of the Bank, he could not remove the squatters for any reason;⁴³⁴ 7) in either of the foregoing situations, (5) and (6), however, either party could appeal the final resolutions of the Bank regarding appraisals to the Second Civil Appellate Division of the Supreme Court, if they did so within fifteen days following the resolution;⁴³⁵ 8) if an impasse such

428. 1960 Draft, *supra* note 408, at art. 67, copied from 1958 Draft, Part One, 14 LAW. AM. 192 n.102 (1982). Art. 77. Cf. Law No. 2825, art. 74 (1974 ed. Art. 98).

429. 1960 Draft, *supra* note 408, at art. 68, copied from 1958 Draft, art. 78. Cf. Law No. 2825, art. 75 (1974 ed. art. 99).

430. 1960 Draft, *supra* note 408, at art. 71, copied from 1958 Draft, art. 81. Cf. Law No. 2825, art. 78 (1974 ed. art. 102).

431. The new appraisal was not to exceed the first by more than twenty percent. 1960 Draft, *supra* note 408, at art. 72, copied from 1958 Draft, art. 82. Cf. Law No. 2825, art. 79 (1974 ed. art. 103).

432. 1960 Draft, *supra* note 408, at art. 73, copied from 1958 Draft, art. 83. Cf. Law No. 2825, art. 79 (1974 ed. art. 103).

433. 1960 Draft, *supra* note 408, at art. 72, copied from 1958 Draft, art. 82. Cf. Law No. 2825, art. 80 and *id.* (1974 ed. art. 104).

434. 1960 Draft, *supra* note 408, at art. 74. See 1958 Draft, art. 84, and the change made by the Committee, discussed in Part One, 14 LAW. AM. 214-15 (1982); and Law No. 2825, art. 81. Cf. *id.* (1974 ed. arts. 94, 105, & Transitory Provision (unnumbered)).

435. 1960 Draft, *supra* note 408, at art. 116 para. 3, copied from 1958 Draft, art. 127 para. 3. The appeal was available against "the resolutions of the Bank regarding the appraisals of properties [*fincas*] which have squatters [*ocupantes en precario*], referred to in art. 74."

The reference was not without ambiguity, for the relevant portions of art. 74 read as follows:

If the owner of the farm accepts neither the final appraisal made by the National Tax Office nor that made by the Bank, he shall not be able to remove [*desalojar*] the squatters [*ocupantes*] for any reason whatsoever.

Given this situation, the Bank shall proceed to expropriate the farm affected, the occupied areas of which shall be distributed among the squatters

as that described in (6) was reached, the Bank was to expropriate the property;⁴³⁶ and 9) the squatters had three months from the date of communication of the appraisals in which to accept whichever was accepted by the owner; if they failed to do so, they would remain subject to the ordinary provisions of the law.⁴³⁷

All of the above was to take place, it should be pointed out, *before* the initiation of expropriation proceedings in the courts. According to a modification introduced by Volio, such proceedings were to be conducted in accordance with the provisions contained in articles 2-3 and 5-9 of Law No. 1371 of November 10, 1951 (Law Relating to Expropriations for "El Coco" Airport).⁴³⁸

According to the aforementioned provisions of Law No. 1371, once the land had been expropriated, the compensation to be paid to the owner was to be established according to the following procedures.

First, at the request of the Office of the Attorney General of the Republic, the Tribunal of Appraisals of the National Tax Office, pursuant to the report of an expert so designated, was to establish the amount which the state should pay as indemnification for the expropriated property.⁴³⁹ Second, once the amount of indemnification had been established by the Tribunal of Appraisals, the Attorney General was to ask the owner to indicate, within five days, if he was willing to accept this amount, so that the corresponding deed could be executed.⁴⁴⁰ Third, once the amount set by

[*poseedores precarios*], by means of payment of the price resulting from the expropriation.

Article 116 paragraph 3 was included in the final text of the law. See Law No. 2825, art. 153, para. 3. However, it was eliminated in 1964 by Law No. 3336, Part One, 14 LAW. AM. 214 n.190 (1982).

436. 1960 Draft, *supra* note 408, at art. 74, para. 2. This had been changed from the 1958 Draft, art. 84, which provided that at that point the intervention of the Institute was concluded, to include the change suggested by the Committee. Cf. Law No. 2825, art. 81; and *id.* (1974 ed. art. 105).

437. 1960 Draft, *supra* note 408, at art. 74 para. 3. This was copied, with only minor changes, from 1958 Draft, art. 84, para. 2. However, the original 1958 draft had not contemplated expropriation in the event the owner was unwilling to sell, but rather only preventing him from evicting the squatters. Art. 74, para. 3 of the 1960 Draft was included in Law No. 2825, art. 81, para. 3 (reducing the period for the squatters to accept to one month). Cf. *id.* (1974 ed. art. 104).

438. 1960 Draft, *supra* note 408, at art. 74 para. 3. Cf. Law No. 2825, art. 128 (1974 ed. art. 152). See Part One, 14 LAW. AM. 246 (1982). See Part One, 14 LAW. AM. 246-47 (1982); current version at Law No. 6734, Part One, 14 LAW. AM. 172 n. 33 (1982), arts. 63-77.

439. Law No. 1371 of Nov. 10, 1951, art. 2; published in La Gaceta No. 258 of Nov. 14, 1951.

440. *Id.*, art. 3.

the Tribunal of Appraisals had been deposited in an account payable to the owner, the Administrative Court, at the request of the Attorney General's Office, could authorize entry into possession of the property. If the owner withdrew the amount, he was deemed to have accepted it as full compensation.⁴⁴¹ Fourth, the Court was to proceed to fix the amount of indemnification, which could in no case exceed that set by the National Tax Office or that of the owner's own expert.⁴⁴² Then, once this amount was deposited with the Court by the State, the Court was to authorize entry into possession by the State.⁴⁴³ Fifth, the final decision of the Court fixing the amount of indemnification could be appealed on a motion to vacate judgment (*revocatoria*) or a motion for appeal, made within five days of the date of notification of the judgment.⁴⁴⁴ Finally, the Attorney General's Office was authorized to initiate expropriation proceedings before the ordinary Civil Courts (*Juzgados Civiles*) of San José where necessary for the prompt and correct achievement of the purposes of the law.⁴⁴⁵ In other words, expropriation proceedings could be initiated not only in the Administrative Court, but also in the first-instance courts of general civil jurisdiction (*Juzgados Civiles*).

In short, the 1960 bill — drafted by Volio and sponsored by the strongest proponents of agrarian reform within the PLN — contained an extraordinarily complicated system of appraisals and expropriation procedures. It was a system certain to tax the human and legal resources of the Bank, while providing landowners many opportunities for challenging and thereby delaying expropriation proceedings.

It has frequently been said that the complexity of expropriation proceedings constitutes one of the principal obstacles to the successful implementation of agrarian reform. Ironically, however, in Costa Rica these complicated procedures were not the result of political bargaining or the demands of large landholding interests,

441. *Id.*, art. 5.

442. Appointment of such an expert was provided for in *id.*, art. 4. While art. 4 was not mentioned in art. 74 of the 1960 Draft, art. 6 of Law No. 1371 began, "Once the expert report referred to in Article 4 has been rendered . . ." In any event, article 4 was included in article 112 of the 1960 Draft, which authorized the Bank to expropriate lands when necessary to fulfill the purposes of the law, in accordance with Law No. 1371, arts. 2-9.

443. Law No. 1371, art. 6.

444. *Id.*, art. 9.

445. *Id.*

but rather were introduced by the reformers themselves.⁴⁴⁶ The inclusion of these provisions was not the nefarious result of hypocritical scheming by cynical defenders of the status quo who held themselves out as reformers only to curry popular favor. It was, quite simply, the result of human error.

The 1955 bill had contained a very simple and straightforward expropriation procedure.⁴⁴⁷ Sometime during 1957-58, a PLN committee, which included experts from the Ministry of Agriculture, redrafted the 1955 bill, to incorporate not only the changes suggested by Eduardo Llovet of FAO, but also the changes regarding squatter conflicts under discussion.⁴⁴⁸ The drafters of the 1958 bill apparently decided to try to achieve the resolution of squatter conflicts not through the use of expropriation, but rather by making it impossible for the owner to *ever* remove the squatters from his land, thereby offering him a strong incentive to sell. Since no expropriation was contemplated in such cases, the aforementioned system of appraisals was established to fix a fair price — limited to the value of the land *at the time it was occupied*.⁴⁴⁹

When the Committee on Finance and Economic Affairs considered the 1958 bill, they decided to return to the system of expropriation contained in the 1955 bill. The Report of the Committee, drafted by Fernando Volio and signed on September 18, 1958,⁴⁵⁰ thus included a modification providing that if the owner refused to accept either of the appraisals, the Institute was to expropriate the property in question.⁴⁵¹ What the members of the Committee failed to realize, however, was that the appraisal procedures of the original 1958 draft had been included *in lieu of* the appraisal procedures to be followed in judicial proceedings. The 1955 bill had included provisions governing such judicial proceedings,⁴⁵² and these provisions had been dropped by the drafters of the 1958 bill when they decided to avoid resorting to

446. Although these provisions were slightly weakened further during Committee negotiations in the fall of 1960, the important point to keep in mind is that the initial negotiating position of the reformers on this point was very weak.

447. See Part One, 14 LAW. AM. 184-85 (1982).

448. Exactly who was responsible for these changes has not been ascertained. See Part One, 14 LAW. AM. 214-15 (1982).

449. 1958 Draft, art. 79, reproduced in 1960 Draft, *supra* note 408, at art. 69. This limitation to the value of the land at the time of the occupation was eliminated in the final text of the law. See Law No. 2825, art. 76 (1974 ed. art. 100); and *infra* p. 438.

450. See Part One, 14 LAW. AM. 214-15 (1982).

451. See Part One, 14 LAW. AM. 214 (1982).

452. 1955 Draft, arts. 83-87.

expropriation.

When the 1958 Committee on Finance and Economic Affairs decided to use the instrument of expropriation in squatter cases, however, they failed to return to the original text of the 1955 bill. Consequently, they left the new appraisal provisions in the text, despite the fact that very similar procedures would have to be followed once again after the expropriation had been decreed. Given the fact that the 1958 Committee was composed of Alfonso Carro Zuñiga, Luis Alberto Monge, and Fernando Volio Jiménez, all of whom were leaders of the left wing of the PLN, it is clear that they did not make the expropriation procedure complicated and cumbersome on purpose. They simply added one provision with the intention of strengthening the bill, without fully realizing the implications of what they had done.

The provision which provided for appeal of the appraisals to the Second Appellate Division of the Supreme Court⁴⁵³ made some sense if the land was not to be expropriated, for it *limited* judicial review to one appellate proceeding. Once the use of expropriation in such cases was restored, however, it had the opposite effect, providing owners with an additional and wholly unnecessary opportunity to delay the proceedings. The Committee did not realize all of these implications when it added the single paragraph to article 84 of the 1958 bill.⁴⁵⁴

When Fernando Volio redrafted the 1958 bill over the week-end of May 14-15, 1960, he copied these provisions directly from the 1958 bill and Committee Report. Given the time frame within which he was working, one can easily understand how he failed to discern the potential problems created by this change. The addition of the sentence providing that expropriations were to be conducted according to certain articles of Law No. 1371 made sense in relation to article 47 of the Law of Economic Encouragement;⁴⁵⁵ however, it resulted in an unnecessarily complicated and repetitive procedure when combined with the appraisal procedures established in the 1958 bill.

While Volio failed to eliminate the cumbersome expropriation procedures discussed above, among the changes that he made was one of considerable potential importance. He modified the 1958

453. See *supra* notes 435, 438.

454. See Part One, 14 LAW. AM. 214 (1982).

455. See Part One, 14 LAW. AM. 244-46 (1982).

draft's article authorizing expropriation where necessary to accomplish the purposes of the law, which had provided that such expropriations were to be carried out "in accordance with the laws on the subject."⁴⁵⁶ Volio substituted language providing that expropriations were to be carried out in accordance with the provisions of articles 2-9 of Law No. 1371, which was somewhat swifter than the general laws on expropriation.⁴⁵⁷ Another important change which he made was the addition of language making it clear that the Bank was to pay for the value of the expropriated property in cash or in bonds "in accordance with its own judgment."⁴⁵⁸ The addition of the quoted words eliminated a possible source of future legal contention.

Several other provisions of the 1960 Draft deserve brief mention. The section dealing with the resolution of squatter conflicts was left somewhat confused when article 74, paragraph 2 was changed, establishing that if the owner accepted neither valuation, ITCO would proceed to expropriate the property occupied by squatters. The 1958 bill, as noted above, had not contemplated expropriation in such cases, but only to make it impossible to remove squatters from the land. The contract of sale between the owner and the squatters in such cases was to conform to the provisions of article 85 of the 1958 bill,⁴⁵⁹ which had been added when the basic mechanism was changed from expropriation to induced sale. While the provision was retained in the 1960 Draft, Volio realized that such contracts (with the seller retaining a mortgage on the land) might not be appropriate in cases where the land was expropriated. Consequently, he inserted a new article, providing:

The Bank may apply other solutions different from that of sale and purchase whenever it is convenient [to do so].⁴⁶⁰

Another change made by Volio in the 1960 Draft was the deletion of the provision establishing, "The Institute shall watch over

456. 1958 Draft, art. 123, copied from 1955 Draft, art. 125. See Part One, 14 LAW. AM. 186, 188 (1982).

457. See E. A. VAN BROWNE OLIVIER, LA EXPROPRIACIÓN 311-16, (1970) (Thesis, Faculty of Law, University of Costa Rica). The procedure was not so swift, however, when added on to the appraisal procedures first included in the 1958 bill. See *supra* pp. 406-410.

458. 1960 Draft, *supra* note 408, at art. 112; reproduced in Law No. 2825, art. 128 (1974 ed. art. 152).

459. Reproduced in 1960 Draft, *supra* note 408, at art. 75. The provision is found in Law No. 2825, art. 82 (1974 ed. art. 106). See Part One, 14 LAW. AM. 215-16 (1982).

460. 1960 Draft, *supra* note 408, at art. 101; reproduced in Law No. 2825, art. 107 (1974 ed. art. 131, para. 1).

(*vigilará*) the correct execution of the laws relating to forest exploitations."⁴⁶¹ Also worth mentioning were Transitory Provisions 7-16, which authorized the Bank to extend titles, through a summary proceeding, to individuals who had occupied state lands for at least ten years with the express or tacit consent of the state, provided such areas did not exceed fifty hectares. These provisions had been included in the original 1958 bill, and were simply copied by Volio.⁴⁶²

While hastily drafted through necessity — the reformers wanted to lose no time, especially in view of the June 1 deadline for passage of the law — the bill was nonetheless ready on Monday, May 16. That was the date that had originally been set for the first debate on the 1958 bill. The reformers had their bill, strengthened in several respects by Volio, and were prepared to fight hard for its immediate passage.

C. *Progress of the Bill in the Legislative Assembly*

The bill drafted by Fernando Volio was formally introduced in the Legislative Assembly on Monday, May 16, 1960.⁴⁶³ During the session of that afternoon, a letter from the General Confederation of Costa Rican Workers (*La Confederación General de Trabajadores Costarricenses*), setting forth its views on the (1958) bill, was read to the Deputies. In its letter, the Confederation urged the inclusion of stronger provisions in the bill, including: 1) the reversion of all uncultivated lands to the State; 2) a more effective expropriation procedure; 3) free distribution of land to *campesinos*; 4) payment for lands not to exceed the value declared for tax purposes; and 5) payment in bonds to facilitate accelerated implementation of the law.⁴⁶⁴

On May 17, Deputies Volio, Oduber, Obregón, Carro, Garroñ, and Monge Alvarez presented a motion exempting the bill from the customary referrals to various committees. The motion re-

461. 1958 Draft, art. 114; copied from 1955 Draft, art. 115. See Part One, 14 LAW. AM. 182 n. 62 (1982).

462. 1960 Draft, *supra* note 408, at Transitory Provision 7-16; copied from 1958 Draft, Transitory arts. 8-17. See Law No. 2825, Transitory arts. 5-13 (1974 ed. Transitory Arts. 5-13).

463. Expediente No. 2825, *supra* note 408, at 1. The President of the Assembly ordered the bill sent to the new Committee on Agriculture and Colonies. The following day, the Committee requested the comments of the *Banco Nacional*, in accordance with art. 190 of the constitution. But see note 465.

464. Expediente No. 2825, *supra* note 408, at 71-72.

quired a two-thirds vote, and was aimed at by-passing the obstacles which might arise if the bill had to be approved by the newly-constituted Committee on Agriculture and Colonies.⁴⁶⁵ Speaking in support of the motion, Deputy Oduber noted that the sponsors had been taken by surprise when the 1958 bill was killed, and stressed the urgency of passing the bill quickly, given the deadline of June 1 established by the Law of Economic Encouragement.⁴⁶⁶ Although Deputies Sotela Montagne and Caamaño Cubero argued for further committee hearings, the motion was approved by the necessary two-thirds majority.⁴⁶⁷ However, with the request for the opinion of the *Banco Nacional*, the bill lost the momentum it had had only a week before. Deputy Aguiluz Orellana moved on May 21 to advance the bill on the agenda, and the motion was approved.⁴⁶⁸ Nevertheless, other bills were repeatedly moved ahead of the agrarian reform bill throughout the summer.⁴⁶⁹

Although the bill did not reach the floor during the summer, the Legislative Assembly continued to receive letters in support of the bill. On June 8, 1960, for example, the Costa Rican Confederation of Workers "Rerum Novarum" (*Confederación Costarricense de Trabajadores "Rerum Novarum"*)⁴⁷⁰ wrote in support of the bill urging various changes, including recovery by the State of unexploited lands, and free distribution of lands to *campesinos*.⁴⁷¹ On June 29, the National Federation of Progressive Committees (*Federación Nacional de Juntas Progresistas*) addressed a letter to the Assembly urging an end to the arrests of squatters on uncultivated lands within the inalienable zone of the Maritime Mile or on lands monopolized by a few, "so that there will no longer be either idle men or idle lands in Costa Rica."⁴⁷² On July 7, the Municipality of Santa Cruz in Guanacaste Province wrote in support of the bill,⁴⁷³ and the Municipality of Cañas relayed a resolution

465. ASAMBLEA LEGISLATIVA DE COSTA RICA, 92 ACTAS 27, at 38 [hereinafter cited as ACTAS]; Expediente No. 2825, *supra* note 408, at 68. See *supra* note 406.

466. 92 ACTAS, *supra* note 465, at 39.

467. *Id.* at 39-41.

468. Expediente No. 2825, *supra* note 408, at 83.

469. See Intervention of Fernando Volio, ASAMBLEA LEGISLATIVA DE COSTA RICA, 98 ACTAS 207-209 [hereinafter cited as ACTAS]. The sponsors of the bill presented, but then withdrew, a motion giving the bill a higher priority, on July 28, 1960. Expediente No. 2825, *supra* note 408, at 98. It is not clear why the motion was withdrawn.

470. Linked to the PLN through its leader, Father Benjamin Nuñez.

471. Letter of June 8, 1960, read to the Legislative Assembly on June 11, 1960. Expediente No. 2825, *supra* note 408, at 78-82.

472. *Id.* at 89.

473. *Id.* at 91.

urging passage "so that the squatters of San Juanillo may soon see their problem resolved."⁴⁷⁴

Meanwhile, Deputy Enrique Obregón Valverde had prepared a different draft law, largely copied from the Venezuelan law of March 5, 1960.⁴⁷⁵ Obregón hoped to include provisions from his draft in the law during the debates on the 1960 bill, which he had also co-sponsored.

A certain danger existed that the reformers themselves might become divided, and the bill would be doomed to defeat. However, Volio — floor manager of the bill — was successful in maintaining unity, and he and Obregón worked very closely both in the plenary sessions and behind the scenes.⁴⁷⁶

1. The Opening Debates: "We are not road bandits but men of law."

The first debate on the 1960 draft of the bill began on September 17. Article 1, incorporating provisions from Obregón's draft, was debated at great length, and finally approved.⁴⁷⁷ One paragraph of article 1 provided particularly strong debate but after lengthy debate, and some modifications, article 1 was passed.⁴⁷⁸ Article 1, in the version which was passed, provided, among its objectives, the following:

(3) to establish [*determinar*] that rural property has as a fundamental purpose [*objeto*] the fulfillment of the broadest social function, and for this reason is subject to every principle of public necessity.⁴⁷⁹

474. *Id.* at 93. See *supra* note 396.

475. Published in La Gaceta Oficial No. 611 (*extraordinaria*) of Mar. 19, 1960 [hereinafter cited as Venezuelan Law]. See *supra* note 395. Obregón's draft [hereinafter cited as Obregón Draft] was never formally introduced as a bill; however Volio and Obregón relied on it extensively in drafting motions which they jointly sponsored. (A copy of the draft is on file with the author.)

476. Interview with Fernando Volio Jiménez, (Dec. 21, 1974).

477. See Decreto Legislativo No. 2747 of May 23, 1961, (vetoed), art. 1; published in La Gaceta No. 137 of June 17, 1961 [hereinafter cited as Decreto No. 2747]. Cf. Law No. 2825, art. 1 (1974 ed. art. 1).

478. 98 ACTAS, *supra* note 469, at 28-38. Expediente No. 2825, *supra* note 408, at 100.

479. The Spanish text is as follows:

(3) Determinar que la propiedad rural tiene por objeto fundamental el de cumplir las más amplia función social, por cuya razón está sujeta a todo principio de necesidad pública.

Decreto No. 2747, art. 1 (3). The provision was eliminated as a result of President Echandi's veto. See Veto of June 5, 1961 (of Decreto No. 2747); published in La Gaceta No. 137 of

On September 19, a new article 2 was introduced by Volio and Obregón which established: 1) the right of landless individuals to be given land; 2) the right of squatters to remain on the land that they were cultivating, in accordance with the provisions of chapter VII; and 3) the right of farmers to receive credit from the banks, in order to achieve a rational exploitation of their lands.⁴⁸⁰ After a long discussion, in which Volio manifested considerable willingness to accede to the suggestions of others in an effort to forge a broad base of support for the bill, the motion was approved.⁴⁸¹ Volio and Obregón also introduced an article providing that the land must constitute, for the man who works it, the guarantee of his economic well-being, his liberty, and his dignity; this motion also was approved.⁴⁸²

While progress was made on September 19, Deputy Caamaño Cubero also introduced the first motion which he had taken from the observations of the *Banco Nacional*, originally requested on May 17, 1960.⁴⁸³ On this and succeeding days, Caamaño sought to complicate and stall consideration of the bill by presenting each suggestion of the Bank in the form of a motion which he himself sponsored. With well over a hundred motions drawn from the suggestions of the Bank, Caamaño was prepared to drag the debates out as long as possible, knowing that if the bill was not passed before November 1, when the budget would come up for consideration, opponents would be able to delay consideration of the bill until the following May.⁴⁸⁴

Debate continued on the floor of the Assembly the following day. A detailed consideration of all of the motions, amendments, and debates which followed, however, is beyond the current scope of this study.⁴⁸⁵ For present purposes, only the high points will be

June 17, 1961 [hereinafter cited as Echandi Veto]. Cf. Law No. 2825, art. 1 (1974 ed. art. 1).

480. Paragraphs (1) and (2) were copied from the Venezuelan Law, *supra* note 475, at art. 2(b)-(c).

481. 98 ACTAS, *supra* note 469, at 50-64; Expediente No. 2825, *supra* note 408, at 106. See *infra* p. 482.

482. 98 ACTAS *supra* note 469, at 43-49; Expediente No. 2825, *supra* note 408, at 106. Reproduced in Law No. 2825, art. 3 (1974 ed. art. 3). Cf. Venezuelan Law, *supra* note 475, at art. 1.

483. See *supra* note 463.

484. For a sample of Caamaño's motions, see Expediente No. 2825, *supra* note 408, at 112-113, 123. During the debates he admitted openly what he was doing. The Bank's Report, moreover, is not to be found in the Archives of the Legislative Assembly.

485. Such an examination is extremely difficult due to the fact that the enumeration of articles which were the subject of debate was continually modified during the legislative

mentioned. Debate continued on September 20, with various motions by Caamaño Cubero, and by Volio and Obregón gaining approval. Of particular note was the approval of the following article introduced by Volio and Obregón:

The obligations derived from the principle of the social function of property are applicable both to individuals and to the State, its Institutions and Municipalities, on those properties of which one or the other are owners.⁴⁸⁶

On September 23, Volio and Obregón introduced the first of several additional motions dealing with the social function of property. These provisions were copied verbatim from the corresponding chapter in the Venezuelan law,⁴⁸⁷ and Volio and Obregón now sought to incorporate them in their entirety into the bill.

The first of these articles, which Volio and Obregón moved to include in the law on September 23, established the following:

For the purposes of the present law, the private ownership of land fulfills its social function when it combines all of the following essential elements:

(1) The efficient exploitation of the land and its profitable use in such a manner that the factors of production are efficiently applied on it, in accordance with the zones in which it is located and its own characteristics;

(2) The property is not of a greater or lesser area than that stipulated in Articles 33 and 34;

(3) Personal operation and management of, and financial responsibility for, the agricultural enterprise by the landowner, except in special cases of indirect exploitation for a reason duly justified by the Bank;

(4) Compliance with the legal provisions governing conservation of natural resources;

(5) Respect of legal provisions governing paid labor, other labor relations in the countryside, and agricultural contracts

proceedings. Indeed, discussion of many articles was based on the enumeration of drafts which are no longer available. This confusion was largely the result of Volio and Obregón seeking to introduce new articles — not in Volio's original draft — which were taken from Obregón's draft. The latter was largely copied from the Venezuelan law. For a description of the procedure adopted which led to this confusion, see 98 *ACTAS* *supra* note 469, at 44-49 (Sept. 19, 1960).

486. Expediente No. 2825, *supra* note 408, at 112. See Decreto No. 2747, art. 6. This provision was adapted from the Venezuelan Law, *supra* note 475, at art. 3.

487. See Venezuelan Law, *supra* note 475, at arts. 19-23. The provisions had been copied by Obregón and included in his draft; it was from the latter that the motions were drawn. See *supra* pp. 414-15.

under the conditions established by law; and

(6) Registration of the property in the *Cadaster* [geographical land index].⁴⁸⁸

This motion provoked the most heated and extended exchanges during the floor debates on the 1960 agrarian reform bill.

The debate on this motion continued on September 26 and 27. On the 27th, Deputy Solano Sibaja moved to suspend discussion of the bill, forming instead a special committee composed of representatives of all of the parties; the committee was to report back within eight days after determining which motions were supported by everyone, leaving those in dispute for debate on the floor. Sibaja's motion reminded Volio of the countless delays which the bill had encountered over the years. After considerable discussion, it was defeated.⁴⁸⁹ Debate on the motion of Volio and Obregón continued on September 28. On Monday, October 3, tempers reached the flash point as Deputy Fournier Jiménez read from the *Communist Manifesto*, hinting strongly that Volio and Obregón had much in common with Marx and Engels, and that agrarian reform was a Communist program.⁴⁹⁰

Volio responded energetically, quoting from an article published by Church officials in the morning paper. He argued:

It is not true that there is only one road, the Communist one, to promote agrarian reform and through it to defend the dignity of the *campesino*. There are other democratic roads. One is that which the Catholic Church has pointed out to us, not now but many years ago. During these very days the Secretariat of the Archdiocese of Catholic Action, recently created by Archbishop Rodríguez, has been presenting an exposition on the subject that occupies us through articles published in the newspaper *La República*.⁴⁹¹ As Deputy Fournier has read us the *Communist Manifesto* today in order to suggest that agrarian reform can

488. 98 ACTAS, *supra* note 469, at 147. Cf. Expediente No. 2825, *supra* note 408, at 193. The article was copied, with very minor changes, from Venezuelan Law, *supra* note 475, at art. 19. With respect to paragraph 2, Obregón's draft, art. 33, fixed a limit of four hundred hectares for farm land, one thousand hectares for cattle raising, and eight hundred hectares for combined use. (Copy on file with the author.) See *infra* p. 461.

489. 98 ACTAS, *supra* note 469, at 206-213; Expediente No. 2825, *supra* note 408, at 177.

490. See ASAMBLEA LEGISLATIVA DE COSTA RICA, 99 ACTAS 3-5 [hereinafter cited as ACTAS]. Fournier's comments were not recorded in the minutes. For a detailed account, see *La República*, Oct. 4, 1960, at 1, 4.

491. Fernando Volio, it should be noted, was Editor of *La República* at this time. The articles referred to were written by Father Francisco Herrera Mora, and published in *La República* on September 28, 29, 30 and Oct. 2, 1960.

lead to Communism, I must read a paragraph from the article by this Secretariat of the Church, which appeared today in the aforementioned newspaper.

Volio then quoted from the article:

Only a Christianity which is fully embodied [incarnate], which is concrete, which is present throughout our days, throughout our existence, throughout our generation, shall dispel the temptation to abandon to other ideologies the valuation of the land and the humanization of the man on the land, in this country of ours which is Christian by birth and by destiny.

He continued:

I cannot permit it to be said that only Communism promotes agrarian reform in every latitude and that only Communism concerns itself with *campesino* dignity. We are pushing for this law on the basis of principles which are essentially democratic and based on Christian ethics. We are not road bandits but men of law. We conceive of our reform within Constitutional and legal norms.⁴⁹²

Fournier objected that his remarks had been distorted, whereupon Volio retorted:

If Deputy Fournier would call bread bread, and wine wine, there would be no mystifications or doubts with respect to his words. . . . If Mr. Fournier wishes for calm to return to this discussion, then let him stop labeling Obregón and me as Communists, because it is natural for one to be disturbed by this kind of tactic and to respond in an impassioned manner to lies.⁴⁹³

Calm did return, and debate continued. During the previous days of debate, Volio and Obregón, lacking the necessary votes, had been forced to compromise with Deputy Fournier and other opponents of the motion.⁴⁹⁴ The only significant change had been the addition of the following paragraph at the end of the article:

It is understood that the obligation imposed by the State on the owner of land, with respect to paragraph (1), is to be directly proportional to the technical and financial assistance which is provided for his adequate independence.⁴⁹⁵

492. 99 ACTAS, *supra* note 490, at 4.

493. *Id.* at 6-7.

494. *See infra* note 496.

495. 98 ACTAS, *supra* note 469, at 231-32.

This change had been agreed to by the reformers in an effort to obtain the votes necessary for its approval.⁴⁹⁶

Following the interchange between Volio and Fournier on October 3, Deputy Villalobos Arce of the Republican Party intervened to explain why he was voting *against* the motion. He argued that the addition of the last paragraph made the provision wholly inoperative.⁴⁹⁷ Yet while the paragraph weakened the article, one of the reasons the reformers had been forced to agree to the compromise was the equivocal position of the Deputies of the Republican Party, a position which now became clear.

The disingenuous nature of Villalobos's arguments was perhaps best revealed by the following statement, made on October 4:

For example, we are all witnesses to the fact that in the face of this motion all of the rights of the State to strike against the *latifundio* were discussed, while on the other hand the sanctity of private property was defended. And now it turns out, as admitted by Mr. Obregón, his motion makes demands or places burdens on the shoulder of the small farmer and not on those of the *latifundista*; and it also places burdens on the poor owner, and not on the *latifundista*, according, that is, to the affirmations made yesterday by Mr. Obregón Valverde.⁴⁹⁸

Villalobos argued, in conclusion, that he was going to vote against the motion not because he was opposed to its objectives, but because

the introduction of this text into the Law of Lands and Colonies does not make the law more functional, does not make it more positive, nor does it improve in any respect the position of thousands of Costa Rican *campesinos*, who are justly interested in a text which is adequate for the solution of their problems of a lack of land.⁴⁹⁹

Villalobos, of course, was simply trying to justify his negative vote to the thousands of *campesinos* who were listening to the radio broadcasts of the debates.

Though sophisticated and persuasive on the surface, his arguments manifested a sincerity no different than that offered by

496. See the explanation offered by Obregón on Oct. 3, at 99 ACTAS *supra* note 490, at 9.

497. *Id.* at 5-7.

498. *Id.* at 18-19.

499. *Id.* at 23.

Deputy Arguedas Katchenguis (who could hardly be characterized as an ardent reformer). The latter explained his vote as follows:

However, there is something that makes me vote against the motion, and that is that it says here that the *latifundio* is not uneconomical. And that, within any law which respects the criterion of a true law of agrarian reform, does not belong in any motion.⁵⁰⁰

With that, the Deputies proceeded to a roll-call vote on the proposed article defining the elements of the social function of property. The motion was defeated, twenty to twenty-four.⁵⁰¹ Later in the session, Obregón remarked bitterly that all of the extended conversations and concessions aimed at compromise had been in vain. The defeat of the motion, he declared, had been simply "the product of a maneuver to liquidate it."⁵⁰²

On October 5, various motions were discussed, with a few gaining approval.⁵⁰³ It soon became apparent, however, that given the very large number of motions pending, the manifest intent of Caamaño Cubero and others was to slow the debates down as much as possible. Given the fact that consideration of the budget was to begin on November 1, it would be impossible to pass the law before the end of ordinary sessions unless a new and different approach was adopted.⁵⁰⁴

On October 10, Deputy Obregón Valverde presented a motion of order, which would allow immediate consideration of the following motion:

That, starting today, sessions continue until 8:00 p.m., until the

500. *Id.* at 24. The redundant adjective "uneconomical" had been added during the debates. For a reflection on Arguedas Katchenguis's real attitude, see, e.g., *infra* note 506.

501. 99 ACTAS, *supra* note 490, at 24; Expediente No. 2825, *supra* note 408, at 193-94. Those voting in favor of the motion were: Arroyo Quesada, Caamaño Cubero, Vargas Ramírez, Volio Jiménez, Trejos Dittel, Aiza Carrillo, Aguiluz Orellana, Alonso Andrés, Cordero Croceri, Saborio Bravo, Montero Chacón, Chaves Soto, Obregón Valverde, Espinoza Jiménez, Alvarez González, Villalobos Dobles, Monge Alvarez, Carro Zúñiga, and Oduber Quirós (20 votes).

Those voting against were: Hernández Cascante, Saborio Fonseca, Villalobos Arce, Morera Soto, Lizano Hernández, Sancho Robles, López Gutiérrez, Brenes Gutiérrez, Montero Padilla, Leiva Quirós, Kopper Vega, Hurtado Rivera, Segares García, González Murillo, Dobles Sanchez, Rojas Tenorio, Sotela Montagne, Dávila Ugalde, Solano Sibaja, Espinoza Espinoza, Jara Chavarria, Vega Rojas, Arguedas Katchenguis, and Brenes Méndez (24 votes).

502. 99 ACTAS, *supra* note 490, at 33.

503. See Expediente No. 2825, *supra* note 408, at 209-11.

504. See Part One, 14 LAW. AM. 217 at n. 201 (1982) and *supra* p. 400.

Law of Lands and Colonies is approved.⁵⁰⁵

Daniel Oduber moved for a roll-call vote on Obregón's motion of order, which required a two-thirds vote. Unfortunately for the reformers, the motion failed to gain the support of two-thirds of the Deputies, with the twenty-two voting in favor and sixteen against.⁵⁰⁶

2. A New Strategy

The major defeat suffered by the reformers on October 4, and the realization that debate on each of the motions would make passage during the current ordinary session impossible, indicated that a new strategy was in order. The vote on Obregón's motion on October 10, moreover, brought home the fact that, without additional support, it would be extremely difficult to obtain the two-thirds vote which would be necessary in order to override a Presidential veto. President Echandi's views on the agrarian reform bill were well known, and the likelihood of such a veto was a factor to be taken into account.

Consequently, Volio and the reformers acted to broaden their base of support. On October 11, Obregón moved that a special committee be immediately named for the purpose of submitting within ten days a concrete plan for the financing of agrarian reform. The motion was approved, and a five-member committee, including key individuals whose support was sought, was named.⁵⁰⁷

The second part of the new strategy was revealed on October 24, when Daniel Oduber moved to send the bill to a Special Committee to review the motions pending, and to report back within eight days regarding those motions on which there was agreement; if the report was approved, the motions still in dispute would then be taken up on the floor. The motion was approved, and Deputies Obregón Valverde, Volio Jiménez, Villalobos Arce, Fournier Jiménez, and Marshall Jiménez were named to the Special

505. Expediente No. 2825, *supra* note 408, at 258.

506. *Id.* Those voting against the motion were: Solano Sibaja, Lizano Hernández, Brenes Gutiérrez, Montero Padilla, Kopper Vega, Hurtado Rivera, Segares García, González Murillo, Dobles Sánchez, Fournier Jiménez, Arguedas Katchenguis, Leiva Quirós, and Sancho Robles.

507. Expediente No. 2825, *supra* note 408, at 264. The members named to the committee were Carlos Manuel Barenas Méndez, Frank Marshall Jiménez, Orlando Sotela Montagne, José Rafael Vega Rojas, and Miguel Angel Dávila Ugalde. Acuerdo No. 350 of Oct. 14, 1960; published in *La Gaceta* No. 233 of Oct. 18, 1960.

Committee.⁵⁰⁸

3. The International Climate: Shifting Attitudes Toward Agrarian Reform

Once these two committees has been formed, two factors began to work decisively in favor of the reformers. First, the attitude of the United States toward agrarian reform had begun to change from one of opposition to one of qualified support. On July 11, 1960, President Dwight D. Eisenhower issued what came to be known as the Newport Declaration, cautiously endorsing "orderly reform" in Latin America while affirming that there ought to be "opportunities for free, self-reliant men to own land, without violating the rights of others."⁵⁰⁹ Within a month, the United States Administration requested a \$500 million authorization from Congress,

to help our Latin American neighbors accelerate their efforts to strengthen the social and economic structure of their nations and improve the status of their individual citizens.⁵¹⁰

A high level Committee of United States and Latin American representatives, known as the Group of 21, had been meeting since 1958, and in 1959 had created the Inter-American Development Bank. With the United States Congress having approved the requested authorization of \$500 million, the Group of 21 met in Bogotá in September 1960. In the Act of Bogotá, issued on September 13, they recognized the need for "social development" programs to be initiated in addition to programs of purely "economic development." To help implement these programs, the United States pledged \$500 million to a new Social Progress Trust Fund to be administered by the Inter-American Development Bank.⁵¹¹

In addition to providing a potential source of financing for programs of social development, the Act of Bogotá gave the idea of agrarian reform a new and sudden respectability.⁵¹² With respect to agrarian reform, the Act called for:

508. Expediente No. 2825, *supra* note 408, at 276. Cf. *supra* pp. 417-18.

509. W. D. ROGERS, *THE TWILIGHT STRUGGLE: THE ALLIANCE FOR PROGRESS AND THE POLITICS OF DEVELOPMENT IN LATIN AMERICA* 23 (1967).

510. *Id.* at 24.

511. *Id.* at 20-24; F. GIL, *LATIN AMERICAN-UNITED STATES RELATIONS* 238-40 (1971); H. PERLOFF, *ALLIANCE FOR PROGRESS* 16-18 (1969).

512. A. HIRSCHMAN, *JOURNEYS TOWARD PROGRESS* 156 (rev. ed. 1963).

1. The examination of existing legal and institutional systems with respect to:

a. land tenure legislation and facilities with a view to ensuring a wider and more equitable distribution of ownership of land, in a manner consistent with the objectives of employment, productivity and economic growth;

...

c. tax systems and procedures and fiscal policies with a view to assuring equity of taxation and encouraging improved use of land, especially of privately-owned land which is idle.

2. The initiation or acceleration of appropriate programs to modernize and improve the existing legal institutional framework to ensure better conditions of land tenure, extend more adequate credit facilities and provide increased incentives in the land tax structure.

3. The acceleration of the preparation of projects and programs for:

a. land reclamation and land settlement, with a view to promoting more widespread ownership and efficient use of land, particularly of unutilized or underutilized land.

...⁵¹³

These words and the shifting United States policy they reflected came as a boost to the backers of the agrarian bill in Costa Rica. While the Act of Bogotá had little or no impact on the vote on the social function of property on October 4, the new attitude of the United States, and particularly the potential availability of external financing, certainly helped a great deal in winning over the key Deputies who on October 11 had been appointed to the Special Committee to draw up a plan for financing agrarian reform.⁵¹⁴

4. A Deal with the Opposition

The second factor which began to work decisively in favor of the reformers was largely a matter of coincidence, and was a product of the intricate complexities of Costa Rican domestic politics.

Following the triumph of Figueres's forces in the Revolution of 1948, the hacienda of ex-President Rafael Angel Calderón Guardia⁵¹⁵ had been confiscated (along with others) by a revolu-

513. Act of Bogotá (Washington, D. C.: Pan American Union, 1961), cited in M. BALL, *THE OAS IN TRANSITION* 563-64 (1969).

514. See *infra* pp. 428-32.

515. See Part One, 14 *LAW. AM.* 159 (1982).

tionary tribunal called the Tribunal of Administrative Probity (*Tribunal de Probidad Administrativa*).⁵¹⁶ In 1959, a law had been passed which granted those whose property had been confiscated when the owners had been absent from the country or had failed to personally appear before the Tribunal the right to seek review of the original judgment. This review, moreover, placed the burden of proof on the Attorney General, who had two months to bring a legal action based on existing legal provisions. If he failed to bring such an action, the decision against the appellant was to be reversed as a matter of law.⁵¹⁷ Calderón Guardia subsequently appealed the decision confiscating his property, known as Hacienda Tapantí; since the Attorney General failed to bring the corresponding legal action within the two-month period, the 1948 decision was reversed as a matter of law.

However, Law No. 2463 had also provided that if the property had passed to a third party, the State could only repay its value in bonds to the appellant.⁵¹⁸ As Hacienda Tapantí had been transferred to the Committee for Social Protection of San José (*Junta de Protección Social de San José*), Calderón Guardia was therefore unable to recover his hacienda from the State without the passage of a special law authorizing the State to reacquire Hacienda Tapantí and then transfer it to him.⁵¹⁹

Dr. Rafael Angel Calderón Guardia was at this time the undisputed leader of the Republican Party, and was to be the standard-bearer of his party in Presidential elections to be held in February 1962. With elections only a little over a year away, the country was gearing up for the campaign by October 1960.⁵²⁰ Thus, in addition

516. Established by Decree Law No. 41 of June 12, 1948.

517. Law No. 2463 of Nov. 7, 1959, published in *La Gaceta* No. 289 of Dec. 22, 1959. Three different minority reports from the Committee on the Constitution and Legislation were submitted to and voted on by the full Legislative Assembly. The report of Villalobos Arce was defeated, 17-22. Archivos de la Asamblea Legislativa, Expediente No. 2463, at 32. That of Cordero Zúñiga was similarly defeated, 20-22. The report of Montero Chacón, which set forth the moral basis of the measures taken in 1948 — the view of the PLN — was then adopted. *Id.* at 32-33 (Oct. 26, 1959). During the first debate on Oct. 27, Villalobos Arce succeeded in reducing the period for the Attorney General to bring his action from six to two months. *Id.* at 39. The text of the report of Montero Chacón is of particular interest, and is found in *id.* at 21-29.

518. Law No. 2463, *supra* note 517 at art. 8.

519. The actual transfer was to a family corporation named "Sociedad Agropecuaria San Rafael, S.A." — which had also been technically the owner at the time of the confiscation.

520. Political campaigns are very drawn-out affairs in Costa Rica, where national attention often turns to the upcoming election before a President is even half-way through his

to Calderón Guardia's strong personal desire to recover his hacienda, its transfer had a broader significance, symbolizing to a certain extent the healing of the wounds of the 1948 civil war.

In any event, Calderón Guardia and the Republican Party were extremely desirous of obtaining the return of Hacienda Tapantí to its original owner. It just so happened, however, that Fernando Volio was a member of the committee on Finance and Economic Affairs, to which the bill had been referred. The other two members, Fabio Fournier Jiménez and Rodrigo Sancho Robles, were pushing hard for unanimous approval of the bill by the committee. The signature of Volio was needed in order to obtain swift passage by the Assembly with a minimum of debate. If the bill became the subject of heated dispute, it would reopen, instead of healing, the wounds of 1948.

Volio occupied a key position due to the fact that he was widely respected within the Assembly. If he raised his voice in opposing the bill on the floor, stressing the moral basis of the Revolution of 1948 and the action taken immediately thereafter by the Founding Junta of the Second Republic, it was likely that he could gain enough support to defeat the bill. Volio was therefore a key figure insofar as the bill was concerned. While the leadership of the PLN had made a deal with the Republicans to support the bill, it still remained within Volio's power to bring about defeat of the measure, or at the very least to make its passage an embarrassing and politically messy undertaking. Volio, moreover, was strongly opposed to the bill on moral grounds.⁵²¹

During most of November, Volio had not yet reached a final decision on whether or not he would support the bill transferring Hacienda Tapantí. He was aware, however, of the critical position which he occupied. Opposed to the transfer in principle, he determined that only the unanimous support of the Republicans for the agrarian reform law could justify a decision to support the bill. Historically, he believed, the agrarian reform bill was the more important of the two. Chance, moreover, had provided him with an excellent opportunity for successful log-rolling.⁵²²

During November, Volio moved to make his threat to oppose the bill on the floor credible. On November 15, he addressed a let-

four-year term.

521. Interview with Fernando Volio (Dec. 16, 1974).

522. *Id.*

ter to the Attorney General, requesting a copy of the brief presented in the earlier proceedings under Law No. 2463. More specifically, he asked the Attorney General to indicate whether the two month period established in the law to bring an action against the appellant had been "sufficient to defend in the most thorough manner the interests of the State."⁵²³

On November 21, Volio wrote the General Director of the National Tax Office, asking for the value which had been placed on Hacienda Tapantí prior to its confiscation, when it had been owned by Calderón Guardia.⁵²⁴ Of far greater significance, however, was a letter he addressed the same day to the Secretary of the PLN, for it revealed that Volio might be willing to bypass the PLN leadership if necessary in order to block the bill. In the letter, Volio noted that Villalobos Arce had succeeded in reducing the period for the Attorney General to bring an action from six to two months which made the proof of events occurring twelve years earlier impossible and resulted in a judgment in favor of Calderón Guardia. The most important part of the letter, however, was the following:

It seems to me that the Party should resolve whether it is to approve the bill transferring the hacienda "Tapantí" to Calderón Guardia, taking into consideration the fact that Law No. 2463 does not authorize a transfer such as that which is proposed, and also taking into consideration that the bill could weaken the moral basis of the Revolution of 1948, formed in part by the necessity of fighting the corruption of the regime of the [previous] eight years.⁵²⁵

In short, Volio was prepared to carry out his threat unless the unanimous support of the Republicans for the agrarian reform bill could be guaranteed.

Both of the factors discussed above, the changing attitude of the United States and Volio's position and attitude toward the bill transferring Hacienda Tapantí, were in the background during the month of November. Both had a significant impact on prospects for passage of the agrarian reform bill.

523. Letter from Fernando Volio Jiménez to Otto Rojas Vargas, Attorney General of the Republic (Nov. 15, 1960) (copy on file with the author). See *infra* pp. 456-58.

524. Letter from Fernando Volio Jiménez to José Rivera A., General Director of the National Tax Office (Nov. 21, 1960) (copy on file with the author).

525. Letter from Fernando Volio Jiménez to José Francisco Carballo Q., Secretary General of the PLN, Nov. 21, 1960 (copy on file with the author).

Meanwhile, the real bargaining on the bill's provisions had begun behind the scenes, primarily within the Special Committee on Motions which had been appointed on October 24.⁵²⁶ The Special Committee on financing agrarian reform, approved on October 11,⁵²⁷ was also of considerable importance to Volio and the reformers as they pursued a new strategy aimed at gaining wider support for the bill.

It was in the Special Committee on Motions, however, that the real bargaining took place. The committee was made up of Enrique Obregón and Fernando Volio, the chief proponents of the agrarian reform bill;⁵²⁸ Guillermo Villalobos Arce from the Republican Party, sponsor of article 48 paragraph 2 of the 1959 Law of Economic Encouragement;⁵²⁹ Fabio Fournier Jiménez from Echandi's National Union Party (PUN), the principal spokesman for the opposition to the bill; and Frank Marshall Jiménez, the only Deputy and principal figure of the Revolutionary Civic Union Party.

Within the Republican Party, Villalobos Arce represented those elements which were most receptive to agrarian reform, though his vote against the motion on the social function of property on October 4 seemed to suggest that his support for the bill was not unqualified, but rather subject to political considerations of a broader nature. At this time, after all, the Republicans did form part of President Echandi's coalition. Consequently, Villalobos Arce could not clash directly with Fournier without bringing into play political considerations of a more general character.

Fournier, for his part, was a consummate and respected politician. While he had not been above reading the *Communist Manifesto* to the Assembly on October 3, he was not an intractable rightist. Rather, he was usually willing to compromise, and when presented with strong arguments was susceptible to persuasion.

Frank Marshall Jiménez, who had achieved a personalistic following as a combatant in the 1948 civil war, had no sharply defined ideological position, though he tended to be staunchly anti-communist in his public statements.⁵³⁰

526. See *supra* pp. 422-23.

527. *Id.*

528. Obregón was from the PLN; Volio, though elected on the Independent Party ticket in 1958, had for all practical purposes returned to the PLN earlier in the year.

529. See *supra* pp. 241-47.

530. See J. Bidinger, *The Ecological Basis of Costa Rican Voting Patterns: 1958-1966*, at 81-82, 94 (1973, Thesis, Georgetown University); B. ENGLISH, *LIBERACION NACIONAL IN*

The Special Committee did not really meet as a *committee*. Instead, agreement on the various motions was usually reached in private conversations between two or three members.⁵³¹ In this setting, Fernando Volio — helped and continually prodded by Obregón, and usually with the tacit support of Villalobos Arce — demonstrated a remarkable brilliance in forging a broad consensus on what was one of the most controversial bills ever considered by the Legislative Assembly.

Marshall's support was won by allowing him to play a leading role in the parallel deliberations of the Special Committee to draw up a plan for financing agrarian reform.⁵³² Volio and Obregón were able to gain the support of Villalobos, and — somehow — Fournier's support was obtained as well. The bill that emerged from the Special Committee was perhaps even stronger than the bill drafted by Volio and introduced on May 16, 1960. Among the provisions which were weakened, the most important had to do with the appraisal procedure prior to expropriation in squatter conflicts. These provisions were slightly weakened, making the procedure even more time consuming,⁵³³ but even this was partly the result of the inclusion of the provisions of the 1958 bill in the 1960 draft.⁵³⁴ Of much greater importance were a number of articles added to the bill which strengthened it in several important respects. All in all, given the passions that had been aroused in late September and early October during the the debate on the social function of property, the consensus which emerged in the Special Committee represented an extraordinary accomplishment.

5. Hard Bargaining

a. The Special Committee on Financing Agrarian Reform

While the original terms of reference of the Special Committee had been to report on those motions on which there was agreement, a motion by Fournier, Obregón, and Volio was approved on November 5 which gave the committee the authority to introduce its own modifications into the bill.⁵³⁵ The reports of both the Spe-

COSTA RICA 74, 94, 96-97 (1971).

531. See Intervention of Deputy Fournier Jiménez, ASAMBLEA LEGISLATIVA DE COSTA RICA, 101 ACTAS 394 [hereinafter cited as ACTAS].

532. See *supra* p. 422.

533. See *infra* pp. 437-41.

534. See *supra* pp. 406-12.

535. Expediente No. 2825, *supra* note 408, at 280. The motion also postponed consider-

cial Committee on Motions and the Special Committee on Financing were signed on November 11,⁵³⁶ a fact which evidenced close coordination by Volio and the reformers of the work of the two committees.

The Report of the Special Committee on Financing Agrarian Reform revealed the influence of the changing attitude of the United States toward agrarian reform, symbolized by the Act of Bogotá. In its report, the Special Committee proposed the inclusion of two new articles in the bill to facilitate the financing of agrarian reform in Costa Rica. The first provided:

The Central Bank of Costa Rica is authorized to take the necessary steps in order to obtain lines of credit from foreign banks or agencies up to the amount of 20 million dollars, the proceeds of which shall be used to finance the agrarian programs of the *Banco Nacional de Costa Rica*, in accordance with the provisions of this law.⁵³⁷

The second provision established:

The Executive is authorized to issue bonds in national or foreign currency in an amount up to 20 million dollars, maturing in 20 years and bearing 7% interest annually, the proceeds of which shall be used in their entirety to finance the agrarian programs of the *Banco Nacional de Costa Rica* which are contemplated in this law.

Each of the emissions of bonds made by the Executive under this authority shall require the ratification of the Legislative Assembly.⁵³⁸

These measures, it should be pointed out, were in addition to other sources of revenue provided for in the bill, including the twenty million colones (¢) which had been set aside by the 1959 Law of Economic Encouragement.⁵³⁹ According to the report, these

ation of the Committee's report for two days.

536. *Dictámen de la Comisión Especial* (financing), Nov. 11, 1960, Expediente No. 2825, *supra* note 408 at 694-96 [hereinafter cited as Report of the Special Committee on Financing]; *Dictámen de la Comisión Especial* (motions), Nov. 11, 1960, Expediente No. 2825, *supra* note 408, at 287-340, 516-55 [hereinafter cited as Report of the Special Committee on Motions].

537. Report of the Special Committee on Financing, *supra* note 536, at 695. The provision is reproduced in Law No. 2825, art. 157 (1974 ed. art. 181).

538. Report of the Special Committee on Financing, *supra* note 536, at 695. The article is reproduced in Law No. 2825, art. 158 (1974 ed. art. 182).

539. 1960 Draft, *supra* note 408, art. 5 para. 1; reproduced in Law No. 2825, art. 16 para. 1 (1974 ed. art. 41 para. 1). See Part One, 14 LAW. AM. 221 (1982); see *infra* p. 449.

funds were to be used,

in accordance with the rhythm of application of the programs [of the Bank] and the possibilities which exist for servicing the bonds and loans.⁵⁴⁰

The influence of the Act of Bogotá on the members of the Special Committee was clearly revealed in the concluding paragraph of the report:

The Committee considers that the climate prevalent in the countries forming the Inter-American Legal System [*el Sistema Jurídico Interamericano*], with respect to programs of development for our underdeveloped peoples, is propitious for obtaining foreign aid for Costa Rica which permits the country to promote its agricultural development through democratic and well-planned [*técnicos*] programs such as those contemplated in the Lands and Colonies bill.⁵⁴¹

The support of Frank Marshall and other members of the Special Committee on financing was an important part of the new strategy of the reformers. While the above provisions increased the amount of financing available for agrarian reform, manifesting in the process the influence of the Act of Bogotá, the real significance of the report was the fact that new supporters had been brought into the camp of those pushing for passage of the agrarian reform bill.

b. The Main Arena: The Special Committee on Motions and Its Reports

The report of the Special Committee on the Bank Motions, also rendered on November 11, was the product of the real bargaining over the bill in the Legislative Assembly. While conceding numerous small points contained in the recommendations of the *Banco Nacional*, in an effort to induce Caamaño Cubero to forego presentation and debate on each of them on the floor,⁵⁴² Volio and Obregón also made some concessions to Fournier and the forces he represented. Nonetheless, the bill which emerged from the Special Committee was strengthened in several respects.

One area of compromise had to do with the recovery by the

540. Report of Special Committee on Financing, *supra* note 536, at 694.

541. *Id.* at 695.

542. See *supra* pp. 300-301.

state of lands which had been acquired illegally from it. One article of the 1960 Draft,⁵⁴³ for example, provided that the bank could request the Office of the Attorney General to undertake legal actions to recover excess areas which, according to Law No. 139 of July 14, 1941 (*Ley de Informaciones Posesorias*), could not be titled, as well as other lands which had been acquired irregularly by private parties. Accepting a modification proposed by the *Banco Nacional*,⁵⁴⁴ the Special Committee added qualifying language which limited such action to situations,

when it [the Bank] considers that said lands are suitable for its plans for parceling and colonization.⁵⁴⁵

While Fournier (and in the background, Caamaño Cubero) might take satisfaction with this concession, in fact the change was not too important, as the Bank retained the authority

to request the Executive to establish those legal actions which are deemed appropriate in order for the state to recover lands from which it has been dispossessed improperly.⁵⁴⁶

A similar change was made in the article specifying which lands were declared to be in the public interest for purposes of expropriation.⁵⁴⁷ Paragraph 2, declaring such lands to include former state lands now privately owned which failed to satisfy the social and economic function pursued by the law, was deleted.⁵⁴⁸ Paragraph 3 originally included:

3) those lands suitable for the purposes of this law which, in the judgment of the Bank, are found to be uncultivated or deficiently exploited.⁵⁴⁹

This provision was changed, in the Special Committee's version, to read:

543. 1960 Draft, *supra* note 408, at art. 105. See Part One, 14 LAW. AM. 187 (1982).

544. Motion No. 129, *Mociones Presentadas Sobre el Proyecto de Ley de Tierras y Colonización* [hereinafter cited as List of Motions], found in the private papers of Alvaro Rojas E. relating to the Law of Lands and Land Settlement, vol. 2 (copy on file with the author).

545. Report of the Special Committee on Motions, *supra* note 536, at 541; Law No. 2825, art. 147 (1974 ed. art. 171).

546. 1960 Draft, *supra* note 408, at art. 5 (6). See Law No. 2825, art. 17(6). Cf. *id.*, art. 30(7). In fact, by including new articles, the reformers gained as much — and perhaps more — than they had lost. See *infra* pp. 433-35.

547. 1960 Draft, *supra* note 408, at art. 113. See Part One, 14 LAW. AM. 188 (1982).

548. Report of the Special Committee on Motions, *supra* note 536, at 542.

549. 1960 Draft, *supra* note 408, at art. 113(3). See Part One, 14 LAW. AM. 188 (1982).

2) those lands suitable for the purposes of this law which, in the judgment of the Bank, are *indispensable* for the achievement of the purposes of the same (emphasis added).⁵⁵⁰

The change was significant, apparently reflecting Fournier's desire to limit the authority of the bank to undertake large-scale programs aimed at the redistribution of land and power in Costa Rica. Still, the loss was perhaps not so great after all, as the last paragraph of the article was retained, as follows:

4) those lands which, due to their size [*latifundio* or *minifundio*], impair the adequate socio-economic development of a zone.⁵⁵¹

Another change of considerable importance was the addition of a new provision relating to the recovery of former state lands. While article 105 of the 1960 Draft was weakened, as we have seen,⁵⁵² the new provision made recovery of some of those lands automatic. Paragraph (d) of the article establishing the patrimony of the Bank's Section of Lands and Colonies was modified to include the following:

(d) Those lands titled in the name of natural or juridical persons which were inscribed under the authority of Law No. 13 of January 10, 1939 and Law No. 139 of July 14, 1941, exceeding 100 hectares in area, which five years from the entry into force of this law are still not cultivated in 60% of their area.⁵⁵³

Similarly, the Special Committee included specific provisions relating to automatic reversion to the state of uninscribed areas of farms more than one thousand hectares in area.⁵⁵⁴ The *Banco Nacional* had suggested in its report that all of the provisions in the 1960 Draft⁵⁵⁵ which had been taken from article 48 paragraph 2 of the Law of Economic Encouragement⁵⁵⁶ be dropped from the

550. Report of the Special Committee on Motions, *supra* note 536, at 542. The provision is found in Law No. 2825, art. 129(2) (1974 ed. art. 153(2)).

551. Report of the Special Committee on Motions, *supra* note 536, at 542. The provision is found in Law No. 2825, art. 129(4) (1974 ed. art. 153(4)). See Part One, 14 LAW. AM. 188 (1982).

552. See *supra* pp. 431-33.

553. Report of the Special Committee on Motions, *supra* note 536, at 516. The provision was passed by the Assembly, but vetoed by President Echandi. See Decreto No. 2747, *supra* note 477, art. 21(d); and Echandi Veto, *supra* note 479. Reversions were to follow the procedures on, *infra* pp. 437-41.

554. See 1960 Draft, *supra* note 408, at art. 5 (22)-(23), discussed *supra* at pp. 405-07.

555. 1960 Draft, *supra* note 408, at art. 5 (22)-(26).

556. See Part One, 14 LAW. AM. 240-45 (1982).

bill.⁵⁵⁷ Instead, the Special Committee retained these provisions. Paragraph 22 was modified by adding a requirement that the study of farms over one thousand hectares in area be started within three months after passage of the law.⁵⁵⁸

Paragraph 23, in the 1960 bill, had provided for *study* of the possibility that all excess areas (i.e., untitled portions) covered by paragraph 22 revert automatically to the state.⁵⁵⁹ This was a literal transcription of the compromise language adopted in 1959.⁵⁶⁰ While the Special Committee did not restore the language of Vilalobos's original motion in 1959 (which provided for reversion of *all* excess portions),⁵⁶¹ it did give the provision operative effect. In the new version, paragraph 23 established:

If any excess [area] is verified, the following procedure shall be observed:

- a) If the entirety of the property is cultivated or dedicated to cattle-raising activities, the owner shall have the right, with the intervention of the Head [*Jefe*] of the Section of Lands and Colonies, to modify the [inscribed] boundaries by 40%, by means of a notarial act to be inscribed in the corresponding entry in the Property Registry;
- b) If the land corresponding to the excess area is not cultivated, the Section shall issue a resolution ordering its inscription in the name of the *Banco Nacional de Costa Rica*, and shall communicate the same to the Office of the Attorney General of the Republic in order for the latter to proceed, within a period of 15 days, to carry out the terms of the resolution through the corresponding inscription and notarial registration.⁵⁶²

Though the fate of any cultivated portion exceeding the forty percent increase permitted for modification of the deed was left ambiguous, presumably the state could recover it by undertaking the corresponding legal actions. Complex questions of interpretations

557. List of Motions, *supra* note 544, Motion No. 18.

558. Report of the Special Committee on Motions, *supra* note 536, at 516. See Law No. 2825, art. 17(22). Cf. *id.*, 1974 ed. art. 30(20) para. 1; and Law No. 3042 of Oct. 4, 1962, Transitory Provision VI, Part One, 14 LAW. AM. 241 n.330 (1982).

559. 1960 Draft, *supra* note 408, at art. 5 (23).

560. See Part One, 14 LAW. AM. 240-44 (1982).

561. See *id.* at 241.

562. Report of the Special Committee on Motions, *supra* note 536, at 517. The provision is reproduced in Law No. 2825, art. 17(22) para. 2. Paragraphs 22 and 23 of the Special Committee's version were combined in *id.* art. 17 (22), (1974 ed. art. 30 (20)). The current and much strengthened version is found at Law No. 6734, Part One, 14 LAW. AM. 172 n. 33 (1982), art. 78.

might arise as to mixed situations not falling completely within either (a) or (b). The important point, however, is that with this provision the Bank acquired the power to recover, on its own initiative and without indemnification, large areas of uncultivated land which were untitled but in the possession of large landholders.

At the same time, paragraph 24 of the same article, establishing the powers and the duties of the Bank, was weakened by the addition of the following underlined words:

Authorize [*questionar*] expropriation with indemnification of those uncultivated lands monopolized by natural or juridical persons who are unwilling or unable to cultivate them, when said lands are necessary for the achievement of the purposes of this law (emphasis added).⁵⁶³

In a second area, Volio and the reformers achieved a total victory on the question of whether it was to be the *Banco Nacional* or the Executive that had the final say on the transfer of state lands to the Section of Lands and Colonies of the Bank. This issue had caused one of the great debates during consideration of the chapter on agrarian reform of the Law of Economic Encouragement in 1959. The clashing views of Fernando Volio and Daniel Oduber, on the one hand, and of Fabio Fournier Jiménez, on the other, had led to an impasse. The outcome had been the inclusion of deliberately ambiguous language on this point, followed by several determined efforts by Volio to shift the balance of ambiguity in the reformers' favor.⁵⁶⁴ Volio had changed one word in his 1960 Draft, deciding the issue in the Bank's favor.⁵⁶⁵ Now, by incorporating articles from Obregón's draft,⁵⁶⁶ the reformers succeeded in deciding the issue once and for all — or so it appeared.

The first of these articles provided:

The following are affected for the purposes of the present law:

- a) Lands considered national reserves;
- b) Rural farms privately owned [i.e., titled] by the State;
- c) Rural farms belonging to Municipalities and Autonomous

563. Report of the Special Committee on Motions, *supra* note 536, at 517. See Part One, 14 LAW. AM. 240-43 (1982). The provision is found in Law No. 2825, art. 17(24). However, it was eliminated by Law No. 3042 of Oct. 3, 1962, Part One, 14 LAW. AM. 241 n.330 (1982).

564. See Part One, 14 LAW. AM. 236-39, 251 (1982).

565. See *supra* pp. 278-79.

566. Obregón Draft, *supra* note 475, arts. 88-90.

Institutions; and

d) Rural properties which pass to the state by virtue and as a consequence of illegal enrichments from public property.⁵⁶⁷

The second article,⁵⁶⁸ to which the Special Committee added a third paragraph, established in its final form:

The properties affected according to the present chapter shall be transferred gratuitously to the Department of Rural Credit, Lands, and Colonization of the *Banco Nacional*. The Executive as well as the Directors [*Gerentes*] of the Autonomous Institutions and the Municipal Presidents are expressly authorized to make such transfers.

Said entities shall not be able to sell, mortgage, or lease lands which are affected.

Notwithstanding the provisions of the preceding paragraphs, the Executive may require the Bank to transfer ownership of those lands which are indispensable for the construction of public works or the installation of public services which are distinct from those contemplated in this law, as well as that of those [lands] covered by contracts signed by the Executive and ratified by the Legislative Assembly.⁵⁶⁹

Meanwhile, article 5(a) of the 1960 Draft, which also provided for mandatory transfer of state lands to the bank, was retained.⁵⁷⁰ Clearly, the reformers had won a fundamental point. The only question that remained was whether the Bank had to request the transfers⁵⁷¹ or whether the corresponding institutions were to undertake such transfers on their own.⁵⁷² The important point, however, was that the reformers had squarely won on an issue of fundamental importance.

The third area in which the reformers succeeded in including articles they wanted had to do with "the social function of land."

567. *Id.*, art. 89, copied from Venezuelan Law, *supra* note 475, art. 10; Report of the Special Committee on Motions, *supra* note 536, at 534. The article is reproduced in Law No. 2825, art. 12 (1974 ed. art. 12).

568. Obregón Draft, art. 90. This provision was apparently adapted from Venezuelan Law, arts. 11, 15. Art. 90 of the Obregón Draft is found in Law No. 2825, art. 13 paras. 1-2 (1974 ed. art. 13, paras. 1-2).

569. Report of the Special Committee on Motions, *supra* note 536, at 534-35. The article is reproduced in Law No. 2825, art. 13 (1974 ed. art. 13).

570. *See supra* pp. 278-79.

571. *Id.* This possibility was also suggested by 1960 Draft, *supra* note 408, at art. 104, copied from art. 114 of the 1955 Draft, discussed at Part One, 14 LAW. AM. 187 (1982). The provision was included as Law No. 2825, art. 14. However, it was repealed by Law No. 4465 of Nov. 25, 1969, art. 109; published in La Gaceta No. 274 of Dec. 2, 1969 (*Ley Forestal*).

572. *See supra* note 569.

Despite their defeat on October 4,⁵⁷³ they managed to include in the Report of the Special Committee on Motions a new chapter II entitled "The Social Function of Property." These provisions were included in the bill passed by the Assembly, but were subsequently eliminated as a result of President Echandi's veto. Nonetheless, three of the provisions are of particular interest. The first provided the following:

The existence and maintenance of uncultivated or idle farms is considered especially contrary to the principle of the social function of property, particularly in regions of economic development. Indirect systems of exploitation of the land, with the exception contemplated in Article 69 of the Constitution, are likewise considered contrary to the principle of the social function of land.

*The situation referred to in this article shall be resolved by the bank in accordance with the provisions of the present law (emphasis added).*⁵⁷⁴

The second article of interest was the following:

The uneconomical *latifundio* and *minifundio* are considered contrary to the public interest.⁵⁷⁵

Finally, and most importantly, the third article provided:

Latifundio is understood to mean every rural property of great extension which is contrary to the economic and social interests of the country.

The Bank shall determine which farms are found in the above conditions, according to the zone, and in accordance with the classification of lands made by the same.⁵⁷⁶

The provision was important because — together with the other two articles discussed here, the chapter on "Acquisition and Expropriation of Lands" included later in the report,⁵⁷⁷ and the

573. See *supra* pp. 302-3.

574. Report of the Special Committee on Motions, *supra* note 536, at 518. The provision is found in Decreto No. 2747, *supra* note 477, art. 5 paras. 1-2. The article was adapted from Obregón Draft, *supra* note 475, at art. 11, which in turn was copied from Venezuelan Law, art. 20. It was vetoed by President Echandi. See *supra* note 479.

575. Report of the Special Committee on Motions, *supra* note 536, at 519. The article is reproduced in Decreto No. 2747, *supra* note 477, at art. 8; however, it was vetoed by President Echandi. *Supra* note 479. See also Decreto No. 2747, *supra* note 477, at art. 6, discussed at *supra* p. 417.

576. Report of the Special Committee on Motions, *supra* note 536, at 519. Cf. Decreto No. 2747, *supra* note 477, at art. 9.

577. See *infra* pp. 340-48.

remaining provisions of the bill — it might have enabled the Bank to carry out expropriations based on the principle of the social function of property *despite* the defeat of the basic motion on this subject on October 4. Gaining the support of Fabio Fournier Jiménez for this and the other provisions was quite an accomplishment. Unfortunately, the last of the three articles was subsequently modified, resulting in the following text of what became article 9 of Decreto No. 2747:

Latifundio is understood to mean every rural property of great extension which is contrary to the economic and social interests of the country.

*The Bank shall formulate a draft law in which it shall be determined which area shall be considered to constitute an uneconomical latifundio in each zone, in accordance with the classification of lands made by the Bank (emphasis added).*⁵⁷⁸

While the importance of these articles subsequently disappeared as a result of President Echandi's veto,⁵⁷⁹ at the time they seemed to represent considerable gains by the reformers. In any event, much of the authority in these articles could also be found in two articles which were retained in Law No. 2825.⁵⁸⁰

The only major concessions made by Obregón and Volio within the Special Committee on Motions were in a fourth area, involving several changes in the appraisal procedure to be followed in squatter cases prior to expropriation. As noted above, the initial negotiating position of the reformers was weak, due to the inclusion of repetitious provisions from the 1958 bill in the 1960 draft.⁵⁸¹

The 1960 draft had been sent to the *Banco Nacional* for its comments,⁵⁸² which were subsequently introduced as separate motions by Deputy Caamaño Cubero. The Bank's suggestions in this fourth area,⁵⁸³ supported by Fournier, were acceded to as part of the overall process of persuasion and accommodation which enabled the reformers to emerge from the committee with a strong bill enjoying very broad support.

578. Decreto No. 2747, *supra* note 477, at art. 9. See *infra* pp. 462-64.

579. See *supra* note 479; and *infra* pp. 478-85.

580. Law No. 2825, art. 128-29 (1974 ed. arts. 152-53). See Part One, 14 LAW. AM. 188 (1982), *supra* pp. 489-90.

581. See *supra* pp. 406-11.

582. See *supra* note 463.

583. List of Motions, Motions 99-106, *supra* note 544.

According to the new provisions,⁵⁸⁴ if in the case of a squatter conflict (under chapter VII of the bill) no agreement could be reached between the parties, then the following procedure was to be observed: 1) the Bank was to carry out an appraisal of the land in question;⁵⁸⁵ 2) the appraisal was *not* to be limited to the value of the lands at the time of their occupation (as it had been in previous drafts);⁵⁸⁶ 3) the Bank was to submit the appraisal to the parties, who had thirty calendar days in which to indicate their agreement or disagreement as to the sale at that price;⁵⁸⁷ 4) if the owner or *any* of the squatters were in disagreement with the Bank's appraisal, the Bank was to request the National Tax Office to have its body of expert appraisers (*Cuerpo de Peritos Valuadores*) carry out a new appraisal within the conditions of the present law;⁵⁸⁸ 5) the latter appraisal was to be delivered to the Bank within thirty calendar days following its receipt of the request; 6) the Bank was to submit this appraisal immediately to the parties, who had thirty calendar days to indicate whether they agreed to buy or sell at the price established (by this second appraisal); 7) if the owner or the squatters did not accept the appraisal of the experts of the National Tax Office, they had thirty calendar days in which to appeal the appraisal before the Tribunal of Appraisals of the National Tax Office; 8) the latter had thirty working days, upon receipt of the appeal, to submit its report to the Bank; 9) the report of the Tribunal of Appraisals was then to be submitted by the Bank to the parties, who had fifteen working days in which to indicate whether they were willing to buy or sell at the price fixed;⁵⁸⁹ 10) if the owner accepted the final appraisal established by the National Tax Office, the squatters were bound by it;⁵⁹⁰ 11) if the owner did not accept the final appraisal of the National Tax Office, he could

584. See Law No. 2825, arts. 75-81; and *id.* (1974 ed. arts. 99-105); current version at Law No. 6734, Part One, 14 LAW. AM. 172 n. 33 (1982), arts. 63-77.

585. List of Motions, Motion No. 99, *supra* note 544; Report of the Special Committee on Motions, *supra* note 536, at 535, reproduced in Law No. 2825, art. 75 (1974 ed. art. 99).

586. This change was *not* proposed by the *Banco Nacional*. Presumably, the change — dropping a phrase from 1960 Draft, *supra* note 408, at art. 69 — was made at the instance of Fournier. Report of the Special Committee on Motions, *supra* note 536, at 535. See Law No. 2825, art. 76 (1974 ed. art. 100); and *supra* p. 289.

587. List of Motions, Motion No. 100, *supra* note 544; Report of the Special Committee on Motions, *supra* note 536, at 536; Law No. 2825, art. 78. Cf. *id.* (1974 ed. art. 102).

588. List of Motions, Motion No. 101, *supra* note 544; Report of the Special Committee on Motions, *supra* note 536, at 536; Law No. 2825, art. 79. Cf. *id.* (1974 ed. Art. 103).

589. *Supra* note 588.

590. List of Motions, Motion No. 103, *supra* note 544; Report of the Special Committee on Motions, *supra* note 536, at 536; Law No. 2825, art. 80. Cf. *id.* (1974 ed. Art. 104 para. 1).

not, *for this reason (por ese motivo)*, evict the squatters;⁵⁹¹ 12) given such a situation — where the owner refused to accept the final appraisal of the National Tax Office—the squatters could request the expropriation of the farm;⁵⁹² and 13) the squatters had a period of one month, after communication by the Bank regarding the appraisals carried out, to declare their readiness to buy at the price finally accepted by the owner, and if they failed to do so, they were to remain subject to the ordinary provisions of the law.⁵⁹³ At the same time the provision in the 1960 draft allowing either party to appeal the resolutions of the Bank relating to appraisals to the Second Civil Appellate Division of the Supreme Court was left intact, thus providing an additional opportunity for delay.⁵⁹⁴ All of the above steps, were still to be completed prior to the expropriation itself, which was to be carried out by following the procedures established by articles 2-9 of Law 1371 of November 10, 1951 — with payment to be made in bonds or cash, as the Bank might decide.⁵⁹⁵

What an extraordinarily complicated and time-consuming procedure! Yet the procedure included in the reformers' draft had been almost as complicated itself, and the modifications suggested

591. List of Motions, Motion No. 125, *supra* note 544; Report of the Special Committee on Motions, *supra* note at 536, at 536; Law No. 2825, art. 81 para. 1. *Cf. id.*, (1974 ed. art. 94) paras. 2-3, art. 105 para. 1, Transitory Art. (unnumbered). This represented a subtle but important modification of Article 74 of the 1960 Draft, which provided that in such circumstances the owner could not evict the squatters "for any reason whatsoever" (*por ning=4un concepto*). Naturally, the owner would never evict the squatters simply because he refused to accept the appraisal; he would do so on the basis of the squatters' violation of criminal and civil legal provisions. The change involved a critical point and, despite subsequent modifications now in force, ITCO has encountered considerable problems, involving disputes with local judicial authorities, when squatters have been evicted and jailed as ITCO was seeking to resolve a dispute.

592. List of Motions, Motion No. 105, *supra* note 544; Report of the Special Committee on Motions, *supra* note 537, at 536; Law No. 2825, art. 81 para. 1. The 1960 Draft, *supra* note 408, at art. 74 para. 2, had provided that in such a situation, "the Bank shall proceed to expropriate the farm affected [by the squatters] . . ." The provision was subsequently changed to read, "[T]he Institute may undertake (*gestionar*) the partial or total expropriation of the farm affected. Law No. 2825 (1974 ed. art. 105 para. 1).

593. List of Motions, Motion No. 105, *supra* note 544; Report of the Special Committee on Motions, *supra* note 536, at 537; Law No. 2825, art. 80, para. 3. The period was thus reduced from three months to one. See 1960 Draft, *supra* note 468, at art. 74 para. 3, discussed *supra* at p. 285. *Cf. id.* (1974 ed. art. 104).

594. 1960 Draft, *supra* note 408, at art. 116, para. 3, discussed at *supra* p. 407 and note 435. The Special Committee did not change this provision, which was reproduced as Law No. 2825, art. 153 para. 3. It was eliminated in 1964, however, by Law No. 3336, Part One, 14 LAW. AM. 214 n.190 (1982).

595. 1960 Draft, *supra* note 408, at art. 112; reproduced in Law No. 2825, art. 128. See *id.* (1974 ed. art. 152).

by the *Banco Nacional* did not seem to weaken the *existing bill* to an unacceptable degree. In any event these concessions were apparently necessary in order to obtain the agreement of Fournier and the forces he represented on the inclusion of other provisions felt by the reformers to be of great importance. Yet while the reformers made concessions tending to make expropriation even more complicated than in the 1960 bill, they also obtained important concessions from Fournier and the opposition in return. Some of the most important of these gains were in a fifth area, relating to the acquisition and expropriation of land situations not necessarily involving squatters.

At the instance of Obregón and Volio, a new chapter, entitled "Acquisition and Expropriation of Lands," was incorporated into the bill by the Special Committee on Motions. The chapter was taken from the draft of Enrique Obregón, who had prepared the chapter by copying the corresponding provisions of the Venezuelan law.⁵⁹⁶ With very few exceptions, therefore, the new provisions adopted by the Special Committee were verbatim copies of articles contained in the Venezuelan law.⁵⁹⁷

The first article of the chapter was far-reaching in effect, providing in its first paragraph:

All lands owned by a natural or juridical person which exceed the limits established for the *latifundio* shall be expropriated for the purpose of distribution among *campesinos* and agricultural workers who are landless or have insufficient lands. The expropriation shall be carried out in a progressive manner, according to the economic conditions of the Bank and in the zones which the latter may determine.⁵⁹⁸

596. See *supra* p. 415. Cf. *supra* notes 480, 486-88.

597. See Obregón Draft, *supra* note 475, at arts. 20-31; Report of the Special Committee on Motions, *supra* note 536, at 549-51; Law No. 2825, arts. 117-126 (1974 ed. arts. 141-50).

598. Report of the Special Committee on Motions, *supra* notes 536, at 549. The article was copied, with one important change, from the Obregón Draft, art. 31. The change involved the elimination of a definition of *latifundio* in terms of specific areas of land (see *supra* note 488). Instead, it was decided to leave this determination to the Bank. See the discussion of what became Decreto No. 2747, *supra* note 477, at arts. 5, 9, at *supra* pp. 436-38. Had the text of *id.*, art. 9, been maintained in the original form proposed by the Special Committee, the Bank would have had broad authority, under *id.* arts. 5, 9 and the provision discussed in the text above, to carry out major programs of land redistribution where squatters were not involved. Cf. *supra* pp. 335-36. The provision discussed in the text was not copied directly from the Venezuelan law. For clues to its origin, see *id.*, art. 29; and Cuban law of Agrarian Reform of 1959, *supra* note 393, art. 1. The provision discussed in the text is found in Law No. 2825, art. 117 para. 1 (1974 ed. art. 141 para. 1).

The article also provided for the expropriation of *minifundios* in certain circumstances.⁵⁹⁹ The next article, however, provided that rural properties could not be expropriated if they satisfied the social function of property.⁶⁰⁰ The chapter on "Acquisition and Expropriation of Lands" contained other provisions which, ironically, tended to limit the freedom of action of the Bank.⁶⁰¹ All of these provisions became law in precisely the form proposed by the Special Committee.

Expropriation was to be undertaken when, in a particular zone, virgin state lands were inadequate, or the Bank, in its own judgment, was unable to acquire sufficient lands which were economically exploitable.⁶⁰²

Expropriation of lands which did not fulfill their social function was to proceed in accordance with the following scheme of priorities:

- 1) Uncultivated lands, and among the same, those greatest in area; those exploited indirectly by tenants, sharecroppers [*medianeros*], settlers [*colonos*],⁶⁰³ and squatters [*ocupantes*]; and those not exploited during five years prior to the expropriation;
- 2) Lands set aside for private rural parceling programs, colonies, or associations formed on the basis of special laws, which have not developed such parceling programs or are not faithfully

599. See Law No. 2825, art. 117 paras. 2-3 (1974 ed. art. 141 paras. 2-3).

600. Obregón Draft, *supra* note 475, at art. 20, adapted from Venezuelan Law, *supra* note 475, at art. 26; Report of the Special Committee on Motions, *supra* note 536, at 549; Law No. 2825, art. 118 (1974 ed. art. 142). However, the defeat of the article defining the social function of property on Oct. 4 (*supra* pp. 417-21) left the meaning of this provision somewhat ambiguous; presumably it was to be interpreted in light of the provisions which were included in the chapter on the social function of property. See *supra* pp. 436-38. These articles, however, were vetoed. *Supra* note 479. Nonetheless, arts. 117-18 are presumably still applicable, if interpreted in the light of Law No. 2825, arts. 128-29 (1974 ed. arts. 152-53).

The redundancy resulting from the grafting of large sections of the Venezuelan law onto the pre-existing text of the Costa Rican bill was considerable. Compare, e.g., Law No. 2825, arts. 117-18 with *id.* arts. 128-29 (1974 ed. arts. 152-53). However, despite this confusing repetitiveness, it resulted in an unexpected benefit: when President Echandi vetoed certain articles, he overlooked others which had the same or a similar effect.

601. See E. FEDER, *THE RAPE OF THE PEASANTRY* 192-202 (1971); the unabridged Spanish edition of the foregoing, *VIOLENCIA Y DESPOJO DEL CAMPESINO: EL LATIFUNISMO EN AMERICA LATINA* 191-97 (1972); and Feder, *Counterreform*, Part One, 14 *LAW. AM.* 236 n.301 (1982).

602. Obregón Draft, *supra* note 475, at art. 21, copied from Venezuelan Law, art. 27; Law No. 2825, art. 119 (1974 ed. art. 143).

603. *Colono* has alternate meanings referring to semi-feudal relationships. See C. SANTOS DE MORIAS, *DICCIONARIO DE LA REFORMA AGRARIA* 260, 399-400 (1973).

satisfying the ends prescribed in said laws. In these cases, the Bank shall safeguard the rights of the parceling beneficiaries which are already established; and

3) Agricultural lands dedicated to cattle-raising. Expropriation shall also be permitted, without taking into account the above scheme of preferences, when no other means remains for the resolution of an agrarian problem of an obviously serious nature. Prior proof of this situation shall be established by the Bank.⁶⁰⁴

The last paragraph was, and is, of great importance, since it authorized the Bank (and now ITCO), to undertake expropriation in *any* serious squatter conflict. While this provision was not of critical importance between 1961 and 1964, when there was no requirement that squatters be in possession for one year before ITCO could intervene,⁶⁰⁵ since 1964 it has constituted ITCO's principal authority for intervening in conflicts involving recent invasions by squatters — conflicts which are often extremely explosive in nature.

Other provisions in this chapter gave the owner of several expropriated properties a right to select and retain a portion of his lands, within limits set by the Bank⁶⁰⁶; gave small and medium-sized owners whose land had been totally expropriated the right to an economically viable parcel⁶⁰⁷; and established that the expropriation would be total if partial expropriation should result in the destruction of the economic viability of the farm.⁶⁰⁸

The following article is of great interest, for it established a straightforward and sensible procedure to be followed prior to the act of expropriation.⁶⁰⁹ The article provided:

Before proceeding to expropriate a property, the Bank shall at-

604. Obregón Draft, *supra* note 475, at art. 22, copied, with very minor changes, from Venezuelan Law, art. 27; Report of the Special Committee on Motions, *supra* note 536, at 550; Law No. 2825, art. 120 (1974 ed. art. 144).

605. See *supra* p. 406 and note 423.

606. Obregón Draft, *supra* note 475, at art. 23, copied from Venezuelan Law, art. 31 (*cf. id. art. 30*); Report of the Special Committee on Motions, *supra* note 536, at 550; Law No. 2825, art. 121 (1974 ed. art. 145).

607. Obregón Draft, *supra* note 475, at art. 25, copied from Venezuelan Law, art. 33, para. 2; Report of the Special Committee on Motions, *supra* note 536, at 550; Law No. 2825, art. 122 (1974 ed. art. 146).

608. Obregón Draft, *supra* note 475, at art. 26, copied from Venezuelan Law, art. 33, para. 3; Report of the Special Committee on Motions, *supra* note 536, at 551; Law No. 2825, art. 123 (1974 ed. art. 147).

609. Such a procedure had originally been included in the 1955 Draft with respect to both squatter conflicts and other expropriations. See *supra* pp. 407-08.

tempt to reach a friendly agreement directly with the owner. If such an agreement is not obtained within a period of 60 days, counting from the first notification, it shall request [*gestionará*] the expropriation, without the necessity of a prior declaration of public utility, this being understood.⁶¹⁰

The chapter contained two other articles taken from Obregón's draft. One provided for the expropriation of the improvements made by third parties occupying state lands when such lands became necessary for the purposes of the present law; the occupant was to retain a portion of the land in accordance with the principles of the law.⁶¹¹ The second provided that the rules on the social function of property were equally applicable to those in possession of national lands (*tierras baldías*); occupants were to be compensated, however, for the expropriation of any improvements made on the land.⁶¹²

The following two provisions accepted by the Special Committee were of tremendous significance. First, a new article was added, establishing:

Payment for the lands which the Bank expropriates for the purposes of this law shall not exceed the value of the farm declared for tax purposes, following publication of this law.⁶¹³

The provision had a sweeping effect, as it would help the Bank to surmount one of the greatest obstacles to agrarian reform: payment for lands at their full market value — despite the fact that they might be uncultivated portions of large *latifundios*, frequently acquired in irregular fashion.

Similar motions, it will be recalled, had been introduced during consideration of the Law of Economic Encouragement in 1959.

610. Obregón Draft, *supra* note 475, at art. 27, copied from Venezuelan Law, art. 35, except for reduction of the period from ninety to sixty days; Report of the Special Committee on Motions, *supra* note 536, at 551; Law No. 2825, art. 124 (1974 ed. art. 148). Cf. current version at Law No. 6734, Part One, 14 LAW. AM. 172 n. 33 (1982), arts. 32-36.

611. Obregón Draft, *supra* note 475, at art. 29, copied from Venezuelan Law, art. 39; Report of the Special Committee on Motions, *supra* note 536, at 551; Law No. 2825, art. 125 (1974 ed. art. 149).

612. Obregón Draft, *supra* note 536, at art. 30; Report of the Special Committee on Motions, *supra* note 536 at 551; Law No. 2825, art. 126 (1974 ed. art. 150). Cf. Venezuelan Law, *supra* note 475, at art. 40.

613. Report of the Special Committee on Motions, *supra* note 536, at 551; Law No. 2825, art. 127. Cf. *id.*, (1974 ed. art. 151). The Spanish text of Law No. 2825, art. 127 was as follows: El pago de las tierras que expropie el Banco, para los fines de esta ley, no podrá exceder del valor de la finca declarado para fines fiscales a partir de la publicación de esta ley.

Deputy Villalobos Arce, now a member of the Special Committee on motions, had included a like provision in paragraph (c) of his original motion detailing the basic principles to be embodied in the future agrarian reform. The language has been dropped, however, in order to achieve passage of what became article 48 paragraph 2 of the 1959 law.⁶¹⁴ Later in those debates, another member of the present Special Committee on Motions, Deputy Obregón Valverde, had introduced an even more explicit motion on the same point. After provoking vehement debate, the motion had been defeated, seventeen to twenty-four, on a roll-call vote.⁶¹⁵

Now, however, the reformers succeeded where they had previously failed. Though it did not attract much attention at the time and was never debated on the floor of the Legislative Assembly during 1960-61, the inclusion of this article in the bill represented a stunning achievement. Commenting on an Executive Decree of July 1962 in Colombia, establishing that the maximum value to be paid for expropriations under the Colombian agrarian reform law⁶¹⁶ was not to exceed 130% of the assessed value of the previous year, Albert O. Hirschman observes:

In view of the fact that the assessed value of many properties, particularly of the larger ones, lagged traditionally and considerably behind their real commercial value, this provision was perhaps the strongest one of the whole new body of legislation and did much to offset the concessions to conservative opinion that had been made earlier to obtain the wide political and Congressional support needed to pass the [Colombian] Reform Law.⁶¹⁷

Despite its far-reaching effect, the article added by the Special Committee on Motions was not — somewhat curiously — among those vetoed by President Echandi in June 1961.⁶¹⁸ At the same time, the Special Committee left article 112 of the 1960 Draft intact, providing for expropriations to be carried out in accordance with Law No. 1371 and for payment to be made in bonds or in cash, at the election of the Bank.⁶¹⁹

614. See *supra* pp. 241-43, 246.

615. See *supra* pp. 251-58.

616. Law No. 135 of Dec. 13, 1961 (Colombia).

617. HIRSCHMAN, *supra* note 512, at 152.

618. See *supra* note 479. The constitutionality of this provision was upheld by the Supreme Court of Justice in 1967. *Sociedad Stewart Hermanos Ltda. v. Instituto de Tierras y Colonización*, Judgment of 13:00 hrs., Apr. 12, 1967 (*Corte Plena*); published in *Boletín Judicial* of Dec. 23, 1967.

619. See *supra* pp. 411-12. The constitutionality of this article's authorization for pay-

The reformers also succeeded in including other provisions which they deemed important. In a sixth area, the Special Committee on Motions included a new chapter on "Agrarian Credit" in the bill. Most of the articles of the chapter were copied from Obregón's draft, which in turn was based on provisions contained in the Venezuelan Law of Agrarian Reform.

The first article provided that agrarian credit would be extended preferentially to a defined group of beneficiaries, including those who worked the land indirectly or were small or medium-sized landholders.⁶²⁰

The following article provided that the state's banking institutions were obligated, within their financial limitations, to furnish credit to those farmers who complied with those elements defining the social function of land. While reference to the latter concept was deleted, it is interesting to note that the text of the article had originally been presented as a motion by Fournier in an attempt to weaken the motion on the social function of the land that had been defeated on October 4. With the defeat of that motion, Fournier had withdrawn his substitute.⁶²¹ Nonetheless, Fournier's motion was now included — minus the reference to the social function of land and the requirement that no credit could be given if the stated requisites were not satisfied — in the chapter on agrarian credit.⁶²² The reformers apparently seized the opportunity presented by Fournier's earlier attempt to weaken their own motion on the social function of property; the latter could hardly oppose a motion which he himself had previously sponsored. The chapter also contained a provision calling for planned credit and requiring the Bank to conduct studies of soil conditions, dividing the country into different zones for this purpose. Consequently, credit was to be given only to those "*campesinos*" who were willing to grow given products in a given manner, as previously agreed

ment in bonds was upheld by the Supreme Court of Justice, in 1961, after being referred to the Court as a result of President Echandi's veto. See *supra* note 479 and *infra* pp. 478-99.

620. Report of the Special Committee on Motions, *supra* note 536, at 545; copied with minor changes from Obregón Draft, *supra* note 475, art. 78. Cf. Venezuelan Law *supra* note 475, art. 109. The provision is reproduced in Law No. 2825, art. 108 (1974 ed. art. 132).

621. Expediente No. 2825, *supra* note 408, at 194 (Oct. 4, 1960). See *supra* pp. 417-18. The Special Committee on Motions retained, however, a provision giving the Department of Rural Credit, Lands, and Colonies of the Bank the authority to veto any extension of credit by the banks forming the [nationalized] National Banking System (SBN). See *infra* pp. 447-48.

622. Report of the Special Committee on Motions, *supra* note 536, at 545-46; Law No. 2825, art. 109 (1974 ed. art. 133).

upon with the Bank.⁶²³

The extension of agricultural credit was to be oriented by the norms set forth in the following two articles, which were copied with very minor changes from the Venezuelan law.⁶²⁴ Another article provided, somewhat surprisingly, that small and medium-sized fishermen were also to qualify as beneficiaries under the credit provisions of the present chapter.⁶²⁵

The foregoing articles, together with those already contained in the 1960 draft, sought to provide the type of credit assistance that could greatly help the successful implementation of agrarian reform. Yet it was the final article added to the chapter that gave those provisions more than an exhortatory ring. Potentially of far-reaching impact, that article provided:

Within the conditions stipulated [above], credits shall be extended by the Banco Nacional, as well as by all banks which form the National Banking System, the Costa Rican Social Security Administration [*Caja Costarricense de Seguro Social*] and the National Institute of Housing and Urban Development, these being authorized to extend mortgage loans up to 75% of the market value of the property, payable over a term of up to 25 years.

*Said institutions shall not be able to extend credits without the prior authorization of the Department of Rural Credit, Lands, and Colonies of the Banco Nacional, and [then] only when [such credits] do not impair the [realization of] the purposes for which they were created. (Emphasis added.)*⁶²⁶

While the second paragraph was eliminated from the final text of Law No. 2825, the important point here is that the reformers had once again emerged from the Special Committee with a very strong

623. Obregón Draft, *supra* note 475, at art. 79; Report of the Special Committee on Motions, *supra* note 536, at 546; Law No. 2825, art. 110. Cf. *id.*, (1974 ed. art. 134).

624. Obregón Draft, *supra* note 475, at art. 80, copied from Venezuelan Law, *supra* note 475, at art. 112(a)-(c), and Obregón Draft, *supra* note 475, at art. 81, copied from Venezuelan Law, *supra* note 475, at art. 81, copied from Venezuelan Law, *supra* note 475, at art. 112(d)(1)-(7); Report of the Special Committee on Motions, *supra* note 536, at 546-48. The provisions are found in Law No. 2825, arts. 111-112 (1974 ed. arts. 135-36).

625. Report of the Special Committee on Motions, *supra* note 536, at 548, copied (except for the addition of a special preference for fishing cooperatives) from Venezuelan Law, art. 113, para. 3; reproduced in Law No. 2825, art. 113 (1974 ed. art. 137).

626. Obregón Draft, *supra* note 475, at art. 82; Report of the Special Committee on Motions, *supra* note 536, at 548. The provision was passed by the Legislative Assembly. Decreto No. 2747, *supra* note 477, at art. 121. However, the final paragraph was vetoed by President Echandi. *Supra* note 479. The first paragraph was retained in Law No. 2825, art. 114 (1974 ed. art. 138).

provision — and one that had not even been contained in the original bill.

In a seventh area, a new chapter entitled "Rural Housing" was added to the bill. The provisions, taken entirely from Obregón's draft, established the improvement of rural housing as one of the "fundamental objectives" of the law. To that end, the planning of rural housing was to seek to concentrate the rural population in populated centers, in order to facilitate the supply of public services.⁶²⁷ The same idea, it will be recalled, had been included in the 1959 Law of Economic Encouragement.⁶²⁸ A second article gave cooperatives or their members priority in requests for home construction or improvements.⁶²⁹ A third provided that on large landholdings the owners were required to provide housing for their permanent employees which had to meet requirements to be established by the Bank.⁶³⁰ A final article established that local materials and labor should be used where possible, and that such housing could not be sold, leased, or mortgaged without the prior consent of the bank.⁶³¹

In an eighth area, the Special Committee also adopted changes suggested by Obregón which were to have a considerable effect on the Indian population of the country. A provision in earlier drafts had included as inalienable lands those areas declared exclusive reserves of indigenous tribes by the Council for the Protection of the Aboriginal Races of the Nation.⁶³² The Special Committee now deleted this provision,⁶³³ substituting instead those proposed by

627. Obregón Draft, *supra* note 475, at art. 84, copied with minor changes from Venezuelan Law, *supra* note 475, at art. 133; Report of the Special Committee on Motions, *supra* note 536, at 544; Law No. 2825, art. 132 (1974 ed. art. 156).

628. See Part One, 14 LAW. AM. 236 n.302 (1982). Interestingly, the article suggests the possibility that the Costa Rican legislation and bills influenced the drafters of the Venezuelan Law. Other articles also strongly suggest this possibility. A more complete examination of this point, however, is beyond the scope of the present study.

629. Obregón Draft, *supra* note 475, at art. 85; Report of the Special Committee on Motions, *supra* note 536, at 544; Law No. 2825, art. 133 (1974 ed. art. 157). Cf. Venezuelan Law, *supra* note 475, at art. 134.

630. Obregón Draft, *supra* note 475, at art. 86, copied from Venezuelan Law, *supra* note 475, at art. 135; Report of the Special Committee on Motions, *supra* note 536, at 544; Law No. 2825, art. 134 (1974 ed. art. 158).

631. Report of the Special Committee on Motions, *supra* note 536, at 544; Law No. 2825, art. 135 (1974 ed. art. 159). The provision was adapted from Obregón Draft, *supra* note 475, at art. 87, copied from Venezuelan Law, art. 136 paras. 1, 2, & 4.

632. 1960 Draft, *supra* note 408, at art. 58(d); 1955 Draft, art. 69(d). See Part One, 14 LAW. AM. 182 (1982).

633. Report of the Special Committee on Motions, *supra* note 536, at 532.

Obregón.⁶³⁴ While guaranteeing Indian families free title to parcels of a size deemed by the Bank to be an "indispensable minimum to satisfy their necessities" without the use of paid labor,⁶³⁵ and providing for indemnification by the Bank "for damages which might be caused to them" as a result of being transferred to other areas,⁶³⁶ one provision also established the following:

It shall not be declared that the extensive zones where these communities live in isolation belong exclusively to them; however, an effort shall be made to unite all these communities, forming a single agrarian center, in the zone which the Bank considers appropriate, and for which purpose use shall be made of whatever land may be necessary.⁶³⁷

Finally, in the area of financing, an extremely important article was added to the bill. It provided:

The Central Bank shall turn over to the *Banco Nacional de Costa Rica*, annually, the proceeds of those amounts received by the Central Bank from its exchange operations on the open market, as exchange profits referred to by Article 37(d) of the Law of International Payments, No. 1351 of September 29, 1951, as amended.

These funds shall be used by the *Banco Nacional de Costa Rica*, through the Department of Rural Credit, Lands, and Colonies, exclusively for the financing of the programs referred to in this law.⁶³⁸

Potentially, the provision added a significant source of financing for the agrarian reform programs of the Bank.

Such were the principal changes made by the Special Committee in the 1960 bill. Only in the area of appraisal procedures in squatter conflicts was the bill significantly weakened. In exchange, however, the draft law was strengthened in several important respects. Provision was made for the reversion to the state of certain lands, particularly on farms exceeding one thousand hectares in

634. Obregón Draft, *supra* note 475, at arts. 62-67. Report of the Special Committee on Motions, *supra* note 536, at 528-29; Law No. 2825, arts. 51-56 (1974 ed. arts. 75-80).

635. Law No. 2825, art. 52 (1974 ed. art. 76).

636. *Id.*, art. 54 (1974 ed. art. 78).

637. *Id.*, art. 51 (1974 ed. art. 75).

638. Report of the Special Committee on Motions, *supra* note 536, at 552; Law No. 2825, art. 159. However, in 1962 the provision was eliminated from the law — in extremely subtle fashion — by Law No. 3042, Part One, 14 LAW. AM. 241 n.330, at art. 3 (1982). The current provisions on funding are found at Law No. 6735, Part One, 14 LAW. AM. 172 n.33 (1982), arts. 32-36.

area. The Bank was given undisputed control over the vast areas of land belonging to the State, thus reinforcing the change Volio had made in the 1960 draft. Articles on "the social function of property" were added which permitted the reformers to regain much of the ground that had been lost on October 4.

An extremely important article, limiting the amount of indemnification for expropriated property to the value declared for tax purposes, was also included in the bill. At the same time, a new provision authorized expropriation if no agreement with the owner could be reached within 60 days — without the necessity of going through the cumbersome appraisal procedures contained in the chapter on squatter conflicts. This provision, moreover, could arguably be used in conjunction with another which provided that the Bank could expropriate land where no other means remained "for the resolution of an agrarian problem of an obviously serious nature." Given the duplication of provisions applicable to squatter conflicts, a result of the grafting of large sections of the Venezuelan law onto the 1960 draft, presumably the Bank could choose to bypass the complicated appraisal procedures — or so, at least, it might be argued. Finally, an article of sweeping importance was included which provided that no credit could be given by the State's lending institutions without the prior approval of the Bank.

Judged in terms of the general political climate and the balance of forces in the Legislative Assembly at the time, the changes made by the Special Committee on Motions represented a great achievement for the reformers. Enrique Obregón and Fernando Volio had worked tirelessly and with great patience in their efforts to persuade the other members of the committee. Volio, in particular, had performed brilliantly in coordinating the strategy of the reformers.

Despite their great success within the Special Committee on Motions, the reformers did not draw attention to the changes that had been made. In fact, the Report of the Special Committee consisted of a one-page introductory statement plus the actual articles which the committee had decided to include in the bill, or delete from it. In its brief statement, the Special Committee simply made the following observations:

The Committee, in accordance with the authority given it by the Legislative Assembly,⁶³⁹ made some necessary amend-

639. See *supra* p. 429 and note 535.

ments to the bill, without referring to any of the motions presented, in order to coordinate the bill and the motions which are recommended for approval.

Our position in this matter has been based on the necessity of preserving the essential integrity of the law, and of adapting some of its provisions, based on motions approved, to the requirements of the Constitution.

The motions which we recommend be rejected, are not in accord with the fundamental objectives of the bill, or have been dealt with in other parts of the same.⁶⁴⁰

In view of the changes that had been made in the bill, the approach of the reformers was extremely low-keyed.

6. The Report of the Special Committee on Motions: Debate and Approval

The Report of the Special Committee on Motions reached the floor of the Legislative Assembly on November 14, 1960, when the one-page introductory statement was read and a brief debate took place on questions of procedure.⁶⁴¹ Debate continued on another procedural matter on November 17, when Fernando Volio introduced a motion of order designed to expedite approval of the report. Noting that the Special Committee had considered a total of 244 motions, at times working late at night in order to complete its work, Volio stressed the need for quick action, given the deadline of November 30 which had been established for passage of the law.⁶⁴² The motion was approved.⁶⁴³

Actual debate on the Special Committee's report took place on November 18, and was not extended.⁶⁴⁴ Deputy Daniel Oduber praised the work of the committee, noting that Obregón, Volio, Villalobos, and Fournier had been those who had actually done the work.⁶⁴⁵ By approving the report, which he stressed was the prod-

640. Report of the Special Committee on Motions, *supra* note 536, at 287.

641. ASAMBLEA LEGISLATIVA DE COSTA RICA, 101 ACTAS 393-96 [hereinafter cited as ACTAS].

642. See Part One, 14 LAW. AM. 223 n.231 (1982).

643. ASAMBLEA LEGISLATIVA DE COSTA RICA, 102 ACTAS 55-57; [hereinafter cited as ACTAS]; Expediente No. 2825, *supra* note 408, at 512.

644. 102 ACTAS, *supra* note 643, at 78-83; Expediente No. 2825, *supra* note 408, at 515.

645. Marshall did not participate in the real work of the committee, as indicated by the fact that he did not sign the report. Expediente No. 2825, *supra* note 408, at 340. The important point, however, is that he did not oppose it, his tacit support having been won by the reformers. See *supra* pp. 422, 429.

uct of reasoned discussion and persuasion, months of debate would be saved. Approval of the bill, he argued, was essential in order for the Department of Rural Credit, Lands, and Colonies to begin its work. Alluding to the terms of the 1959 Law of Economic Encouragement, Oduber concluded:

So long as we do not pass this Law of Lands and Colonies, the funds which have been allocated, the possibilities for beginning operations, the possibilities for foreign financing of land programs in Costa Rica cannot be realized; and we shall have to wait until who knows when in order to provide the legal instrument which can get this Section of the *Banco Nacional de Costa Rica* moving.⁶⁴⁶

Recognizing the inevitable, Deputy Caamaño Cubero adopted a positive attitude, stating:

The subject of Lands and Colonies, as I said on one occasion, is really not a political issue, but rather one of national interest [*un asunto nacional*] in which all parties are participating. This has been manifested since 1951 when this Law of Lands and Colonies was supported and concern arose for its passage. It was in the time of Otilio Ulate that this concern first appeared in the Legislative Assembly. It continued there in lethargy and then was picked up by the gentlemen from *Liberación Nacional*, and is now under discussion in the Legislative Assembly.

I have said these words because the Committee acted in a considerate manner and adopted a great portion of the Bank's and my own motions. . . .

In fact, however, Caamaño was quite unhappy with the result. He objected to the procedure that had been followed by referring to the motions to the Special Committee,

because a committee is always a trio or a quartet in which one converses and any member may be subjected to pressure by the attitude of two or three who disagree with him, or who are in harmony regarding a certain agreement or a certain motion which has been presented.⁶⁴⁷

Volio then intervened to report briefly on the work of the Special Committee, an intervention which he noted was originally to have been made by Fournier, who was not present. He praised

646. 102 ACTAS, *supra* note 643, at 78-79. See Part One, 14 LAW. AM. 239-40, 245 (1982).

647. 102 ACTAS, *supra* note 643, at 79.

Fournier, in whose office members of the committee had worked together until midnight on various occasions. Volio noted that the members had sought to modify the bill so that it would be in agreement with the Constitution. He continued:

We also tried to maintain and leave intact the ideological integrity of the bill, that is, to stress the theme of public service which permeates this Law of Lands. And we did not have long arguments, because we were motivated by the same objective — to finally pass a Law of Lands and Colonies, which the country has been asking for since 1950.

Continuing, Volio sought to allay fears some might have:

I assure you that we have not introduced any change which might come to disturb the socio-economic system of Costa Rica; rather, we have taken the idiosyncracies of the nation into account in a manner which, on the contrary, attacks the agrarian and socio-economic problems of the country.

Emphasizing that a detailed explanation of each article would be extremely difficult, Volio noted that the members had worked in harmony, each defending his own theses, but compromising whenever it seemed to benefit the bill and the country.⁶⁴⁸

Asked for a somewhat more detailed explanation as to, for example the fate of the changes proposed by the *Banco Nacional*, Volio responded as follows:

We took, as I said earlier, Mr. President, the text of the bill as the basis for discussion. And if we saw that the motion we were examining would have changed, let us say, the basic orientation of the bill — if, for example, there was a motion with a purely civilist [i.e., traditional civil law] basis, in accordance with the present norms of the Civil Code, and this basis conflicted with the orientation of the bill — we did not include it because it weakened the bill itself. With respect to the motions of the Bank, we accepted the great majority of them. We accepted some while redrafting them from the point of view, say, of syntax. Others, for example, where the Bank preferred not to assume a given function, e.g., that of making a study of the present lands of the State — the Bank considering perhaps that this would be a little bothersome and preferring that the Executive do it instead — in these cases we rejected the theses of the Bank, considering that following the promulgation of the law,

648. *Id.* at 81.

the Executive henceforth is not going to interfere in problems of lands, and that following this law the Bank should assume that task. And many of these motions in which, instead of "the Bank," the same asked that the text say "the Executive," we rejected on the same principle. This is the explanation with respect to the motions of the Bank, Mr. President.⁶⁴⁹

Caamaño Cubero then pointed out that the report did not indicate the origin of the motions that had been adopted. He noted that many of the Bank's motions had been accepted, while others had been rejected simply because they substituted the word "Executive" for "Bank." This was not a serious matter, he said:

However this [change] is of course a small modification in the motion presented by the Bank, because it [is] nothing more than a word.

Caamaño concluded by affirming that he intended to introduce some of his own motions, which had been rejected by the Special Committee during the first debate on the bill.⁶⁵⁰

A brief procedural clarification by the President of the Assembly followed in which he explained once again that if the report was approved, those motions not accepted by the Special Committee could still be presented on the floor during the first debate. With that, and without substantive discussion of any of the changes made by the Special Committee, the report was approved.⁶⁵¹

Approval of the Report of the Special Committee on Motions did not come as a surprise, given the representation of political forces on the Committee. Still, it represented a very significant victory for the reformers. For once the unanimous report of a committee representing all political parties had been approved by the full Assembly, the basic bargaining and negotiation over the contents of the bill had come to an end. Only a limited number of motions were subsequently adopted during the actual debates on

649. *Id.* at 82.

650. *Id.* Caamaño Cubero was particularly upset over the fact that the origin of the approved motions was not indicated in the report, because his own copy of the report of the *Banco Nacional* had mysteriously disappeared. As a result, he was not in a position to criticize the Report of the Special Committee on Motions. Interview with Fernando Volio Jiménez (Jan. 14, 1974). The change of a single word, it should be noted, went to the heart of one of the fundamental issues in the debates — who was to have the final say over transfer of state lands to the Bank. See, e.g., List of Motions, Motion No. 8, *supra* note 544.

651. 102 ACTAS, *supra* note 643, at 82-83; Expediente No. 2825, *supra* note 408, at 514.

the bill, and with a few exceptions, these changes were of very minor importance.

7. November, 1960: Victory Assured, Passage Delayed

Gaining approval of the bill before the close of the current regular sessions of the legislature, however, was a different matter. Oduber, Obregón, and Volio introduced a motion on November 23, which would have set aside the period from 6:00 to 7:00 p.m. every evening for discussion of the bill until it was passed. Since the regular session ended on November 30, with the Deputies devoting most of their attention to passage of the budget, approval of the motion would have enhanced prospects for passage during November, instead of waiting until the next regular sessions beginning in May. Unfortunately for the reformers, the motion was defeated.⁶⁵²

Nonetheless, first debate began on November 25. Several attempts were made to undermine the bill, but the consensus forged within the Special Committee stood up, and the motions failed. Deputy Brenes Castillo, for example, moved to consider the budget immediately instead of the agrarian reform bill, but the motion was defeated.⁶⁵³

Deputy Solano Sibaja introduced a motion which would have substituted the word "State" for the word "Bank" in all articles of the bill,

so that it shall be the State, through the Department of Rural Credit, etc. which is charged with achieving the purposes of the Law of Lands and Colonies.

The motion, which would have limited the autonomy of the Bank in matters covered by the bill, was defeated.⁶⁵⁴

Of greater importance was the first of several motions to be introduced by Deputy Brenes Gutiérrez.⁶⁵⁵ The motion provided, regarding the fundamental objectives of the law, the following:

That Article 1 para. (a) read as follows:

a) To promote an equitable distribution of lands belonging

652. Expediente No. 2825, *supra* note 408, at 556.

653. *Id.* at 558.

654. *Id.*

655. It was widely rumored, apparently with some foundation, that these motions had been drafted by a staunch defender of traditional civil law notions who was an ex-President of the Supreme Court of Justice.

to the State, as well as their gradual and more efficient exploitation (emphasis added).

As made clear by the underlined words, the motion was nonsensical and would have completely undermined the law. The consensus forged by the reformers was maintained, and the motion was defeated.⁶⁵⁶

Brenes Gutiérrez also moved to add a final paragraph to the article defining uninscribed lands as national reserves belonging to the State. That paragraph provided:

The presumption of ownership contained in this article can be rebutted by any type of proof, and shall in no way prejudice the acquired rights of individuals, or final judicial dispositions.

Like the previous suggested modification, the motion was defeated.⁶⁵⁷ Another motion by Brenes Gutiérrez was also defeated, as was a motion of Solano Sibaja which would have charged the Ministry of Agriculture with administration of the law.⁶⁵⁸

In the face of these efforts by Brenes Gutiérrez and others to sabotage the bill, it became clear that debate could not be concluded before the end of the month. The bill would have to await action until the next regular sessions in May.

Three days later, on November 28, Fernando Volio signed the committee report on the bill authorizing the transfer of "Hacienda Tapantí" to its former owner, ex-President Dr. Rafael Angel Calderón Guardia. The product of successful log-rolling by Volio, the report was signed in exchange for a promise that the Republican Deputies would vote *en bloc* in favor of the agrarian reform bill.⁶⁵⁹

The Report of the Committee on Finance and Economic Affairs, signed by Volio, Fabio Fournier Jiménez, and Rodrigo Sancho Robles, contained a brief explanation of the technical reasons why the bill was necessary in order for "Hacienda Tapantí" to be returned to Calderón Guardia. The Committee noted that the Committee for Social Protection of San Jose had manifested its willingness to sell the property, and "without entering into judg-

656. Expediente No. 2825, *supra* note 408, at 558. Cf. Part One, 14 LAW. AM. 149 (1982).

657. Expediente No. 2825, *supra* note 408, at 558. See 1960 Draft, *supra* note 408, at art. 2; Law No. 2825, art. 7 (1974 ed. art. 7); Part One, 14 LAW. AM. 149 (1982).

658. Expediente No. 2825, *supra* note 408, at 558.

659. Interviews with Fernando Volio Jiménez (Jan. 14, Dec. 16, and Dec. 26, 1974). See Part One, 14 LAW. AM. 149 (1982).

ment of the motives of the latter," recommended that the bill authorizing the transfer be passed by the Assembly.⁶⁶⁰

The bill reached the floor that very afternoon. During a brief intervention during debate on the report, Volio stressed that the decision of the Court of Cassation (*Sala de Casación*) of the Supreme Court, which had declared the nullity of the 1948 judgment against Calderón Guardia, had resulted from the fact that the Office of the Attorney General had failed to bring the corresponding legal action within the two-month period established by Law No. 2463. He continued:

It is very important to point this out, because the law [No. 2463] had an objective, which was to put to the proof the revolutionary tribunals [of 1948], and to establish whether there had been a miscarriage of justice, and in the event that there had, to correct it. In fact, however, it was not possible to verify whether or not this had occurred. Consequently, the principal objective of the law which was passed last November was not achieved. At this point, the problem remains the same: it cannot be said whether these tribunals acted correctly or not.

At the same time, Volio explained the technical aspects of the bill and its history. In closing, however, he returned to his principal point, after stressing that all of the provisions of Law No. 2463 must be complied with. He concluded as follows:

[I]f nothing is in opposition to the transfer, if the State is not prejudiced in any way, [the Executive] may carry it out in strict compliance with a law which, as I have confirmed with testimony from the Office of the Attorney General,⁶⁶¹ was passed with conditions which made it impossible to establish the truth pursued by Law No. 2463, that is, justice and correction of [any errors of] the Tribunal of Administrative Probity.

Following his intervention, the favorable report of the Committee was approved.⁶⁶² The bill became law on December 2, 1960.⁶⁶³

660. Dictámen de la Comisión de Economía y Hacienda, Nov. 28, 1960 (copy on file with the author). Because of the adoption of a motion exempting the bill from ordinary procedures (*dispense de trámites*), the report was not published in *La Gaceta*. It should be found in Archivos de la Asamblea Legislativa, Expediente No. 2709 (*Ley*), but this dossier is missing from the Archives of the Legislative Assembly—or was, at least, in November and December, 1974.

661. See *supra* p. 451.

662. ACTAS, Sesión Ordinaria No. 140 of Nov. 28, 1960 (copy on file with the author).

663. Law No. 2709 of Dec. 2, 1960, published in *La Gaceta* No. 275 of Dec. 6, 1960.

Volio thus agreed to the transfer of "Hacienda Tapanti," while stressing on the floor of the Assembly that the transfer is no way reflected on the actions taken by the Tribunal of Administrative Probity in 1948 — and hence the moral basis of the Revolution itself.

With Volio's approval of the Committee's report, the deal with the republicans was consummated, and passage of the agrarian reform law, for which Volio has stubbornly fought since 1958, was finally assured. Historically, Volio believed, the agrarian reform bill was the more important of the two bills. In that judgment, he certainly was correct. One other thing was certain: Not only for his successful log-rolling, but also for his tireless and skillful efforts to secure passage of the agrarian reform law, history would be kind to Fernando Volio.

While President Echandi's strong opposition to the bill was no secret, Deputy Enrique Obregón nonetheless introduced a motion, on January 18, 1961, requesting that the Executive send the bill to the special sessions of the Legislative Assembly. The motion was approved; Echandi, however, took no action.⁶⁶⁴

8. The Alliance For Progress

Only two days later, on January 20, President John F. Kennedy called in his inaugural address for an "Alliance for Progress" among the nations of the hemisphere.⁶⁶⁵ With Kennedy's election, the shift in United States policy toward Latin American began to accelerate rapidly. On March 13, 1960, Kennedy unveiled the details of his proposal for an Alliance for Progress in a speech to members of Congress and diplomatic representatives from the Latin American countries. He announced that he was asking Congress for appropriation of \$500 million which had been authorized in September, 1960, "as a first step in fulfilling the Act of Bogotá." The money would be used

to combat illiteracy, improve the productivity and use of the land, wipe out disease, attack archaic tax and land-tenure structures, provide educational opportunities, and offer a broad range of projects designed to make the benefits of increasing abun-

664. Expediente No. 2825, *supra* note 408, at 572 (*excitativa*).

665. GIL, *supra* note 511, at 240. Kennedy had first coined the phrase in a speech prepared for delivery at Tampa, Florida on Oct. 18, 1960—two weeks before the U.S. Presidential election. ROGERS, *supra* note 509, at 30.

dance available to all. We will begin to commit these funds as soon as they are appropriated.⁶⁶⁶

In the concluding portion of the speech, Kennedy declared:

[U]nless necessary social reforms, including land and tax reform, are freely made — unless we broaden the opportunity for all our people — unless the great mass of Americans share in increasing prosperity — then our alliance, our revolution, our dream, and our freedom will fail. . . .

Let us once again transform the American continent into a vast crucible of revolutionary ideas and efforts — a tribute to the power of the creative energies of free men and women, an example to all the world that liberty and progress walk hand in hand. Let us once again awaken our American revolution until it guides the struggle of people everywhere — not with an imperialism of force or fear, but the rule of courage and freedom and hope for the future of man.⁶⁶⁷

In his message to Congress the following day requesting the special appropriation, President Kennedy revealed one of the factors which had influenced the new attitude of the United States. He warned:

[If] the Act of Bogotá becomes just another empty declaration . . . then we face a grave and imminent danger that desperate peoples will turn to communism or other forms of tyranny as their only hope for change. Well-organized, skillful, and strongly financed forces are constantly urging them to take this course.⁶⁶⁸

Among the obstacles he listed as those which had to be overcome were “archaic tax and land tenure structures.” Measures such as those outlined would be “even at the start . . . a condition of assistance from the social (progress) fund.” For example, Kennedy said:

[T]he uneven distribution of land is one of the gravest social problems in many Latin American countries. In some nations 2 percent of the farms account for three-quarters of the total farm area. And in one Central American country, 40 percent of the privately owned acreage is held in one-fifth of 1 percent of the number of farms.⁶⁶⁹ It is clear that when land ownership is so

666. J. LEVINSON & J. DE ONIS, *THE ALLIANCE THAT LOST ITS WAY* 333-36 (1970).

667. *Id.* at 338-39.

668. *Id.* at 340.

669. *Cf.* Table 1, Part One, 14 *LAW. AM.* 160 (1982).

heavily concentrated, efforts to increase agricultural productivity will benefit only a very small percentage of the population. Thus if funds for improving land usage are to be used effectively, they should go only to those nations in which the benefits will accrue to the great mass of rural workers.⁶⁷⁰

No doubt the new attitude of the United States expressed by Kennedy gave greater encouragement to the proponents of agrarian reform in Costa Rica and contributed to the wide margin by which the law was finally passed by the Legislative Assembly in May. Some, perhaps many, countries in Latin America subsequently passed agrarian reform bills in response to the loan conditions referred to by Kennedy in March, and later sanctioned by the Charter of Punta del Este in August, 1961. Yet this was not the case in Costa Rica, where passage of the agrarian reform law by the Legislative Assembly had been assured since November, 1960. That is not to say, of course, that the changing international climate was not helpful to the reformers, for it was.

Shortly before the opening of the regular legislative sessions in May when the Legislative Assembly resumed consideration of the agrarian reform bill, Jorge Mandas Chacón — who had been charged by the Assembly with drafting an Agrarian Code in 1950,⁶⁷¹ — sent a letter to the Assembly in which he argued strongly against the use of expropriation as a means of achieving the objectives of the law. Mandas also opposed the idea of leaving squatters on the land that they were occupying. Interestingly, however, Mandas revealed that a group of private citizens had visited with Secretary of State Christian Herter during his visit to the country in August, 1960, and had requested financing for a national agrarian reform program. The reaction of the Department of State had been positive, he noted, urging that the Costa Ricans who had participated in the discussions make public the respective correspondence. It was clear from his letter, however, that Mandas was opposed to any "agrarian reform" which affected privately-held land. What he had in mind was the use of national reserve lands instead.⁶⁷² The reformers, on the other hand, had full assurances that the existing bill, as amended by the Special Committee on Motions, would receive the support, *en bloc*, of the Republican deputies.

670. LEVINSON & DE ONIS, *supra* note 666, at 342-43.

671. See Part One, 14 LAW. AM. 161 (1982).

672. Expediente No. 2825, *supra* note 408, at 578.

9. May, 1961: Final Debates and Passage

When the regular session of the Legislative Assembly began on May 1, they moved quickly to secure immediate passage of the agrarian reform law. On May 2, both Oduber and Aguiluz Orellana moved to place the subject on the agenda.⁶⁷³ First Debate on the bill began the following day.⁶⁷⁴ There was a lengthy debate initially over a procedural ruling by the President of the Assembly. The President had interpreted the Rules of Order in a way which prohibited a motion of order altering the agenda during actual debate on a substantive matter. While the most immediate effect of the ruling was to ensure that the agrarian reform bill did not get side-tracked as it had the previous year, it was a ruling of general applicability. Volio and Oduber spoke in support of the ruling. Among those opposed to the interpretation, however, only Solano Sibaja appeared to perhaps be motivated by a desire to stall the agrarian reform bill. At one point, he even argued, somewhat facetiously, that if the ruling stood, the Legislative Assembly would not be able to suspend discussion of a measure even if Fidel Castro were invading the country.⁶⁷⁵ In any event, no motion was presented to overrule the chair, and the deputies proceeded to First Debate on the draft Law of Lands and Land Settlement.

Deputy Brenes Gutiérrez introduced the first motion, one of many he had first begun to introduce on November 25.⁶⁷⁶ The motion would have made a small change in the article on the powers and duties of the Bank, charging the latter with "the prompt and just *administrative* solution" of squatter conflicts. It was a subtle change, but one which could have led to considerable problems with respect to interpretation by the courts.⁶⁷⁷ Volio pointed out the implications of the motion, and it was defeated.⁶⁷⁸

Next, Obregón Valverde introduced a motion defining the term *latifundio*, as follows:

673. *Id.* at 581-82.

674. *See* Part One, 14 *LAW. AM.* 190, n.91 (1982).

675. ASAMBLEA LEGISLATIVA DE COSTA RICA, 108 ACTAS 35-42 [hereinafter cited as ACTAS].

676. *See supra* pp. 455-56.

677. As noted above, the actual author of these motions was believed to be a traditionalist-minded former President of the Supreme Court of Justice. *See supra* note 655.

678. 108 ACTAS, *supra* note 675, at 42. *Cf.* Law No. 2825, art. 17(11). This provision was eliminated in 1962 by Law No. 3042, Part One, 14 *LAW. AM.* 241 n.330 (1982). The authority, however, was retained in other articles of the law.

Latifundio is understood to be any maximum extension of land in possession of private parties [*particulares*] exceeding 400 hectares in area, if it is dedicated to agriculture; 1000 hectares, if it is dedicated to cattle-raising; or 800 hectares, if it is dedicated to both activities. According to the zone, the Bank may reduce these areas up to 40%.⁶⁷⁹

This provision, originally in Obregón's draft,⁶⁸⁰ had been rejected by the Special Committee on Motions.⁶⁸¹ Caamaño Cubero was the first to speak against Obregón's motion. More importantly, Volio noted that the motion had been rejected by the Special Committee. He explained:

[T]he conclusion was reached that, in order to avoid uninformed judgments in definitions which might be appropriate, for example, for the area of Guanacaste but not for the area of Cartago, the text agreed upon should be that which is in the bill. It was suggested by the Special Committee that emphasis be placed on technical concepts — without establishing areas — for *latifundios* and *minifundios*, thus leaving to the institution which is to deal with all of these agrarian problems the task of determining, in each case, when it is dealing with a *latifundio*. That is, the economic problem and the social problem — which ultimately determine what is a *latifundio* — are taken into account, leaving to the regulations following the law or to an amendment to the law — in accordance with the terms established by the institution which shall carry these programs forward — the determination of when, in certain zones, an area or a given portion of land is a *latifundio* or a *minifundio*.

Therefore, Volio concluded that he was opposed to the present motion, and invited other members of the Special Committee, especially Obregón, to confirm what he was saying.⁶⁸²

Before Obregón could speak, Villalobos Dobles also intervened to oppose the idea of defining *latifundio* in terms of specific areas. More significantly, he pointed out that there was a discrepancy between the text of the Report of the Special Committee on Motions and the revised text of the bill in his hands, which provided — on a second page with the same number — that the Bank was to sub-

679. 108 ACTAS, *supra* note 675, at 43. See *supra*, note 488. The limits of four hundred and one thousand hectares, respectively, correspond to the limits set in the 1959 Cuba Law of Agrarian Reform, *supra* note 393, at arts. 1-2.

680. Obregón Draft, *supra* note 475, at art. 33.

681. See *supra* pp. 448-50.

682. 108 ACTAS, *supra* note 675, at 43-44.

mit a bill defining the area to be considered as a *latifundio*.⁶⁸³ Given the existence of pages with the same numbers, but differing provisions Villalobos Dobles asked:

I would like to ask the drafters of the report whether they have reached a final agreement on this point . . .⁶⁸⁴

After a procedural clarification, in which the Assembly President explained that the motions approved by the Special Committee had been incorporated into the text of the bill, Obregón intervened to explain why he had introduced the motion. The question had been considered at length by the Special Committee, he noted, adding:

I understand that we had approved a definition of *latifundio*, establishing that a *latifundio* is any great extension of land in rural zones which is contrary to the economic and social interests of the country.

Deputy Fournier Jiménez had made the suggestion obligating the Bank to determine the maximum . . . areas with respect to a *latifundio*, so that the Bank would be the one to establish the same.

Observing that he had personally opposed this solution, Obregón urged clarification of the point, stating:

Since, perhaps due to an error of the same Committee, the principle which obligated the Bank to establish these areas of land was omitted, I believe that it is necessary that we enter into a discussion which goes to the heart of this problem.

No one spoke in support of Obregón's motion, however, and it was defeated.⁶⁸⁵

Villalobos Dobles' request for a clarification of which of the two contradictory articles defining *latifundio* was included in the bill thus was not answered in the debates. The point was important, since it potentially affected the authority of the bank to expropriate large land holding.⁶⁸⁶

It is not entirely clear which of the two texts — one authorizing the Bank to determine on its own what was a *latifundio*, the other requiring that the Bank submit a bill to the legislature con-

683. The texts of both versions are found at *supra* pp. 437-38.

684. 108 ACTAS, *supra* note 675, at 44-45.

685. 108 ACTAS, *supra* note 675, at 46.

686. See *supra* pp. 437-38.

taining such a definition — had been included in the Report of the Special Committee which was brought to the floor on November 14, 1960. A clue is provided, however, by Volio's response on November 14 to an objection made by Brenes Gutierrez, who claimed that he had not had time to read the report. Volio replied:

The Directorate, at our request, sent the bill to the mimeograph [department] last Friday. And with a great effort by various employees of this Assembly, working until 11:00 in the evening on that day, it was possible to distribute the text of our motions to each and every one of the Deputies on Saturday morning. What was distributed today were three pages, containing three motions which were amended at the last minute in order to perfect them.⁶⁸⁷

The motion under discussion appears to have been one of the three to which he referred. It would be interesting to know at whose instance this particular last-minute change was made. In any event, the article was among those vetoed by President Echandi in June.⁶⁸⁸

Debate on the bill continued on May 8, when Brenes Gutiérrez introduced three more motions each aimed at weakening the bill. First, he moved to add to paragraph 23 of the article on the powers and duties of the Bank, relating to the recovery of untitled lands on farms over one thousand hectares in area, the following restrictive language:⁶⁸⁹

The foregoing shall not affect that which the courts [*Tribunales de Justicia*] may ultimately decide in accordance with the [existing] laws.

While the effect of the motion was not clear, it could only have weakened the provision. It was defeated.⁶⁹⁰ Second, he moved to add the word "administratively" to the following paragraph of the same article,⁶⁹¹ so that it would read:

Authorize [*gestionar*] *administratively* expropriation, with prior indemnification, of all uncultivated lands . . . (emphasis added).

The motion, introducing another subtlety, was similarly de-

687. 101 ACTAS, *supra* note 641, at 394.

688. See *supra* note 479.

689. See *supra* pp. 434-35.

690. Expediente No. 2825, *supra* note 408, at 587.

691. See *supra* pp. 434-35.

feated.⁶⁹² Finally, Brenes Gutiérrez moved to delete the provision in the bill giving the Bank, in the zones it might declare, a first option on the sale of any land exceeding two hundred fifty hectares in area.⁶⁹³ This motion was also defeated.⁶⁹⁴ The defeat of these motions was significant in that it demonstrated very clearly that the Republicans were fulfilling their part of the bargain struck in November, 1960. As a result, the efforts of Brenes Gutiérrez and others were completely in vain.

Once this point has been grasped, the bill proceeded rapidly toward final approval. On May 9, motions were withdrawn by various Deputies — including Caamaño Cubero, Leiva Quirós, and Obregón Valverde — in order to clear the way for passage.⁶⁹⁵ Still, one significant motion — sponsored by Leiva Quirós — was approved. It provided that in cases where the Bank had acquired land (including state lands) without payment, such lands were to be distributed to beneficiaries at no cost.⁶⁹⁶

On May 10, debate continued, with both Caamaño Cubero and Brenes Gutiérrez withdrawing a large number of motions.⁶⁹⁷ One of these, sponsored by Caamaño Cubero, would have eliminated the three-month period allowed for the presentation of claims arising under Law No. 88 of July 14, 1942 (*Ley de Poseedores en Precario*).⁶⁹⁸ Other motions by Caamaño Cubero were also defeated during the session.⁶⁹⁹

Brenes Gutiérrez withdrew two more motions during the debate on May 11, as did Leiva Quirós.⁷⁰⁰ A motion of Caamaño Cubero, after the first being rejected, however, was approved on a second vote. While the motion of Leiva Quirós — providing for the free distribution of land to beneficiaries when the Bank had acquired it at no cost — had been approved on May 9, Caamaño's

692. Expediente No. 2825, *supra* note 408, at 587.

693. 1960 Draft, *supra* note 408, at art. 17. The provision had originally been included in the 1958 draft. See part One, 14 LAW. AM. 215 (1982).

694. Expediente No. 2825, *supra* note 408, at 587. Consequently, the article was retained, in Decreto No. 2747, *supra* note 477, at art. 34. However, it was vetoed by President Echandi. See *supra* note 479.

695. Expediente No. 2825, *supra* note 408, at 591-93.

696. *Id.* at 593. The provision was retained in Law No. 2825, art. 35, para. 3. However, it was eliminated in 1962 by Law No. 3042, at Part One, 14 LAW. AM. 241 n.330, at art. 7 (1982).

697. Expediente No. 2825, *supra* note 408, at 614-18.

698. *Id.* at 614. Cf. Law No. 2825, art. 89 (1974 ed. art. 113).

699. Expediente No. 2825, *supra* note 408, at 618.

700. *Id.* at 655-57.

motion now added language to a different article. It provided that the free distribution of such lands was not to exceed ten hectares per parcel in the case of agricultural land and fifty hectares per parcel in the case of cattle-raising land, except in special cases approved by a unanimous vote of the Board of Directors.⁷⁰¹ Approval of Caamaño Cubero's motion led to a somewhat incongruous result, as the article adopted on the motion of Leiva Quirós was also retained in the bill.⁷⁰² Also on May 11, a provision allowing the Bank to bring in foreign colonization beneficiaries was deleted from the bill, on the motion of Caamaño Cubero.⁷⁰³ Debate continued on May 13, when three motions of a technical nature were withdrawn. The bill was moving swiftly toward passage.

The climax of the debates came on May 15, when a number of motions were acted on. The first, which had actually been debated on May 13, was sponsored by Fournier Jiménez. It modified a provision in the bill, copied from the 1959 Law of Economic Encouragement,⁷⁰⁴ which reduced the period of time required following the inscription of land to quiet title, from ten to three years.⁷⁰⁵ The motion of Fournier added the following language:

Nonetheless, the possessory actions and boundary modifications shall be considered final [*consolidadas*] solely for the purpose of requesting and obtaining loans from the organizations of the National Banking System and other autonomous institutions of the State.

A second paragraph specified that in the event of a successful ejectment action by a third party, the latter was to repay any outstanding mortgage loans in accordance with their original terms and conditions.⁷⁰⁶

Since 1959, the three-year period had been in effect *for all purposes*. It had been included in the present bill because that same bill repealed the corresponding provision in Law No. 2466.⁷⁰⁷ The effect of the change suggested by Fournier, therefore, was to return to the situation existing prior to the 1959 law, except with

701. *Id.*

702. See *supra* p. 465 and note 696.

703. Expediente No. 2825, *supra* note 408, at 655. See 1960 Draft, *supra* note 408, at art. 44; Part One, 14 LAW. AM. 181 n.60 (1982).

704. Law No. 2466, art. 46 para. 2. See Part One, 14 LAW. AM. 218 (1982).

705. 1960 Draft, *supra* note 408, at art. 62.

706. Expediente No. 2825, *supra* note 408, at 686.

707. 1960 Draft, *supra* note 408, at art. 117. See Law No. 2825, art. 160 (1974 ed. art. 184).

respect to loans. Nonetheless, the motion was approved.⁷⁰⁸

Deputy Brenes Castillo then introduced a motion which would have stayed the execution of judgments against farmers for six months. The motion, which bore no relation to the bill, was supported only by its sponsor who defended it in a manner which was perhaps only half-serious, whereupon the motion was defeated.⁷⁰⁹

The lack of seriousness of Brenes Castillo turned to bitter sarcasm as he introduced the following motion, which provided that the Bank was to donate lands which might be necessary,

In order to carry out plans for the construction of penal colonies in the areas which may be indicated . . .⁷¹⁰

Volio intervened to point out — dryly — that the article was unnecessary because the authority requested was already contained in other provisions of the bill.

Brenes Castillo replied in a manner which revealed the emotional intensity with which many opposed the agrarian reform bill, despite the outer calm which had prevailed since Fournier's outburst on October 3, 1960.⁷¹¹ Said Brenes:

I do not agree.

You suggest that the [text of] the motion was modified very recently, and I must tell you that that is correct. You know that every mind is a world unto itself, and one is always subject to a series of concerns, and among my ideas recently has been that of authorizing this institution to donate these lands.

It may be that in the future the administration of the banks—their Boards of Directors—are composed of people like yourself who have a social conscience, but it may also happen that in the future these same Boards of Directors are made up of members with criteria like that of a Brenes Castillo, i.e., conservatives. And then these Boards of Directors are not going to donate these lands.

To my way of thinking, since what is really involved is, I believe, a purely humanitarian question, it is a moral obligation of Costa Ricans to come to do something for those who are incarcerated in Costa Rica. I have wanted to have it clearly specified in the

708. 108 ACTAS, *supra* note 675, at 262. Expediente No. 2825, *supra* note 408, at 686. See Law No. 2825, art. 69 (1974 ed. art. 93).

709. 108 ACTAS, *supra* note 675, at 262-63; Expediente No. 2825, *supra* note 408, at 686-87.

710. 108 ACTAS, *supra* note 675, at 263.

711. See *supra* p. 418.

law that this Bank, or what in the future may be the Institute of Lands and Colonies, donate . . . lands for this purpose.

I would appreciate it if you would not block this idea, because the Constitution has been violated here more than once without our opposing it, and in a matter so simple—above all of a humanitarian nature—we are trying to block the road, even though it is a problem which we ought to resolve because it is urgent.⁷¹²

Volio's response to this obvious sarcasm was simple and to the point:

Thus the essence of this motion has been explained and also the possibility that if it is rejected by the Assembly, the institution which is in charge of penal institutions may request necessary land from the agricultural institution.⁷¹³

Following this interesting exchange, the motion was ruled out of order, since it had not been technically presented before the corresponding deadline.⁷¹⁴

The next motion, however, was very serious indeed. Sponsored by Fournier Jiménez, it added language⁷¹⁵ which provided:

The Bank is also authorized to request the Executive to expropriate [*gestionar ante el Poder Ejecutivo la expropiación*] those lands which are considered indispensable for the purposes of this law.⁷¹⁶

In support of his motion, Fournier argued that the article was needed because the bill did not say exactly how expropriations were to be carried out.⁷¹⁷

Volio was quick to reply that the authority to expropriate lands rested with the Bank.⁷¹⁸ Other articles, he stressed, showed that all aspects of the law, insofar as possible, were to be decided by the Bank on the basis of technical criteria. Focusing on the central point, which had been amply discussed in 1959,⁷¹⁹ Volio under-

712. 108 ACTAS, *supra* note 675, at 264-65.

713. *Id.* at 265.

714. *Id.*

715. To "Article 105" — presumably of the 1960 Draft; it is possible, however, that the reference was to a working draft which is no longer available. *See supra* note 485.

716. 108 ACTAS, *supra* note 675, at 265.

717. The phrase "lands which are considered" is ambiguous, and in this motion the ambiguity was probably intentional.

718. In accordance with 1960 Draft, *supra* note 408, at art. 6(9); reproduced in Law No. 2825, art. 17(9) (1974 ed. art. 30(11)).

719. *See* Part One, 14 LAW. AM. 149 (1982).

lined the importance of the Bank having the last word on which lands were to be expropriated, so that the Executive would have nothing at all to do with land tenure problems, once the present law was passed.⁷²⁰

Fournier stressed once again that it was inappropriate for such absolute power to be held by an autonomous institution. Such a drastic action as the expropriation of an individual's property, he argued, should not be left to a few persons on the Board of Directors of a Bank, but rather should be left to the Executive, which had a more comprehensive point of view and could take the other general problems of the country into account in reaching a decision. Leaving such an absolute power to the Board of Directors of a Bank, he continued, was "really dangerous" and contrary to the goal of creating social harmony which was pursued by the present law. He concluded:

Therefore, I believe that we ought to make it clear here that in this law we are going to follow the customary procedure in Costa Rica, which is that the Executive [*los Poderes Centrales*] is the one that decides in the ultimate instance with respect to cases of expropriation—the Executive, first of all, and then if necessary, the Legislative Assembly.⁷²¹

Similar arguments were made by Lara Bustamente in support of the motion. But while the point had been left somewhat ambiguous in 1959, the reformers now had the necessary votes, and the motion was accordingly defeated.⁷²² Consequently, barring any conflict with the Constitution, the Bank had full authority to carry out expropriations without the approval of the Executive.

The next motion was sponsored by Brenes Gutiérrez, and would have deleted, entirely, from the bill an article providing for the recovery by the state of lands which had been illegally acquired in the past. This motion, too, was defeated.⁷²³

The only motions remaining had to do with the question of financing. They included those proposed by the Special Committee on Financing and a motion by Villalobos Arce specifying the details of a proposed progressive tax on uncultivated lands. At the

720. 108 ACTAS, *supra* note 675, at 266-67.

721. *Id.* at 267-68.

722. *Id.* at 268-69.

723. *Id.* at 269. The article in question was 1960 Draft, art. 105, reproduced as Law No. 2825, art. 147 (1974 ed. art. 171). See *supra* pp. 403-13.

start of the discussion, Volio pointed out that Villalobos Arce's motion has not been accepted by the Special Committee on Motions, because it contained, without any previous study, an old law dating from the time of President Cleto González Viquez.⁷²⁴ The Special Committee had accepted the idea of such a progressive tax, and included an article requiring that the Bank submit a draft law on the subject to the Legislative Assembly within one month of passage of the present law.⁷²⁵ Another article had included the income from such a tax as part of the patrimony of the Bank.⁷²⁶ In short, Volio suggested that the motion was out of order, or, at least, that it should be rejected.⁷²⁷

Due to Villalobos Arce's temporary absence, the Report of the Special Committee on Financing signed on November 11, 1960,⁷²⁸ was taken up first. After it had been read aloud, Montero Padilla questioned the wisdom of stating the amounts referred to in the two articles in U.S. dollars, instead of local currency. More importantly, Losilla Gamboa expressed his surprise at the measures proposed,

because I do not consider that to be financing for any program such as that which we are discussing.

Authorization to obtain lines of credit abroad, or authorization for the Executive to issue bonds to be placed in the national market, for me, is not financing. Because then we would run into the subsequent problem of [finding] the necessary sources of income to include in the Budget in order to service these obligations.

I believe that if the motions are approved in the form in which they have been introduced, we shall again be leaving the bill unfunded. I believe that the appropriate action would be for the Assembly to seriously come to grips with the problem of creating a tax which would provide the amounts necessary to give eco-

724. The provision proposed by Villalobos Arce had actually been in force from 1939-1945. Law No. 27 of Mar. 2, 1939, arts. 31-35 (Title VII, *Ley Sobre Impuesto Territorial*). Articles 31-32 and 34-35 were repealed, and article 33 modified, by Law No. 121 of July 20, 1945. See letter from Rodrigo Zavaleta U. (*Procurador de Hacienda*) to Bruce Masís D. (*Ministro de Agricultura e Industrias*), June 14, 1956 (copy on file with the author).

Actually, the law was first passed not under the administration of González Viquez, but rather under that of Alfredo González Flores. Law No. 72 of Dec. 18, 1916; [1916] *COLECCIÓN DE LEYES Y DECRETOS*, II, 598-609 [hereinafter cited as Law No. 72]. See *infra* pp. 476-77.

725. Report of the Special Committee on Motions, *supra* note 536, at 554 (proposed Transitory Art. 19).

726. *Id.* at 516.

727. 108 *ACTAS*, *supra* note 675, at 270.

728. See *supra*, pp. 429-32.

conomic sustenance to this bill.⁷²⁹

Losilla Gamboa concluded with a request that members of the Special Committee on Financing respond to the objections he had raised,

because I am afraid that if matters are approved in the form in which they were presented, we are going to make a law of such importance for the country—above all at the present time—inoperative.⁷³⁰

Daniel Oduber Quirós intervened next, declaring that he was going to vote in favor of both the Report of the Special Committee on Financing and the motion of Villalobos Arce, both of which he viewed as complementary. The latter, he noted, was almost an exact copy of the legislation passed under President Alfredo González Flores.⁷³¹ The motions proposed by the Committee were adequate, Oduber continued,

taking into account the large capital which we are giving to the Institute [sic] by transferring to it three million manzanas of [state] lands.⁷³²

In conclusion, he asserted:

I believe that the two recommendations of the Committee—one relating to the negotiation of credits abroad with agencies like the Economic Development Fund, for example⁷³³; and the other relating to the emission of bonds which have the backing, so to speak, of all of the assets of the institution which is now receiving three million manzanas which this Assembly is transferring to the Bank—and the tax on uncultivated lands to be discussed later, plus the amounts which we appropriated in the Law of Economic Encouragement, all of this will make it possible—by one or another of these four means—for the Bank to have the economic support [necessary] for the carrying out of this type of agrarian programs.⁷³⁴

729. 108 ACTAS, *supra* note 675, at 271. In Costa Rica, it should be noted, it is a common practice to allocate the income of a specific tax directly to an autonomous institution — thus protecting the latter from the vicissitudes of yearly budget deliberations in the Assembly.

730. 108 ACTAS *supra* note 675, at 271.

731. *See supra* note 724.

732. 108 ACTAS, *supra* note 675, at 272. One manzana is equal to approximately 1.73 acres or 0.698 hectares.

733. The reference was apparently to the Social Progress Trust Fund, originally agreed upon in the Act of Bogotá. *See supra* pp. 423-24, 457-61.

734. 108 ACTAS, *supra* note 675, at 272.

Whether intentionally or not, Oduber had completely undercut Volio's opposition to Villalobos Arce's motion. Volio was the next to speak, and he began as follows:

I want to confirm what Deputy Oduber has said. And I particularly wish to remind you that, at the very start, not even half of the 20 million colones are going to be needed. Because the entire reform of our system of land tenure is not going to be accomplished all at once. It is going to be carried out on a progressive scale, and in accordance with the law which establishes a scale of priorities within the agrarian programs.

After stressing that the twenty million colones (¢) appropriated by the Law of Economic Encouragement were also included as part of the Bank's assets, Volio concluded on the following note:

I wish to insist on . . . the necessity of opening all of the doors so that the funds announced in accordance with Mr. Kennedy's Alliance for Progress may arrive here more quickly. Those who have proposed this idea have said that it is necessary that the Latin American countries promote their tax reform and agrarian reform, among other things, and that this would be a basic prerequisite in order to be able to negotiate these loans abroad, primarily with the government of the United States of America.⁷³⁵

Following Volio's intervention, the report of the Special Committee on Financing was approved, with the proposed articles being incorporated into the bill.⁷³⁶

Finally, the deputies proceeded to a discussion of the tax on uncultivated lands proposed by Villalobos Arce. This provision added to the article establishing the patrimony of the Section of Lands and Colonies, the proceeds of a progressive tax on uncultivated lands.⁷³⁷ The first paragraph exempted lands belonging to a single person when their total area, in the entire country, did not exceed one hundred hectares.⁷³⁸ The next paragraph set forth the progressive scale of the tax:

If the total uncultivated land of a natural or juridical person in all of the Republic exceeds 100 hectares, the assessment shall be

735. *Id.* at 273.

736. *Id.*; Expediente No. 2825, *supra* note 408, at 687-88.

737. The article was copied verbatim from the corresponding provisions of Law No. 72 of Dec. 18, 1916, *supra* note 724.

738. 108 ACTAS, *supra* note 675, at 273-74; Expediente No. 2825, *supra* note 408, at 688-688 bis. The provision was copied from Law No. 72, *supra* note 724, art. 12(a). It is found in Law No. 2825, art. 16(d) (1974 ed. art. 41(d)(1)).

paid annually according to the following progressive rate:

¼ % on the value of the first 250 hectares or fraction thereof over 100 hectares;

½ % on the excess from 250 up to 500 hectares;

¾ % on the excess from 500 up to 1,000 hectares;

1% on the excess from 1,000 up to 1,500 hectares;

1-¼ % on the excess from 1,500 up to 2,000 hectares;

1-½ % on the excess from 2,000 up to 3,000 hectares;

1-¾ % on the excess from 3,000 up to 4,000 hectares;

2% on the excess from 4,000 up to 5,000 hectares; and

2-½ % on the excess over 5,000 hectares.⁷³⁹

If the uncultivated lands of a taxpayer had differing values, the tax was to be assessed at a value representing their total value divided by the number of hectares.⁷⁴⁰ Villalobos' motion also included a final sentence in the paragraph referring to another provision of Law No. 72, thus proving beyond any doubt that the article had been copied from the 1916 law.⁷⁴¹

The definition of uncultivated lands was contained in the following paragraph, which established:

All land shall be considered uncultivated which is in its natural state without its owner, on his own or through tenants or *colonos*⁷⁴², having undertaken works of cultivation or formal exploitation. The simple opening of narrow roads [*carriles*] as boundaries does not take away its uncultivated character, nor shall the simple exploitation of forests [*maderas*] or the profitable use [*aprovechamiento*] of superficial natural resources be considered exploitation in the sense of this law. However, systematic and organized exploitation [of the land] with the help of permanent mechanical installations, such as sawmills, mining equipment and the like, may be accepted as profitable use which takes away the uncultivated character [of the land]. The Administration ["Bank" in Law No. 2825] shall decide in each instance whether such is the case, and shall establish the area of land classifiable as exploited or as a legitimate reserve in the sense of the paragraph immediately following.⁷⁴³

739. Copied from Law No. 72, *supra* note 724, at art. 12(b); reproduced in Law No. 2825, art. 16(d)(2) (1974 ed. art. 41(d)(2)).

740. Copied from Law No. 72, *supra* note 724, at art. 12(b); para. 2; reproduced in Law No. 2825, art. 16(d)(2), art. 16(e) (1974 ed. Art. 41(d)(2), para. 2).

741. 108 ACTAS, *supra* note 675, at 273; Expediente No. 2825, *supra* note 408, at 688; Law No. 72, *supra* note 724, at art. 12(b) para. 2.

742. See *supra* note 603.

743. Copied from Law No. 72, *supra* note 724, at art. 13; reproduced, except for the substitution of "Bank" for "Administration," in Law No. 2825, art. 16(f). Cf. *id.* (1974 ed.

Finally, the last paragraph contained a major loophole: Uncultivated lands forming part of an agricultural enterprise shall be considered as a legitimate reserve for future cultivation, and shall be subject only to the general rate of assessment as if they were found in proper cultivation, if their extension is not greater than that which is already cultivated. It is not necessary, in order to benefit from this advantage, that the uncultivated portion form a single body with that already cultivated without interruption, *provided that the distance between the closest points does not exceed two kilometers* (emphasis added).⁷⁴⁴

In the face of Deputy Villalobos Arce's continued absence, Deputy Oduber intervened to speak in support of the motion. Noting that the provision was the same as a law that had been passed during the administration of President González Flores, the text of which he had been unable to locate in the Assembly's Archives, as it had been loaned out, Oduber declared that both the old and the present provisions had the same purpose, namely:

to help with the adequate exploitation of the land for the sake of high productivity, that is, to keep the land from being converted into simple merchandise for speculation — leaving large zones of uncultivated lands to benefit from the increased social value which makes the price of the land increase.

Appealing to history, Oduber continued:

The legislators of that period [administration of González Flores], in their wisdom, included all of the exceptions [necessary] so that injustices would not be committed, as, for example, cattle-raising⁷⁴⁵ and lands in the process of exploitation.

art. 41(d)(2) para. 3-4), which adds at the beginning of para. 4 the following:

In order to maintain and improve climatic and rain systems, and to safeguard the conservation of natural resources, areas covered with natural or cultivated forests shall be excepted from the taxes on uncultivated lands.

The above language was added by Law No. 3042, Part One, 14 LAW. AM. 241 n.330 (1982).

744. Copied from Law No. 72, *supra* note 724, at art. 14; reproduced in Law No. 2825, art. 16(g). The underlined words were deleted in 1962 by Law No. 3042, Part One, 14 LAW. AM. 241 n. 330 (1982). See Law No. 2825 (1974 ed. art. 41(d)(2) para. 4). The 1962 law also added provisions excepting certain areas in order to preserve them for environmental reasons. *Id.* (1974 ed. art. 41(d)(2) para. 5). In addition, the same law added an exception for lands dedicated to the forest industry (*la industria forestal*). See Law No. 2825 (1974 ed. art. 42).

745. The 1916 law had indeed contained a precise definition of uncultivated lands dedicated to cattle raising, but Villalobos Arce neglected to copy this provision in drafting his motion. The article established:

The natural savannas and jungles of little density . . . likewise shall be considered as exploited in the sense of this law if they are properly utilized for

If we, who have all praised as progressive and far-sighted the legislative measures of the government of Alfredo González Flores [pass this motion], then this . . . would ratify historically the intention of the legislation of that time.⁷⁴⁶

Oduber also underlined the exception granting owners a legitimate reserve equal in area to the land cultivated. In fact, he stressed, the tax was an extremely low one. He concluded:

It cannot be said in any manner that this law tries to ruin those who have great extensions of uncultivated lands; rather, it seeks to [implement] on the basis of the tax system an agrarian reform which is suitable for Costa Rica. Because great extensions of land which are not paying taxes at this moment are being benefitted by the increased value resulting from the action of the State in the zones in which these lands are located.⁷⁴⁷

Deputy Sotela Montagne expressed concern over the possible application of the tax against the purchaser of land which the new owner intended to develop, inquiring as to the point in time when such tax liability would be incurred. Oduber responded, stating that the tax would apply immediately and be collected on an annual basis. In response, Sotela Montagne suggested that it would be unfair to collect the tax in such cases.⁷⁴⁸

Deputy López Gutiérrez spoke briefly in support of the motion, as did Deputy Villalobos Dobles, who said:

With respect to the question concerning lands which became cultivated progressively, well, progressively they will become liberated from the tax. The idea is that the tax exists so that it is paid so long as the land is not cultivated.⁷⁴⁹

cattle-raising. In order for this exception to benefit the owner or the property, an indispensable condition shall be that a number of cattle be maintained on the land which is not less than two-thirds the number considered normal under the circumstances of the locality, and in no case less than one head for every five hectares. If this condition is not satisfied during the entire year, the land shall be considered uncultivated, and taxed according to Article 12 on the portion not utilized, in accordance with the terms of the present article.

Law No. 72, *supra* note 724, at art. 16. Villalobos Arce also omitted to copy art. 15 of the same law, which provided that uncultivated lands less than one hundred hectares in area were not exempted from the tax if they were situated less than one thousand meters from a public road or railroad station, except in the case of forests or lakes close to population centers when their conservation was indicated. Law No. 72, *supra* note 724, at art. 15.

746. 108 ACTAS, *supra* note 675, at 274.

747. *Id.* at 275.

748. *Id.* at 275-76.

749. *Id.* at 276-77.

After the President of the Assembly had explained that no amendments to the motion could be made because its sponsor was not present, Oduber intervened once again to stress that the tax was very low indeed. While he had been unable to find the 1916 law, Oduber recalled that it contained a provision to the effect that lands used for cattle-raising were considered cultivated for the purposes of the law.⁷⁵⁰ Thus, he argued,

lands which are producing cattle for stock raising, despite the fact that they may have the appearance of uncultivated lands, are in fact considered for the purpose of this law as lands under exploitation. Whether it is an efficient explanation [sic] or not, and the measures which may be taken to make it efficient, shall be the subject of another type of legislation or of programs of the *Banco Nacional de Costa Rica*.⁷⁵¹

Deputy Chaves Soto concluded the debate, stating briefly:

With pleasure I am going to vote for the motion under discussion because it seeks to finance this law. Secondly, because it will put an end to the monopolization of land out of selfish motives. In this way, the individual who does not need the land either pays the tax or returns the land to the State.⁷⁵²

Following this intervention, the motion establishing the tax on uncultivated lands was approved.⁷⁵³ Except for the preliminary remarks noted above, Volio, seeing Oduber's support for the motion, did not intervene in the debate.⁷⁵⁴

Thus, the tax on uncultivated lands became incorporated into the bill. Signed into law by President Alfredo González Flores on December 18, 1916, it had been one of several progressive measures, including the first income tax law, also signed on December 18, which led to González' overthrow through a military coup led by Federico Tinoco on January 27, 1917.⁷⁵⁵ The tax on uncultivated lands was drastically reduced only a year after its passage, when Tinoco signed into law a modification establishing a rate of

750. See *supra* note 745.

751. 108 ACTAS, *supra* note 675, at 277. However, it should be noted that the provisions to which Oduber referred were not in fact included in the motion, and consequently were not incorporated into the text of the law.

752. *Id.*

753. *Id.*; Expediente No. 2825, *supra* note 408, at 688-688 bis. The provision is found in Law No. 2825, art. 16(d)-(g). Cf. *Id.* (1974 ed. arts. 41(d) and 42).

754. See *supra* pp. 471-72.

755. See E. RODRIGUEZ VEGA, LOS DIAS DE DON RICARDO 88-89 (2d ed. 1974).

one-quarter percent on uncultivated lands greater than one hundred and less than two hundred fifty hectares in area, and one-half of one percent on those exceeding two hundred fifty hectares in area.⁷⁵⁶

The law had also been in force from 1939 to 1945, when it was repealed under the administration of Republican President Teodoro Picado.⁷⁵⁷ Now, some forty-four years after its first passage, it was once again approved by the Legislative Assembly.⁷⁵⁸ As the motion of Villalobos Arce was the last to be considered, with its approval the draft Law of Lands and Land Settlement was approved in First Debate.⁷⁵⁹

Following approval in First Debate on May 15, final passage of the bill by the Legislative Assembly remained only a formality. Nonetheless, two substantive motions of interest were introduced during the second debate on May 16. First, Deputy Marshall Jiménez called for reconsideration of Villalobos Arce's motion establishing a tax on uncultivated lands, but Marshall's motion was defeated. Second, in a final effort to block the bill, Deputy Solano Sibaja moved that the bill be returned to First Debate, but his motion too was defeated. With no changes, the bill was approved in Second Debate.⁷⁶⁰

Finally, on May 17, 1961, the draft Law of Lands and Land Colonization came up for discussion in Third Debate. Fernando Volio moved for a roll-call vote,⁷⁶¹ and the bill was approved by an overwhelming majority, forty-two to two; only Deputies Brenes Gutiérrez and Solano Sibaja voted negatively.⁷⁶² At long last, and

756. Law No. 8 of Dec. 29, 1917; [1917] COLECCION DE LEYES Y DECRETOS, II, 680-82.

757. See *supra* note 724.

758. In some respects, however, the 1916 law was stronger. Worth noting is an article which provided for the forced sale of any land when the tax on it had not been paid for four consecutive quarters (art. 21); and an article (art. 24) which gave the state the right to purchase any land at 120% of the value declared by the owner for tax purposes. Law No. 72, *supra* note 724. The latter provision was an early precursor of Law No. 2825, art. 127 (1974 ed. art. 151).

759. 108 ACTAS, *supra* note 675, at 278; Expediente No. 2825, *supra* note 408, at 688 bis.

760. Expediente No. 2825, *supra* note 408, at 704.

761. *Id.* at 708.

762. *Id.* Those voting in favor were: Fonseca Zúñiga, Rojas Tenorio, Villalobos Arce, Brenes Castillo, Lizano Hernández, Sancho Robles, Solera Solera, Montero Padilla, Brenes Méndez, Arguedas Katchenguis, Kooper Vega, Segares García, González Murillo, Fournier Jiménez, Sotela Montagne, Hurtado Rivera, Guzmán Mata, Dávila Ugalde, Volio Jiménez, Marshall Jiménez, Hernández Madrigal, McRae Grant, Trejos Dittel, Aiza Carrillo, Aguiluz Orellana, Alonso Andrés, Vargas Ramírez Saborio Bravo, Espinoza Jiménez, Losilla Gam-

after many battles, the agrarian reform law had been passed by a nearly unanimous vote of the Legislative Assembly.⁷⁶³

D. Final Obstacles

1. Presidential Veto

The reformers had ample reason to take satisfaction in the Legislative Assembly's approval in May, 1961 of the agrarian reform bill, which had been first introduced in 1955. Not only had they successfully resisted many attempts to kill, sidetrack, or weaken the bill, but they had also succeeded in actually strengthening the bill's provisions in many important respects. While the possibility of a veto by President Mario Echandi could not be ruled out, given his strong and well-known opposition to the bill, the fact that its approval on May 17, 1961 has been by the overwhelming margin of forty-two to two made a veto seem less likely.

When President Echandi vetoed the bill on June 5, 1961,⁷⁶⁴ therefore, it came as quite a blow to the reformers. Echandi vetoed many provisions on the ground that they violated the Constitution, while he vetoed other provisions simply because, in his judgment, they were inappropriate.

Before proceeding further, a word of explanation regarding the veto in Costa Rica is in order. Under the Costa Rican constitution, the Executive has ten days following the receipt of a bill to veto the same and return it to the Assembly with the corresponding objections; otherwise, the Executive must sanction and publish the law.⁷⁶⁵ The Executive may veto a law either on constitutional grounds,⁷⁶⁶ or simply because it "considers it inappropriate (*inconveniente*) or believes that modifications are necessary." In the latter case, the Executive must indicate the changes it believes are needed.⁷⁶⁷

Different procedures are to be followed depending on the jus-

boa, Obregón Valverde, Jara Chavarria, López Garrido, Alvarez González, Villalobos Dobles, Monge Alvarez, Carro Zúñiga, Espinoza Espinoza, Oduber Quirós, Chaves Alfaro, Leiva Quirós, and Caamaño Cubero. *Id.*

763. The bill was sent to the Executive for President Mario Echandi's signature on May 23. Decreto No. 2747, *supra* note 477, found in Expediente No. 2825, *supra* note 408, at 748.

764. Echandi Veto, *supra* note 479; Expediente No. 2825, *supra* note 408, 723-47.

765. CONSTITUCIÓN arts. 125-26 (Costa Rica 1949).

766. *Id.* art. 128.

767. *Id.* art. 126.

tification given for the veto. If vetoed simply because it is deemed "inappropriate," the bill is returned to the Assembly with any suggested modifications. If the latter are rejected and the bill is again approved by a majority of two-thirds of all of the Assembly's members, the bill automatically becomes law.⁷⁶⁸

If, however, the veto is based on grounds of unconstitutionality which are not accepted by the Assembly, then the latter is to send the bill to the Supreme Court of Justice which must decide the issues raised, within the next ten days. Then,

If the Court, by vote of no less than two-thirds of all of its members, declares that the bill contains unconstitutional provisions, the part containing them shall be considered as rejected. The remainder shall be sent to the Assembly for the corresponding action [*tramitación*], and the same shall be done with the complete bill when the court declares that it contains no provisions contrary to the Constitution.⁷⁶⁹

In short, those provisions vetoed as inappropriate require the vote of a two-thirds majority in the Assembly in order to be overridden, while those vetoed on constitutional grounds require, in addition,⁷⁷⁰ approval of more than one-third of the total membership of the Supreme Court in order to become law. Even if an article is declared unconstitutional by the court, the remaining portions of the bill can still become law, provided they have either not been vetoed or have received the required two-thirds majority vote of the Legislative Assembly.

President Echandi's veto came as a heavy blow to the reformers, not only because they had hoped that the President would sign the bill, but also because the veto itself was very well drafted, making specific reference to numerous provisions in the bill, the most important of these being vetoed on constitutional grounds.

The task of overriding the veto was thus made doubly difficult. In order to obtain the two-thirds majority in the Assembly to uphold the vetoed provisions, it would be necessary to gain a number of votes from members of Echandi's coalition. At the same time, the number of articles vetoed on constitutional grounds made it

768. *Id.* art. 127.

769. *Id.* art. 128.

770. Article 128 is not entirely free of ambiguity as to whether a disposition vetoed on constitutional grounds, but upheld by the Supreme Court, also requires approval by an absolute two-thirds majority of the Assembly. Presumably, however, this is the case. See CONSTITUCIÓN art. 128 (Costa Rica 1949).

unlikely that all of them would be upheld by the Supreme Court of Justice.⁷⁷¹

The cornerstone of the veto message was the argument that many of the bill's provisions were in flagrant violation of article 45 of the Constitution.⁷⁷² Affirmed Echandi:

This antimony [between certain articles of the bill and Article 45] acquires or has the character of unusual institutional gravity, for two fundamental reasons: a) because the aforementioned Article 45 is, on the one hand, the base and the foundation of the socio-economic organization of Costa Rica, and, on the other hand, the indispensable guarantee of the progress and social peace which we Costa Ricans enjoy, as do the foreigners who live together with us; and b) because the articles of the bill suffering from the defect indicated are no more and no less than the backbone, the reason for being — note it well — of the entire bill under discussion.⁷⁷³

A lengthy discussion of the inviolability of private property followed, with specific reference to the debates in the National Constituent Assembly which drafted the 1949 Constitution. Echandi asserted that the principles of "eminent domain" and "the social function of property" contained in the draft Constitution submitted by the Founding Junta of the Second Republic, had been expressly rejected by the drafters of the constitution.⁷⁷⁴ Consequently, and despite the fact that in the interventions which Echandi himself cited, the proponents of these principles had argued that they were *already* included in the 1871 Constitution (amended in 1943), and that the changes being proposed were more precise statements of accepted principles,⁷⁷⁵ Echandi concluded:

[O]ur deputies [of the Constituent Assembly] of the 1949 rejected emphatically the principle of the social function of private property, no less than its logical antecedent, the principle of eminent domain of the State — that is to say, in our system

771. Interview with Fernando Volio Jiménez, Dec. 16, 1974.

772. For the text of art. 45, see Part One, 14 LAW. AM. 189 n. 85 (1982).

773. Echandi Veto, *supra* note 479.

774. In support of his contention, Echandi cited interventions made during the 1949 debates by Fernando Volio Sancho (the father of Fernando Volio Jiménez), Fernando Fournier Acuña, and Rodrigo Facio Brenes. *Id.* See O. AGUILAR BULGARELLI, LA CONSTITUCION DE 1949: ANTECEDENTES Y PROYECCIONES 55-95, 107-108 (1973).

775. See Intervention of Fernando Volio Sancho, cited in Echandi Veto, *supra* note 479.

private property does not have a social function.⁷⁷⁶

The general rule, the President argued, was that private property was inviolable, except in cases of expropriation where the owner was paid prior and full indemnification in cash. To be sure, an exception to the general rule was contained in article 45 paragraph 2, which provides:

For reasons of public necessity, the Legislative Assembly may, by a vote of two-thirds of its total membership, impose limitations of social interest on property.⁷⁷⁷

The limitations referred to in this paragraph, however, could not in any manner be considered as equivalent to the social function of property, Echandi asserted. Limitations of social interest on property were permissible under the constitution, the President maintained, only in a very limited class of situations:

If these two conditions — public necessity and the inexistence of any means other than limiting private property — do not exist, it is not lawful, not even if the ordinary legislator states [these conditions] as a pretext, to impose limitations on private property.

Through a somewhat strained textual analysis, he concluded that limitations on private property required more than did simple expropriations. Specifically, both “public necessity” and “social interest” were required in order to establish such limitations, while expropriations required only “public necessity.”⁷⁷⁸ The interpretation was strained, and made possible by the fact that when the second paragraph was added to article 45 in 1943, no attempt was made to redraft the first paragraph in order to harmonize the terminology employed.⁷⁷⁹

Finally, Echandi stressed that no expropriation could be carried out, or limitation on property established, without full compensation to the owner in cash. The President affirmed:

[I]n our political-legal system, in matters [respecting] property,

776. Echandi Veto, *supra* note 479. See Law No. 6735, Part One, 14 LAW. AM. 172 n. 33 (1982), art. 3(c), which establishes that a function of the Institute is “to make effective the principle of the social function of property.”

777. This paragraph had been added by a constitutional amendment in 1943 under the administration of President Calderón Guardia.

778. Echandi Veto, *supra* note 479.

779. See R. SOTELA M., O. SALAS M., & J. L. ARIAS A., CASOS Y MATERIALES SOBRE DERECHOS REALES, TOMO II, 171-94 (1971).

a direct violation — as a synonym for a damage to one's patrimony — is impossible. . . . Recall that when the text cited authorizes the taking away of a certain and given property, it requires that [the owner] be given, previously, another property: the price in cash of that which is taken away and the amount of damages which may be occasioned.⁷⁸⁰

Following these general considerations, President Echandi listed the specific articles which he considered violative of the constitution. With one exception, all were allegedly in violation of article 45. The provisions vetoed included three paragraphs from article 1 of Decreto No. 2747, which established — as objectives of the law — that rural property has as a fundamental object the satisfaction of the broadest social function⁷⁸¹; the prohibition of *latifundios*⁷⁸²; and the restriction of *minifundios*.⁷⁸³ A paragraph in article 2 which established the right of squatters to remain on land they were cultivating⁷⁸⁴ was similarly vetoed as violating article 45.⁷⁸⁵

With respect to the chapter on the social function of property, the President vetoed the first paragraph of article 5, which established that the existence and maintenance of uncultivated or idle farms was especially contrary to the social function of property, the national well being, and the economic development of the country.⁷⁸⁶ Article 6, which established that the lands of the State, Autonomous Institutions, and Municipalities were also subject to the principle of the social function of property,⁷⁸⁷ was vetoed, as was article 8, which established that *latifundios* and *minifundios* were contrary to the public interest.⁷⁸⁸ At the same time, the article which defined *latifundio* for the purposes of the law⁷⁸⁹ was vetoed as contrary to article 45 of the constitution; the same reason was given for the veto of the following article, which defined

780. Echandi Veto, *supra* note 479.

781. Decreto No. 2747, *supra* note 477, at art. 1 (3). *See supra* p. 415.

782. Decreto No. 2747, *supra* note 477, at art. 1 (4).

783. *Id.* art. 1 (5).

784. *Id.* art. 2 (2). *See supra* pp. 415-16.

785. Echandi Veto, *supra* note 479.

786. Decreto No. 2747, *supra* note 477, at art. 5, para. 1. *See supra* pp. 436-37.

787. Decreto No. 2747, *supra* note 477, at art. 6. *See supra* pp. 416-17.

788. Decreto No. 2747, *supra* note 477, at art. 8. *See supra* pp. 437-38.

789. Decreto No. 2747, *supra* note 477, at art. 9. *See supra* pp. 438, 461-64. This provision has been added by the Special Committee. Report of the Special Committee on Motions, *supra* note 536, at 520.

minifundio for the purposes of the law.⁷⁹⁰

Other articles were seen by President Echandi as equally violative of article 45. Article 21 (d), providing for the reversion to the State of lands over one hundred hectares in area, when they had been illegally acquired under certain laws and were not cultivated in sixty percent of their area five years after the promulgation of the law, was vetoed as being contrary to article 45. Moreover, while he did not cite article 34 of the constitution, Echandi alluded to the possibility that article 21 (d) was also contrary to that Constitutional precept that:

No law shall be given retroactive effect which prejudices any person, or his acquired proprietary rights, or settled legal situations.⁷⁹¹

The President also vetoed, as a limitation on property not authorized by article 45, the provision in the bill which gave the Bank a first option to purchase any land offered for sale exceeding two hundred fifty hectares in area, in certain zones designated by the Bank.⁷⁹² Of the greatest importance, however, was the President's veto of the article providing that indemnification for expropriated lands was to be paid in bonds or in cash, at the election of the Bank.⁷⁹³ The President argued:

This matter of paying in bonds is not indemnifying, because the latter expression is to be understood in the sense of paying with money in cash, that is, legal tender, fully redeemable. In expropriations, as noted above, the patrimony of the titleholder of the expropriated property is not to be prejudiced.⁷⁹⁴

Noting that article 45 allowed for deferred payment only in the case of war or internal commotion,⁷⁹⁵ he affirmed that even then, full payment in cash had to be made within two years following conclusion of the emergency. Finally, Echandi declared that even if payment in bonds were allowed — which it was not — the bonds

790. Decreto No. 2747, *supra* note 477, at art. 10.

791. CONSTITUCIÓN art. 34 (Costa Rica 1949).

792. Decreto No. 2747, *supra* note 477, at art. 34. The article had been included in the 1958 bill in the form proposed by Eduardo Llovet in 1955. See Part One, 14 LAW. AM. 215 (1982). Volio had included the provision when redrafting the bill. 1960 Bill, *supra* note 408, art. 17.

793. Decreto No. 2747, *supra* note 477, at art. 135. See Part One, 14 LAW. AM. 149 (1982) and *supra* p. 445.

794. Echandi Veto, *supra* note 479.

795. CONSTITUCIÓN art. 45 para. 1 (Costa Rica 1949). See Part One, 14 LAW. AM. 189 n. 85 (1982).

would have to be discounted to their market value in order to satisfy the requirements of the constitution. The "penalty" represented by the depreciation in value of the bonds, he concluded, was yet another violation of article 45,

since to pay for a piece of property less than its value, clashes openly with the inviolability of property, in that it violates the same to the extent not paid.⁷⁹⁶

In addition to the foregoing, the President vetoed the article which declared that the present law "constitutes a limitation of social order on the right of property."⁷⁹⁷ This provision, too, assertedly violated article 45.⁷⁹⁸

In addition to articles allegedly in violation of article 45, Echandi also objected to the article which required that no credit could be given without the prior authorization of the Department of Rural Credit, Lands, and Colonies of the *Banco Nacional*.⁷⁹⁹ This article was vetoed on the ground that the opinion of the autonomous institutions affected by the provision had not been previously heard as required by article 190 of the constitution.⁸⁰⁰

In addition to the articles vetoed as unconstitutional, President Echandi made a number of minor and technical suggestions with respect to other provisions of the bill. Some related to obvious errors in drafting, while others had to do with articles which the President found ambiguous. One of the latter is of particular interest, as it related to the articles providing for the reversion of certain untitled lands to the State:

Article 22 para. 22⁸⁰¹ establishes as a duty and power of the *Banco Nacional de Costa Rica* the making of a study of all of the inscribed farms in the country with an area greater than 1000 hectares, which are inscribed following the entry into force of this law. The Executive presumes, with all logic, that what the legislator wished to establish as a power of the *Banco Nacional* is the study of all farms with an area exceeding 1000 hectares which are currently inscribed, given the fact that the

796. Echandi Veto, *supra* note 479.

797. Decreto No. 2747, *supra* note 477, at art. 168. See Part One, 14 LAW. AM. 149 (1982).

798. Echandi Veto, *supra* note 479. Cf. Law No. 2825, art. 161 (1974 ed. art. 185).

799. Decreto No. 2747, *supra* note 479, at art. 125 para. 2. See *supra* p. 447. Cf. Law No. 2825, art. 114 (1974 ed. art. 138).

800. Echandi Veto, *supra* note 479. For the text of art. 190, see Part One; 14 LAW AM. 206 n. 160 (1982).

801. See *supra* pp. 433-34. Cf. Law No. 2825, art. 17 (22) (1974 ed. art. 30 (20)).

purpose and object of this study is to verify whether the area inscribed corresponds in fact to the land possessed. Therefore, it is necessary that the intention of the legislator be clarified, correcting if necessary the cited paragraph of Article 22.⁸⁰²

With respect to the ambiguities and textual errors in drafting contained in the bill, Echandi caustically observed:

If a problem in the distribution of lands exists, an even greater problem is going to be occasioned by the application of a law which contains these confusions and contradictions.⁸⁰³

Finally, the President objected to what he perceived to be certain procedural errors made by the Assembly in its consideration and passage of the bill.⁸⁰⁴

2. Response of the Reformers

Since the political campaign for the Presidential and Assembly elections to be held in February 1962 was fully underway, it looked as if it would be extremely difficult for the reformers to obtain the two-thirds majority necessary to override the veto. Many deputies would be reluctant to vote against the President. At the same time, to defend each of the vetoed articles in the Assembly would have led to extended debate, with all of the risks of the bill getting sidetracked that such debates implied. Moreover, it was doubtful that the Supreme Court would uphold all of the provisions vetoed on constitutional grounds.⁸⁰⁵

The reformers thus faced quite a dilemma. The PLN reacted immediately, publishing a series of newspaper articles entitled "The Agrarian Law and the Government," on June 6, 7, 8, and 9.⁸⁰⁶ The articles, written by Volio, included a detailed justification of the most important articles in the bill, and quoted extensively from a study by International Development Services, Inc., done in 1960 at the bequest of President Echandi himself. In addition to these articles, Fernando Volio attacked President Echandi sharply for his opposition to the social function of land, in an article pub-

802. Echandi Veto, *supra* note 479. See *infra* p. 488.

803. Echandi Veto, *supra* note 479.

804. *Id.*

805. Interviews with Fernando Volio Jiménez, Jan. 14 and Dec. 21, 1974.

806. The articles were published under the heading, "Partido Liberación Nacional (Secretaría de Capacitación y Cultura)." The articles are found in *La República*, June 6, 1961, at 2; June 7, 1961, at 2; June 8, 1961, at 2; and June 9, 1961, at 2.

lished in *La República* on June 7.⁸⁰⁷

Despite this strong reaction, the reformers were still faced with the problem of what strategy to adopt in order to overcome the veto. Informal discussions followed with Volio enlisting the aid of PLN Deputy Jorge Villalobos Dobles, a lawyer with an excellent legal mind. Villalobos Dobles prepared a detailed study of the veto, including an assessment of the strengths and weaknesses of the articles vetoed and their relative importance for the achievement of the purposes of the law.⁸⁰⁸

Following an examination of each of the articles vetoed, including the legal arguments and case law supporting the constitutionality of the article providing for payment in bonds, Villalobos Dobles recommended the following:

Accept the observations of the President and correct the articles in the manner proposed, deleting them where necessary; [but] reject the [alleged] unconstitutionality insofar as [the provision] related to payment in bonds for expropriation, and send it to the Court so that the latter shall consider this point alone — for which there are good precedents to secure a pronouncement that it is not unconstitutional.⁸⁰⁹

Meanwhile, in the Assembly the bill and veto had been referred to the Committee on Agriculture and Colonies, composed of Deputies Monge Alvarez, Caamaño Cubero, and González Murillo. The Committee studied both the veto and the study prepared by Deputy Villalobos Dobles, and heard the opinion of various individuals, including, of course, Fernando Volio. The Committee charged Volio with the actual drafting of its report.⁸¹⁰

Volio, therefore, was the real author of the committee report, which did not reach the floor of the Assembly until July 31. The report which he drafted reflected the decisions made within the PLN and among the reformers. Given the difficulties of sustaining all of the provisions vetoed, they had adopted Villalobos Dobles' suggestion and had decided to accept all of the changes proposed by Echandi, except one: payment in bonds for expropriated lands.

807. *La República*, June 7, 1961.

808. Letter from Jorge Villalobos Dobles to Fernando Volio Jiménez, June 19, 1961 (copy on file with the author).

809. *Id.* at 7.

810. Fernando Volio Jiménez, "Antecedentes de la Ley de Tierras y Colonización," in Archivos de la Asamblea Legislativa, Expediente No. 3042 (*Ley*), at 48, 51. See *supra* note 411.

That article, they felt, was absolutely essential for the successful implementation of any agrarian reform. None of the other vetoed provisions were anywhere nearly as important as article 135 of Decreto No. 2747.

Nonetheless, the committee report drafted by Volio continued a very strong defense of all of the provisions vetoed by the President. The report refuted the charge that the social function of property had been rejected by the Constituent Assembly in 1959, while tracing in detail the doctrine's development in Costa Rica and other countries, in legal treatises, and in the doctrine of the Catholic Church. The second paragraph of article 45, added to the constitution in 1943, the report concluded, referred directly to the social function of property.⁸¹¹

In addition to a sweeping and cogent defense of the principle of the social function of property, Volio rebutted the alleged unconstitutionality of each of the articles vetoed.⁸¹² With respect to article 135, he pointed out that article 45 of the constitution itself provided that indemnification was to be paid "in accordance with the law." He continued:

Consequently, if the Law of Lands and Land Settlement establishes, in Article 135, the manner of indemnifying the owners who may be expropriated, [then] far from violating the Constitution, it is developing a clearly enunciated principle of the same.⁸¹³

"Indemnification" was not the same as "payment in cash," Volio stressed, as was clearly revealed by previous laws for the eradication of slums,⁸¹⁴ and the resolution of squatter conflicts.⁸¹⁵ Both of these laws had provided for indemnification in *land*, and not cash, Volio noted.⁸¹⁶ Similarly, indemnification in bonds, provided for in the Law of Economic Blockade of December 12, 1942, had been

811. Fernando Volio, *Dictámen Sobre el Veto a la Ley Agraria* [hereinafter cited as Volio Draft Veto Report] 1-20, July, 1961 (mimeographed) (copy on file with the author). The official version, identical except for a slightly different pagination, is reproduced as *Dictámen de la Comisión de Agricultura y Colonias Sobre el Veto*, in Expediente No. 2825, *supra* note 408, at 999-1036.

812. Volio Draft Veto Report, *supra* note 811, at 20-25.

813. *Id.* at 25-26.

814. Law No. 2760 of June 16, 1961, amended by Law No. 2794 (*Ley Contra el Tugurio*).

815. Law No. 88 of July 14, 1942 (*Ley de Parásitos*). See Part One, 14 LAW. AM. 159 (1982).

816. Volio Draft Veto Report, *supra* note 811, at 26-27.

upheld by the Court of Cassation in 1952.⁸¹⁷ Volio argued that the First Civil Appellate Division of the Supreme Court had also upheld payment in bonds under the same Law of Economic Blockade.⁸¹⁸

Volio also replied to each of the suggestions made by the President with respect to articles which had not been vetoed on constitutional grounds. Of most interest was the reply given with respect to article 22 (22) of Decreto No. 2747.⁸¹⁹ The President's objection was recalled as follows:

That in article 22 para. 22 it is not clear with respect to the study of farms inscribed in the country, with an area greater than 1000 hectares, whether those already inscribed should be considered, or those which may be inscribed in the future.⁸²⁰

In response, Volio declared:

It is certain. It refers to those already inscribed.⁸²¹

Thus the ambiguity as to the time of inscription of the lands was settled. However, the provision retained another ambiguity. Did the article refer to all farms over one thousand hectares in area in actual possession, even if the titled portion was less than one thousand hectares? Or did it refer only to those farms the titled portion of which exceeded one thousand hectares? Neither the original language, nor the observations of Echandi or Volio, nor the amended language of the article clarified this ambiguity.

Volio also replied to the alleged procedural errors committed by the Assembly in its handling of the law. While justifying the alleged errors, the conclusive argument presented by Volio was the following:

The Legislative Assembly has full and unrestricted independence, as the Branch [*Poder*] of the State which it is, to exercise its exclusive constitutional powers.⁸²²

In short, the Assembly's internal procedures were its own exclusive domain of concern.

817. Judgment of 10 hrs., August 19, 1952.

818. Judgment of 16:30 hrs., Jan. 15, 1952. Both of these cases had been cited in the study done by Villalobos Dobles, *supra* note 808.

819. Volio Draft Veto Report, *supra* note 811, at 29. See *supra* p. 412.

820. Volio Draft Veto Report, *supra* note 811, at 30.

821. *Id.* at 31.

822. *Id.* at 31-33.

Finally, in the concluding section of the report, Volio reaffirmed the principle of the social function of property, declaring that the articles vetoed as unconstitutional were, on the contrary, wholly in accord with the constitution. Volio continued:

[T]he Committee could recommend to the Legislative Assembly that it not accept the veto of provisions on Constitutional grounds, nor that of those deemed inappropriate. Nevertheless, this course would occasion new discussions in the [Assembly] regarding subjects debated since May, 1958 — when the draft Law of Lands and Land Colonization was introduced — and such debates would further delay the definitive promulgation of a democratic agrarian law, the necessity and urgency of which are evident. Therefore, the Committee prefers to recommend to the Assembly that it adopt the modifications proposed by the Executive in its Veto with respect to the reasons of inappropriateness, and that it accept all the reasons of unconstitutionality except one — that corresponding to Article 135 of the bill.⁸²³

These provisions could be deleted from the law because, with perhaps two exceptions, their deletion

does not weaken or detract from the agrarian policy which should be promoted on the basis of this law, because other norms [contained] in the same — not vetoed by the Executive — maintain the progressive and democratic features of this important legal instrument, and its effectiveness in order to promote the agrarian reform which the country needs.

Most of the vetoed articles, Volio explained, were merely declarations of principles. The two major exceptions were the provision requiring the Bank's prior approval to the granting of any agricultural credit, and the provision giving the Bank a first option on the purchase of any land exceeding two hundred fifty hectares in area offered for sale. Even without these two articles, he concluded, an agrarian reform could be carried out.⁸²⁴

The Report of the Committee on Agriculture and Colonies — in fact, the very draft prepared by Volio — was signed by the members of the Committee and brought to the floor of the Assembly on July 31, 1961. On a roll-call vote, a motion to consider the report was approved. Five deputies, however, voted against the motion: Villalobos Arce, Abdenago Hernández, Morera Soto, En-

823. *Id.* at 33-34.

824. *Id.* at 34-35.

rique Fonseca Zúñiga, and Brenes Méndez. Villalobos Arce explained his negative vote by objecting to the fact that they had just received copies of the report and had not even had time to read it.⁸²⁵ Nonetheless, and without debate on its merits, the report was approved.⁸²⁶ On August 4, the Secretary of the Assembly forwarded the bill and the Committee Report to the Supreme Court of Justice.⁸²⁷

However, on September 1 Villalobos Arce introduced a motion to reconsider the vote of July 31, arguing that no final decision (*acuerdo firme*) had been taken to send the bill to the court.⁸²⁸ Following an extremely long intervention — in which he attacked the PLN for seeking political gain from passage of the law, while lauding the efforts in favor of agrarian reform of his own Republican Party over the years — Villalobos withdraw his motion.⁸²⁹ Apparently all he had intended was to make a long and partisan speech as part of the ongoing political campaign. Nonetheless, this action — as his negative vote on July 31 — was curious, to say the least. In any event, the bill was sent to the Supreme Court again on September 2.⁸³⁰ The constitutionality of article 135 would be decided by the court within the following ten days.

Between the approval of the Report of the Committee on Agriculture and Colonies on July 31, and the decision of the Supreme Court on the constitutionality of article 135, the proponents of agrarian reform received further support at the internat level. At a high-level meeting of the OAS Inter-American Economic and Social Council, held in Punta del Este, Uruguay from August 5-17, ministers representing the countries of the hemisphere worked out the basic principles which were to guide the Alliance for Progress.

In the "Declaration to the Peoples of America," the delegates enunciated the objectives of the Alliance for Progress, "a vast effort to bring a better life to all the peoples of the continent."

825. ASAMBLEA LEGISLATIVA DE COSTA RICA, 113 ACTAS 298-305 [hereinafter cited as ACTAS].

826. *Id.* at 311; Expediente No. 2825, *supra* note 408, at 995.

827. *Id.* at 1037.

828. *Id.* at 1040. Technically, he was correct, since a revision of the vote on a motion may be made at the next regular session of the Assembly. During August, the Assembly meets only in special session. Apparently this was the reason the Supreme Court of Justice did not decide the matter within ten days of its original receipt of the bill, as required by article 128 of the Costa Rican constitution.

829. *Id.* at 1040.

830. *Id.* at 1042.

Among the goals which the signatories agreed to work toward was the following:

To encourage, in accordance with the characteristics of each country, programs of comprehensive agrarian reform, leading to the effective transformation, where required, of unjust structures and systems of land tenure and use, with a view to replacing *latifundia* and dwarf holdings by an equitable system of property so that, supplemented by timely and adequate credit, technical assistance and improved marketing arrangements, the land will become for the man who works it the basis of his economic stability, the foundation of his increasing welfare, and the guarantee of his freedom and dignity.⁸³¹

The same objective was also included in the more detailed Charter of Punta del Este, also signed at the conference.⁸³²

In order to assist in such a collaborative effort, the United States pledged that it would provide one billion dollars from public funds for the year beginning March 13, 1961 — when the Alliance had been announced by Kennedy. It also pledged that it would provide

a major part of the minimum of \$20 billion, principally in public funds, which Latin America will require over the next ten years from all external sources in order to supplement its own efforts.⁸³³

Thus, the new "respectability" of agrarian reform was once again reaffirmed by the nations of the hemisphere. A major clash between the United States and Cuban delegations to the conference, moreover, served to highlight the urgency of change.⁸³⁴

3. Decision of the Supreme Court

Against this background, the Supreme Court of Justice deliberated on the constitutionality of article 135 during early September.

The decision of the Supreme Court of Justice was handed

831. Declaration to the Peoples of America, reproduced in LEVINSON & DE ONIS, *supra* note 666, at 349-50.

832. The Charter of Punta del Este, reproduced in *id.* at 352, 353-54.

833. Declaration to the Peoples of America, *id.* at 351.

834. See *id.* at 64-67. With respect to the Punta del Este Conference in general, see *id.* at 59-73; GIL, *supra* note 584, at 40-42; ROGERS, *supra* note 509, at 35-45.

down on September 11, 1961.⁸³⁵ Eleven justices voted in favor of declaring the provision for payment in bonds unconstitutional, while six justices voted to uphold the constitutionality of article 135. The vote of seventeen to six thus fell one vote short of the two-thirds majority required under article 128 of the constitution.⁸³⁶ Consequently, the court held that article 135 of Decreto No. 2747 did not violate article 45 of the constitution.

Six justices — Baudrit, Elizondo, Fernández, Jiménez, Loria, and Monge — justified their vote in favor of declaring the article unconstitutional in a one-paragraph opinion. They stated, quite succinctly:

[Article 135] violates Article 45 of the Constitution, which permits, in the relevant portion, expropriation "with prior indemnification in accordance with the law." If payment is to be made in bonds, then the indemnification is not prior, since such documents are only instruments of credit, which have periods — more or less lengthy — in which to be paid. Therefore, we consider the rule under discussion unconstitutional.⁸³⁷

Three justices — Acosta, Soto, and Sanabria — offered a more detailed opinion justifying their vote that the article was unconstitutional. They declared:

[P]ayment in bonds over given terms is not indemnification, since to indemnify is to pay in cash, with money that is legal tender. . . . The Presidential objection is conclusive.

Such payment had to be made, they asserted, *prior* to the disposition of the owner of his property. At the same time, the three justices declared that, due to the depreciation in the value of the bonds on the open market, payment in bonds amounted to partial confiscation,

since the indemnification should be of the same value as that of the property which is expropriated.⁸³⁸

835. Judgment of 14 hrs., Sept. 11, 1961, Sesión de Corte Plena No. 46, Art. 20 [hereinafter cited as Judgment of Sept. 11, 1961]; published in Boletín Judicial of Feb. 20, 1962. The decision is reproduced in Expediente No. 2825, *supra* note 408, at 1044-57; PERECHO AGRARIO 85-91 (C. Salas & R. Barahona eds. 1973); and LOS VETOS DEL PRESIDENTE ECHANDI: SUS RAZONES Y JUSTIFICACION 606-615 (1962).

836. See *supra* p. 479.

837. Judgment of Sept. 11, 1961, *supra* note 835.

838. The justices affirmed that such a confiscation violated not only art. 45, but also art. 40 of the constitution. The latter provides:

No one shall be subjected to cruel or degrading treatment, or to perpetual

Finally, they rejected the argument, made by the Committee on Agriculture and Colonies, that the words "with prior indemnification in accordance with the law" granted the Assembly the authority to determine the way in which to carry out the indemnification.⁸³⁹

Two other justices — Valle and Casafont — were also of the view that the article was unconstitutional. While admitting a possible distinction between "indemnification" and "price," they affirmed:

Nevertheless, accepting the word indemnification — as do some writers, and as apparently did our Constituent Assembly — as including the price and the damages occasioned, it is not conceivable that payment may be made in anything other than cash.

What was really at stake, moreover, they underlined in the following terms:

This authority [to expropriate] which the same Constitution gives to the Executive represents a threat in itself, because a case may occur in which expropriation is decreed without there really existing a public interest, duly justified, which requires the measure as necessary and indispensable. And if, on top of this, expropriation is authorized without payment of the price in cash, it would cease being a sale and be converted into an act of exploitation.

Justices Valle and Casafont were also of the view that the words "with prior indemnification in accordance with the law" did not empower the Legislative Assembly to provide for indemnification *after* expropriation. Had this been the intention of the drafters of the constitution, they contended, those drafters would have omitted "prior" and spoken merely of "indemnification in accordance with the law." Finally, they stressed that there was a great difference between bonds and cash, and that the loss represented by the depreciated value of bonds in the market was not one which the drafters of the constitution had intended the expropriated owner to bear. They affirmed:

This could never have been the intention of the Constituent Assembly. And so long as we live under an institutional regime such as that which thanks be to God governs in our country, and

punishment, or to the punishment of confiscation.

839. Judgment of Sept. 11, 1961, *supra* note 835.

which for the well-being of all we ought to preserve, such an absurdity is inconceivable. It would be iniquitous if the State itself, which is obligated by nature and written law to safeguard the well-being of the people, were to issue laws which take away their property or ruin them economically.⁸⁴⁰

Thus eleven justices voted against the constitutionality of article 135. Six, however, voted to uphold the constitutionality of payment in bonds for expropriated property.

Four justices — Ramírez, Avila, Jacobo, and Porter — justified their vote upholding the article, in the following terms:

[T]he prior indemnification referred to in the text [of article 135] should not be understood, in every case, as payment of the price of the expropriated property in cash, but rather as the reparation of damages before entering into permanent possession of the land acquired in this manner.

Citing various dictionaries and legal encyclopedias, they also quoted the famous Costa Rican legal writer, Brenes Córdoba, in support of this view. They continued:

The aforementioned Article 45, when it alludes to indemnification, says that it should be made "in accordance with the law"; so that, if the latter establishes a just compensation, an equitable recovery [*resarcimiento*], an adequate reparation, it can not be considered as being in conflict with the spirit or the letter of the aforementioned constitutional canon.

Alluding to the second paragraph of article 45, the justices observed the following:

[T]he vetoed law pursues a socio-economic purpose of public order [*de orden público*], which is to divide virgin state lands, and the rural properties of private parties *which are uncultivated*, among persons who wish to acquire them in order to work them, thereby increasing the national wealth — for which purpose the parceling of lands shall be done in accordance with the dictates of necessity and convenience. The foregoing concept excludes from expropriation those rural properties whose exploitation satisfies the social function [of property], by virtue of the categorical language of Article 125 of the same law; and this concept is also ratified by Article 137 of the same.⁸⁴¹

840. *Id.*

841. *Id.* Art. 125 provided:

Rural properties are not subject to expropriation where their exploitation satisfies the social function of property, in accordance with the provisions of this law.

In response to the objection that payment in depreciated bonds resulted in indemnification for less than the value of the property, the justices declared that the expropriated owner could point this fact out to the expert appraiser or judge, so that he might receive payment in bonds equal, if the bonds were discounted at the time, to the amount he would have received had he been paid in cash. In any event, they held:

[T]he state, for reasons of public order, may issue a law in which the manner of payment is determined, provided that the latter is fair.

Such a law was clearly permissible, they argued, citing article 764 of the Civil Code (regarding payment of damages in civil litigation), which provides:

Payment shall be made in all respects in conformity with the nature of the obligation, *without prejudice to that which the law may provide for special cases.*

Finally, the justices suggested that regardless of the interpretation of the first paragraph of article 45, payment in bonds under article 135 of the bill was permitted by the terms of the second paragraph of article 45, which provides:

For reasons of public necessity, the Legislative Assembly may, by a vote of two-thirds of its total membership, impose limitations of public interest on property.

As was well-known, the justices concluded, the present law had been approved by a vote of forty-two to two.⁸⁴²

Two other justices — Bejarano and Jugo — also voted to up-

The article was taken from Obregón Draft, *supra* note 475, art. 20. Obregón adapted the article from Venezuelan Law, *supra* note 475, art. 26 — changing, however, the final clause which in the Venezuelan law had read:

. . . except for the exceptions expressly established in this law.

Obregón's version of the article was included in the bill by the Special Committee. Report of the Special Committee on Motions, *supra* note 536, at 549. The article is reproduced in Law No. 2825, art. 118 (1974 ed. art. 142).

The change made by Obregón had potentially serious implications, depending on how the final phrase was interpreted. Consider, *e.g.*, the potential conflict between this article and law No. 2825, art. 120, para. 2 (1974 ed. art. 144, para. 2), discussed *supra* pp. 442-43. Article 137 of Decreto No. 2747, *supra* note 477, was the first expression of this idea, originally contained in the 1955 Draft. See Part One, 14 LAW. AM. 167-68 (1980). The inclusion of both articles in the final bill was but another instance of the duplication which resulted from grafting large sections of the Venezuelan law onto the Costa Rican bill. The article is reproduced in Law No. 2825, Art. 130 (1974 ed. art. 154).

842. Judgment of Sept. 11, 1961, *supra* note 835.

hold the constitutionality of article 135. They argued, quite simply, that "prior indemnification" and "in accordance with the law" were concepts which the Constituent Assembly had clearly intended to leave to the Assembly for their development and application. The Legislative Assembly had done precisely that, constitutionally and legally developing the concept of indemnification contained in article 45. They concluded as follows:

Whether the alternative payment in bonds of the State is or is not just, is or is not good, or is or is not appropriate, the point comes to a question of greater convenience, resolvable at any time by the co-legislative powers, but not at present in the form of a question of unconstitutionality to be decided by this Court — unconstitutionality which does not exist, according to the reasoning above.⁸⁴³

In short, eleven justices held that payment in bonds for expropriated property was contrary to article 45 of the constitution. Of these, five referred specifically to the fact that bonds are worth less in cash than their face value. Six justices, on the other hand, voted to uphold the constitutionality of article 135. Of these, four suggested that payment in bonds was permissible because the expert appraiser or judge could establish an amount of indemnification in bonds which was equal in value to the cash compensation which an expropriated owner would otherwise receive. Only two justices suggested that the Legislative Assembly could establish indemnification according to any terms it wished. Since the vote of the justices fell one short of the required two-thirds majority, article 135 was upheld as constitutional by the Supreme Court of Justice.⁸⁴⁴

The narrow margin by which payment in bonds had been upheld by the court suggested that the decision of the reformers to challenge the President only on this essential point had been extremely astute. The margin of victory was narrow indeed, but the reformers had won.⁸⁴⁵

843. *Id.*

844. See Law No. 2825, art. 128 (1974 ed. art. 152).

845. The constitutionality of payment in bonds — at their face value — was upheld by the Supreme Court of Justice of Colombia in 1964, some three years after the Costa Rican decision. There the constitutional text granted much broader authority than did that of Costa Rica. See Karst, *The Colombian Land Reform: The Contribution of an Independent Judiciary*, 14 AM. J. COMP. L. 118 (1965); and K. KARST & K. ROSENN, *LAW AND DEVELOPMENT IN LATIN AMERICA* 346-51 (1975).

4. Denouement: Final Attempts to Block; Entry into Force of Law

Following the decision of the Supreme Court and its ratification by the same body on September 18, the bill was returned to the Legislative Assembly for final approval. Meanwhile, however, the court's decision had provoked a reaction in the newspaper *La Nación* which revealed the intensity with which the agrarian reform bill was actually opposed — outward appearances to the contrary notwithstanding.

La Nación unleashed a virulent attack on the decision of the Supreme Court on September 13, with an outraged editorial entitled "We Have Crossed the Boundary of Marxist Totalitarianism."⁸⁴⁶ Declared *La Nación*:

It would be very difficult to find, in the annals of legal history of Costa Rica, a decision which is more unfortunate, more untutored, and more harmful for the future of our native land than that handed down last Monday by six honorable Justices, whose names we are going to repeat, because it is good that Costa Ricans remember them: Evelio Ramírez, Gilberto Avila, Román Jugo, Hugo Porter, Juan Jacobo Luis, and Hernán Bejarano. And we say not to forget these names, because these honorable Justices have placed Costa Rica in a situation of legal instability which is scarcely comparable with that of Fidel Castro's Cuba.

The editorial continued with an attack on the legal basis of the decision, inquiring:

How can these honorable justices conceive that prior payment is being made — and of course by payment it should be understood the complete value — to an owner, if securities of the State are delivered to him which have a market value which is less, by a third or more, than their face value?

The decision was contrary to "the doctrine and the texts of the great majority of civil codes," the editorial affirmed, and contrary to fundamental concepts of law dating to Roman times. More importantly, the text of the constitution was categorical in this regard, the paper declared. The decision was enormously harmful for Costa Rica, moreover, because no foreign investor would ever commit the stupidity of investing in the country if his property could be taken from him in exchange for depreciated government securi-

846. *La Nación*, Sept. 13, 1961, at 6.

ties. Pointing out that a minority of six justices was responsible for the present decision, the editorial concluded as follows:

The vote of these six — who will pass into history — and which is the object of this commentary, constitutes an act creating the most serious undermining of institutions which has ever existed in Costa Rica. The backbone of a democratic regime is the absolute respect for the guarantees of individual rights. When this respect disappears, as in the present case, one passes the boundary leading to Marxist totalitarianism. Could this have been the intention on the honorable Justices of the minority?⁸⁴⁷

The editorial provoked a vehement debate in the Legislative Assembly that very afternoon. Villalobos Dobles, Volio Jiménez, Arguedas Katchenguis and Solano Sibaja — surprisingly, since he had opposed the bill — spoke in support of the Court's decision and were sharply critical of *La Nación*.⁸⁴⁸ Heated exchanges continued on the editorial pages of *La Nación*, *La República*, and *El Diario de Costa Rica* during the following days.⁸⁴⁹

The alarm expressed by *La Nación*, however, did little to impede final approval of the bill. Modified in accordance with the recommendations of the July 31 Report of the Committee on Agriculture and Colonies, with article 135 remaining, the bill was approved in First Debate by a roll-call vote of thirty-seven to five, on September 22, 1961. Deputies Saborío Fonseca, Brenes Gutiérrez, González Murillo, Fournier Jiménez and Solano Sibaja voted against the bill, which was not certain to become law.⁸⁵⁰ On September 26, the bill was approved in Third Debate, by a vote of forty-one to two. Only Deputies González Murillo and Solano Sibaja voted against the bill.⁸⁵¹ The corresponding Legislative Decree was published on October 2, and then finally — after six years in the Legislative Assembly — President Mario Echandi signed the Law of Lands and Land Settlement, on October 14, 1961. The law entered into force with its official publication on October 25, 1961.⁸⁵²

Yet for the reformers the battle was not quite over. Two days

847. *Id.*

848. *La Nación*, Sept. 14, 1961.

849. *See, e.g.*, *La Nación*, Sept. 14, 1961, at 6; Sept. 15, 1961, at 6, and Sept. 17, 1961; *La República*, Sept. 17, 1961; and *El Diario de Costa Rica*, Sept. 17, 1961, at 2. Compare the attitude of *La Nación* with respect to the 1955 bill, Part One, 14 *LAW. AM.* 203-10 (1982).

850. Expediente No. 2825, *supra* note 408, at 1102.

851. *Id.* at 1109.

852. Law No. 2825.

after the Supreme Court decision, a proposed constitutional amendment, sponsored by thirteen deputies, was introduced in the Legislative Assembly.⁸⁵³ The amendment modified article 45 of the constitution to read as follows:

Property is inviolable; no one may be deprived of his own unless it is in the legally proven public interest, with prior indemnification in accordance with the law. In case of war or internal disorder, it is not essential that the indemnification be made in advance. Nonetheless, the corresponding payment shall be made no later than two years after termination of the state of emergency. *In any event, the amount of the indemnification or indemnifications shall be paid in cash* (emphasis added).⁸⁵⁴

In short, the second paragraph of article 45 — dating from 1943 — was completely eliminated, while the underlined words were added to the first paragraph of the constitutional provision.

The amendment would have required the approval of at least two-thirds of the members of the Legislative Assembly after passing through a lengthy and complicated procedure. Only a majority was needed, however, to set the process in motion.⁸⁵⁵

As the vote on whether or not to set this process in motion approached, and two days after final approval of the agrarian reform bill in the Legislative Assembly, Fernando Volio published the first of two articles attacking the editorial of *La Nación* and defending the new law.⁸⁵⁶ In the first article, Volio compared the attack of *La Nación* on justices of the Supreme Court with “totalitarian methods used to put an end to the democratic right of dissent.” The editorial of September 13, he charged, was “as intolerant as any Marxist article could be.” Referring to “the points of coincidence between communism and conservatism in the country, in their opposition to the Agrarian Law.” Volio criticized the September 13 editorial in the following terms:

If *La Nación* had manifested its displeasure with the resolution of the Supreme Court of Justice with only legal arguments, that paper would not have fallen into the camp of totalitarian intolerance, and six Justices of the Court itself would not have suf-

853. Archivos de la Asamblea Legislativa, Expediente (unnumbered) de Reforma al Artículo 45 de la Constitución [hereinafter cited as Expediente on Reform of Art. 45], *auto* of Sept. 13, 1961.

854. *Id.* at 1.

855. See CONSTITUCIÓN arts. 124-28 (Costa Rica 1949).

856. *La República*, Sept. 26, 1961.

ferred the most rude, unjust, and wild attack in memory.

Even the Board of Directors of the Costa Rican Bar Association had protested the editorial, he noted.⁸⁵⁷ In the second article, published on September 30, Volio defended the law itself, pointing out that expropriations were all to be carried out in accordance with the procedures of the 1951 law used to expropriate land for the San Jose airport, and used at present by the Costa Rican Institute of Electricity (ICE). Finally, Volio declared:

The Agrarian Law, finally, is not communist. The greatest heresy committed by *La Nación* is to have placed a red label on it

Our Agrarian Law, democratic and adopted to the peculiarities of the country, . . . is the antithesis of a communist agrarian law. . . . Our Agrarian Law is precisely the type which is suggested as appropriate for the [Latin] American countries by the recently adopted "Charter of Punta del Este," by Papal Encyclicals, by international organizations, and by modern Agrarian Law.⁸⁵⁸

While the bill itself had already been approved, these articles came in time to bolster the defense against the proposed amendment to article 45 of the constitution.

On October 2, Deputies Carro Zuñiga and Volio Jiménez moved for a roll-call vote in the Assembly on the question of whether or not to admit the proposal to debate. Before the vote, Deputy Solano Sibaja spoke against the amendment, characterizing it as "a tempest in a teapot" caused by the decision of the Supreme Court. He noted that, almost alone, he had opposed the agrarian reform bill; nonetheless, an amendment to article 45 was too drastic a measure. If the amendment passed, he argued,

we would close off any opportunity for the State to carry out an expropriation. I say that it would close off that possibility because in Costa Rica the State has never had money to meet a series of obligations apart from the National Budget. . . .

The amendment was not needed, because indemnification in bonds could be made so as to take into account any depreciation in their market value. Furthermore, the amendment was harmful because it might impede the implementation of necessary social programs. Said Solano:

857. *Id.*

858. *La República*, Sept. 30, 1961.

[T]here are many programs that might be developed in the future, above all in poor countries such as ours, because there is a prevailing necessity for certain provisions and certain laws that benefit certain conquests of the greater number, and above all benefit the capitalist class which, if it does not adopt an attitude of mutual understanding, may lead to the degeneration of our State so as to fall into a situation like that of Cuba, in which everything is lost.⁸⁵⁹

The only other deputy to intervene was Arguedas Katchenguís, who declared:

In reality, if we adopted the constitutional principle that payment is to be made in cash, we would be nullifying any agrarian reform in the future, because there is no possibility of paying for this in cash. . . .

Consequently, if we desire that there be a reform of this type, we can not allow this reform to pass, and therefore my vote is negative.⁸⁶⁰

Thereupon, the deputies proceeded to vote on whether or not to admit the proposal for discussion. The motion was defeated, fourteen to twenty-nine, which meant that the amendment was dead.⁸⁶¹

Following the vote, Deputy Carro Zuñiga intervened to defend again those justices who had voted to uphold the constitutionality of payment in bonds. The real significance of the victory in the court was tremendous, he declared, for had only one more justice voted with the majority,

it would not have been possible in Costa Rica, within the constitutional order which we presently have, to carry forward any program — not just a project or an integral system of agrarian reform, let us say, but not even the smallest plan, the smallest

859. ACTAS (*Sesión Ordinaria*, Acta No. 97) (Oct. 2, 1961).

860. *Id.*

861. *Id.*; Expediente on Reform of Art. 45, *supra* note 853, *auto* of Oct. 2, 1961. Those voting in favor were: Morera Soto, Lizano Hernández, Solera Solera, Brenes Gutiérrez, Brenes Méndez, Kopper Vega, Segares García, Lara Bustamente, González Murillo, Sotela Montagne, Hurtado Rivera, Castro Monge, Dobles Sánchez, and Leiva Quirós (14 votes).

Those voting against the motion were: Fonseca Zuñiga, Chaves Alfaro, Saborío Fonseca, López Gutiérrez, Arguedas Katchenguís, Volio Jiménez, Guzmán Mata, Davila Ugalde, Solano Sibaja, Espinoza Espinoza, Garrón Salazar, Trejos Dittel, Aiza Carrillo, Aguiluz Orellana, Alonso Andrés, Cordero Croceri, Brenes Castillo, Montero Chacón, Chaves Soto, Obregón Valverde, Jara Chavarría, López Garrido, Alvarez González, Villalobos Dobles, Arroyo Quesada, Carro Zúñiga, Vega Rojas, Oduber Quirós, and Espinoza Jiménez (29 votes). *Id.*

decision to carry out land distribution, would have been possible.

In the remainder of his intervention, Carro's words had the ring of a victory speech.⁸⁶² He had just reason to be pleased, as did all of those who had pushed so hard, and so long, for the passage of an agrarian reform law in Costa Rica.

Clearly, agrarian reform had become quite a respectable issue. It figured as a major campaign theme for the PLN during the period leading up to the February, 1962 elections, from which the PLN Presidential candidate, Francisco Orlich, emerged victorious. Following the latter's inauguration on May 1, 1962, the new Legislative Assembly began consideration of a new bill creating the Institute of Lands and Land Settlement (ITCO). The law, subsequently signed by President Orlich on October 3, 1962, transferred responsibility for administration of Law No. 2825 from the *Banco Nacional* to ITCO.⁸⁶³

But while the creation of ITCO in 1962 was an important and very necessary step, the enactment of the agrarian reform law in 1961 had marked the climax of the struggle in the Legislative Assembly. The country now had the legal instrument necessary to carry out agrarian reform. The law was, to be sure, a flawed instrument. But it was an adequate one. Under the political conditions existing at the time, the law was even much stronger than anyone might have had reason to expect.

VI. CONCLUSION

As Albert O. Hirschman has observed:

The reforms which take place in Latin America today are extraordinary feats of contriving in the course of which some of the hostile power groups are won over, others are neutralized and outwitted, and the remaining diehards often barely overcome by a coalition of highly heterogeneous forces.⁸⁶⁴

Efforts to achieve such reforms, moreover, are frequently characterized by:

bitter and protracted battles, unexpected switches, and narrow margins of victory rather than by the miracle of sudden national

862. ACTAS, *supra* note 859.

863. Law No. 3042 of Oct. 3, 1962; published in *La Gaceta* No. 228 of Oct. 10, 1962.

864. HIRSCHMAN, *supra* note 512, at 272.

unanimity. The reason is precisely that situations do not suddenly change from normal to emergency or crisis. Rather, we have here a gradual ascent in the course of which a *succession* of new reform ideas and possible alliances come into view.⁸⁶⁵

Certainly, these words accurately describe the long and arduous process by which proponents of agrarian reform in Costa Rica achieved passage of the Law of Lands and Land Settlement in 1961.

Costa Rican reformers, moreover, could also be described in Hirschman's terms:

Revolutionaries will maintain . . . that the needed changes cannot be effected without a *prior* overthrow of the "system"; reformers, on the other hand, behave like the country or the chess player who exasperatingly fights on when "objectively" he has already lost — and occasionally goes on to win.⁸⁶⁶

The "naive" reformer, in fact, may turn into

a master tactician who manages to slip through a workable reform to the surprise and dismay of both landowners and revolutionaries.⁸⁶⁷

To be sure, passage of Law No. 2825 in Costa Rica did not amount to the actual implementation of an agrarian reform. In fact, no sweeping reform has taken place to date. Indeed, official reports indicate that between 1962 and 1972 only 3.7% of rural families or 7,174 families, and 4.3% of the rural population or 50,190 individuals "benefitted" from ITCO programs in any way. Only 4.1% of the land in farms or 109,338 hectares were so affected, according to ITCO figures.⁸⁶⁸

These figures are highly misleading, however, for many of the families "affected" by ITCO programs received only the legal rights over lands which they had already been occupying, sometimes for years. Actually, only 1525 families received a total of 39,837 hectares as beneficiaries of colonization and other distribution programs. There were 1383 families occupying 30,603 hectares on privately-held land were converted from squatters into owners,

865. *Id.* at 264.

866. *Id.* at 271.

867. *Id.* at 272.

868. Departamento de Planificación, Instituto de Tierras y Colonización, Primer Informe Estadístico, 1962-1972 [hereinafter cited as Primer Informe Estadístico], Table 1 (mimeographed; copy on file with the author).

while some 3,264 families occupying 23,826 hectares of state lands obtained ownership rights over the same. Another 937 families benefitted from land-titling programs during this period covering a total area of 14,729 hectares. Finally, some 65 families occupying 342 hectares in Indian Reserves had their status legalized.

While 234 squatter conflicts involving 3,215 families on 64,516 hectares of privately-owned land were presented to ITCO during this period, however, only 1,383 of these families benefitted from ITCO programs, obtaining rights over some 30,603 hectares of land.⁸⁶⁹ Thus, the Institute succeeded in resolving squatter conflicts for only forty-three percent of the families involved in conflicts in which ITCO's intervention was sought.

As can be readily appreciated from these figures, the passage of Law No. 2825 did not itself result in any significant redistribution of land, wealth and power in Costa Rica during this ten year period. Yet that does not detract from the significance of the law's passage, for the failure to implement major agrarian reform programs resulted not from the weakness of the law, though it was flawed, but rather from the balance of political forces in a continuing struggle whose focus now shifted from the legislative to the administrative and judicial arenas. Law continued to play an important part in the outcome as Law No. 2825 was amended, and court decisions affected the potential reach of the law. Primarily, however, the failure to implement broad-scale reform was due to the influence of political factors on the direction and administration of ITCO and on the level of resources allocated to it by the Legislative Assembly.

Chance, too, played an important part. PLN candidate Daniel Oduber, throughout a strong supporter of the agrarian reform law, lost the 1966 Presidential election by the narrowest of margins — 4,320 votes out of a total of some 440,000 votes cast.⁸⁷⁰ When the PLN regained the presidency in 1970, it was under the leadership

869. As one observer notes:

While there are no reliable estimates of the intensity of the (squatter) problem in the 70's, several ITCO officials readily admit that there are considerably more unsolved squatting incidents today than there were in the 60's. Thus, ITCO appears to be losing ground as each year more cases of squatting arise than are solved.

Seligson, *Agrarian Policies in Costa Rica: Intended and Unintended Consequences* at 28 (Paper delivered at the Annual Meeting of the American Political Science Association, Sept. 2-5, 1975).

870. Bidinger, *supra* note 530, at 116.

of José Figueres, who had emerged victorious after a bitter dispute with the left wing of the party and who by this time could be characterized more as an opponent than as a supporter of agrarian reform. During Figueres' administration, ITCO was allowed to proceed carefully, primarily extinguishing the brush fires represented by squatter conflicts which sprang up first in one, then in another area of the country. From 1970-1974, ITCO gradually consolidated its position, proceeding carefully and putting its own house in order following alleged corruption during 1969 under the previous administration. Funding for and the reach of ITCO programs have increased at a quickening tempo since 1974, with the movement for fuller implementation of agrarian reform steadily gathering momentum.⁸⁷¹

When PLN leader Daniel Oduber assumed the Presidency for a four-year term (1974-78), the process of implementation of the agrarian reform quickened. This hardly came as a surprise, in view of Oduber's earlier support for the agrarian reform bill in the Assembly. During his administration, more land was distributed to peasants than in all of the previous years of ITCO's existence.⁸⁷² The stop-start process of reform slowed once again in 1978, however, when the PLN lost the Presidency to Rodrigo Carazo Odio, a former PLM member who now headed a coalition of opposition parties. With the election of Luis Alberto Monge in February, 1982, the PLN reformers once again assumed the reins of government, with the economy in dire straits but nonetheless with a firm commitment to strengthening the implementation of agrarian reform.

The issue of agrarian reform is therefore far from dead. Moreover, current programs are being implemented under the authority of the 1961 law examined in detail above, subject to the strengthening amendments introduced by the legislation passed in March 1982.⁸⁷³ It is within this context that the present study of the legis-

871. The growing interest in and political support for agrarian reform in the mid 1970's is revealed by the fact that as of December, 1974, there were twenty bills relating to agrarian reform either pending or under active consideration in the Legislative Assembly. Archivos de la Asamblea Legislativa, Fichero de Proyectos en Trámite (Dec. 20, 1974).

872. See SELIGSON, Part One, 14 LAW. AM. 159 n. 1 (1982) at 149. See also Seligson, *Agrarian Reform in Costa Rica: The Impact of the Title Security Program*, 55 INTER-AM. ECON. AFF. 31 (1982); Seligson, *Implementation and Impact of Land Reform in Costa Rica*, Jan. 1983 (Paper presented at the Conference on the International Dimensions of Land Reform, Mexico City, CIMMYT, Jan. 3-5, 1983).

873. see Part One, 14 LAW. AM. 172 n. 33 (1982).

lative process culminating in passage of the law assumes a special significance, for bills to modify or replace the Law of Lands and Land Settlement will surely be introduced in the Legislative Assembly in the future. Before proceeding to pass a new law, however, legislators and others might profitably consider the failures and successes which are represented by the current law. The present study, it is hoped, will contribute to this end while at the same time illuminating the meaning of and potential usefulness of existing provisions, something which is at times quite obscure due to the manner in which provisions were successively grafted onto the original 1955 bill.

Full consideration of all of the conclusions which might be drawn from our examination of the legislative history of Law No. 2825 is beyond the scope of this study.⁸⁷⁴ Many of these conclusions, however, should already be obvious to the careful reader. Here, only some of the most important can be briefly mentioned.

First, the exhortatory function of law, most dramatically revealed by passage of the agrarian reform chapter of the 1959 Law of Economic Encouragement, is an extremely important one. Law can be used to enunciate a program or set of goals which, though lacking in immediate effect, are of considerable importance in generating pressure and support for their gradual and increasing implementation. The same may occur in the case of a law passed with apparent operative effect, but which is not applied in practice. The existence of a law on the books broadens the range of support which a reformer may draw upon in forging new coalitions to promote change. Moreover, when sufficient political support is obtained for the implementation of a reform, an existing law may suddenly be taken up and used as an active instrument of social reform.

In fact, the lop-sided margin of victory of the 1961 agrarian reform law was due in part to the expectation of many that it would never be fully carried out. In the short run, at least, the pessimists appear to have been justified in that belief. Over the longer term, however, they may be quite surprised to learn how forcefully such an "ineffective" law can be applied.

A second conclusion which clearly emerges is that the agrarian reform law was not passed in 1961 in response to the Alliance for

874. See Part One, 14 *LAW. AM.* 153-58 (1982).

Progress or the Cuban Revolution. Indeed, passage of the law was virtually assured even before President Kennedy outlined the Alliance in March, 1960. While origins of the law extended far back into Costa Rican history, the immediate impetus for the bill had come from the abuses which had occurred under the 1942 Squatter Law, an earlier attempt to deal with "the agrarian problem." Concern over the scandalous application of Law No. 88 fused in the early 1950's with increasing interest generated by the agrarian reform programs carried out in Bolivia and Guatemala. It was against this background that the 1955 bill was drafted.

Moreover, Fernando Volio and others had already taken steps to stall passage of the Law of Economic Encouragement even before Fidel Castro's triumphant entry into Havana in January, 1959, while the chapter on agrarian reform was included in the substitute committee bill months before the promulgation of the Cuban agrarian reform law on May 17, 1959.

Nevertheless, the changing international climate was helpful to the reformers as they sought to gain the broadest possible support for the bill. Certainly it contributed to the nearly unanimous vote by which the bill was approved in the Legislative Assembly. One can never be certain, but it is quite possible that the Alliance for Progress and the Charter of Punta Del Este swayed one or more of the six justices of the Supreme Court who voted to uphold the constitutionality of payment in bonds for expropriated lands.

Third, it is clear that the bill was not significantly weakened in the Legislative Assembly by the representatives of strong land-holding interests. Attempts were certainly made to weaken the law, but they were beaten off by the determined and highly skillful efforts of the reformers. The latter even succeeded in strengthening the bill in the Assembly, as when they added the provision limiting the amount of indemnification for expropriated lands to the value declared for tax purposes.

Fourth, it should now be possible to understand why the rather confusing and at times contradictory text of the law was adopted in the form that it was. The 1955 bill, largely drafted by Alvaro Rojas, an agricultural economist, and polished by a committee including attorneys with broad experience, was a coherent if not entirely elegant piece of legal craftsmanship. Thereafter, however, the bill was subjected to numerous modifications which were more or less tacked on to the original bill, at times without any real appreciation of the total effect such changes would have. The

most egregious example of imprudent modifications, of course, was the failure to eliminate the appraisal procedures in the 1958 bill once expropriation was restored as the principle mechanism by which squatter conflicts were to be resolved.

At the same time, the grafting of articles onto the bill which were copied verbatim from other laws did not always lead to a felicitous result. Certainly, the copying of some, but not all portions of the 1916 law establishing a tax on uncultivated lands was not a carefully considered solution to a problem of fundamental importance. Yet the inclusion of large sections of the Venezuelan agrarian reform law, while contributing mightily to the repetitive and confusing text of the law, was not without its unexpected benefits for the reformers, as in the article establishing only a sixty day period for agreement before land could be expropriated. In sum, the defects of legal craftsmanship should be readily apparent to the reader. Before passing judgment, however, he might take into consideration the fact that the reformers had no pool of skilled attorneys trained in draftsmanship available to assist them at the Legislative Assembly, while the time they could personally devote to such matters was limited by the fact that theirs was only a part-time and during this period relatively low-paying job.

Finally, the present study reveals the origin of the subsequent "gap" between the law on paper and the law as it was applied in practice. Many who voted for the law did so with the hope and in some cases the firm belief that the law would never be carried out in practice. An excellent illustration of this phenomenon is found in Brenes Castillo's sardonic intervention on May 15, subsequently accompanied by his vote *in favor* of the bill.

Indeed, many voted for the bill precisely because they were reasonably confident that it would not be strongly implemented. This belief allowed them to approve provisions they would never have accepted had the prospect of application been immediate and great. Reformers, of course, were not unaware of the possibility that passage of the law would not automatically lead to full implementation of its provisions. Often they played down the more far-reaching provisions of the law, emphasizing that they would only be applied in a slow and gradual manner.

Passage of the law thus amounted to a victory, but a qualified one, for the reformers. It was the necessary first step. Following its passage, the struggle between proponents and opponents of agrarian reform would certainly continue in the administrative and ju-

dicial arenas. Reformers were pleased to get what they could into a law of the Republic. Opponents, on the other hand, while they would have preferred no law at all, acquiesced in passage of the law secure in the knowledge that the battle over agrarian reform was far from over.

Thus, the most important source of the agrarian reform "gap" was perhaps precisely the different expectations and motivations that went into passage of the bill. In order to understand different kinds of "gaps" between the law on the books and the law in practice in Costa Rica, however, one must distinguish between different kinds of law. Some laws, such as those against assault and battery, or breach of contract, may be enacted with a very high degree of consensus as to the desirability of their being fully applied in practice. Here, a gap between prescription and reality may indeed result from the "inefficiency" of the legal system or one of its constituent parts. However, other laws of a redistributive nature, involving major social reforms and the clash of powerful interests, may be passed with quite different expectations. Passage of the 1961 Law of Lands and Land Settlement represents a case in point. Where major social reforms are involved, the resulting "gaps" are quite different in nature from the types of inefficiencies one may refer to as "gaps" in connection with the first or more traditional type of law. In the second category, what occurs is a transfer of the struggle from efforts to pass a given law into efforts to influence or control the political machinery through which that law must be applied. At the same time, the often not inconsiderable resources of individual opponents may also be brought to bear in legal battles before the courts.

Before proceeding to a consideration of some of the implications for the future of the present study, a further word is in order regarding its limitations. First, the principal focus on original research in primary sources and resulting time limitations have precluded consideration of broader issues which may be of interest to the reader. Thus, it has not been possible to relate the findings of the current study to the vast literature, scattered through several disciplines, on agrarian reform in Latin America.⁸⁷⁵ A general ex-

875. In addition to the works cited previously, see e.g., Barraclough, *Agricultural Policy and Strategies of Land Reform*, in *MASSSES IN LATIN AMERICA* 95-171 (I.L. Horowitz ed. 1970); P. DORNER, *LAND REFORM AND ECONOMIC DEVELOPMENT* (1972); A. GARCIA, *SOCIOLOGIA DE LA REFORMA AGRARIA EN AMERICA LATINA* (1973); and *REFORMAS AGRARIAS EN AMERICA LATINA* (O. Delgado ed. 1965). See also A. DE JANVRY, *THE AGRARIAN QUESTION AND REFORM-*

amination of the recent literature in the field of law and development is readily accessible,⁸⁷⁶ but time considerations do not permit any detailed consideration of the available literature on law and agrarian reform in Latin America.⁸⁷⁷ Perhaps this omission is not overly serious, as none of these studies have focused on the legislative history of agrarian reform legislation in any manner comparable to that of the preceding material.

In Costa Rica, the literature on the law and agrarian reform is scarce indeed,⁸⁷⁸ but valuable studies do exist on the social and economic aspects of agrarian reform in the country. The arguments in favor of agrarian reform, together with valuable economic and

ISM IN LATIN AMERICA (1981); M. GRINDLE, *WHATEVER HAPPENED TO AGRARIAN REFORM? THE LATIN AMERICAN EXPERIENCE* (1980); F. VARGAS MUNOZ, *AGRARIISMO Y REFORMA AGRARIA* (1975) (Venezuela); A. MALDONADO, *POLITICA AGRARIA* (1974) (Bolivia); *AGRARIAN REFORM & AGRARIAN REFORMISM* (D. Lehman ed. 1974) (Perú, Chile); S. BARRACLOUGH, *AGRARIAN STRUCTURE IN LATIN AMERICA* (1973); P. NEGRE RIGOL, J. ALBO, J. ACOSTA & L. BACH, *REFORMAS AGRARIAS EN AMERICA LATINA* (1976); A. GARCIA, *EL NUEVO PROBLEMA AGRARIO DE LA AMERICA LATINA* (1981) (including material on Central America); and A. GARCIA, *REFORMA AGRARIA Y DESARROLLO CAPITALISTA EN AMERICA LATINA* (1981) (including material on Costa Rica and Honduras).

876. See J. GARDINER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* (1980); Trubek & Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 *WIS. L. REV.* 1062; J. MERRYMAN, D. CLARK & L. FRIEDMAN, *LAW AND SOCIAL CHANGE IN MEDITERRANEAN EUROPE AND LATIN AMERICA* 1-19 (1979); *id.* at 613-18 (bibliography).

877. See KARST & ROSENN, *supra* note 845 at 241-420; Karst, *Latin American Land Reform: The Uses of Confiscation*, 63 *MICH. L. REV.* 327 (1964); Thome, *The Process of Land Reform in Latin America*, 1968 *WIS. L. REV.* 9; and Comment, *Expropriation and the Venezuelan Law of Agrarian Reform*, 6 *COLUM. J. TRANSNAT'L L.* 273 (1967). See also P. MORAL LOPEZ, *TEMAS JURIDICOS DE LA REFORMA AGRARIA Y DEL DESARROLLO* (1968). A study of particular interest, in that it deals with the legislative history of the Brazilian agrarian reform law — providing valuable material for comparison with the present study — is M. Cehelsky, *The Policy Process in Brazil: Land Reform, 1961-1969* (Thesis, Columbia University, 1974). See also M. CEHELSKY, *LAND REFORM IN BRAZIL: THE MANAGEMENT OF SOCIAL CHANGE* (1979); H. MUNOZ, *LA ASAMBLEA LEGISLATIVA EN COSTA RICA* (1977). For studies of the legislative process in the United States, see D. BERMAN, *A BILL BECOMES A LAW* (1962) (Civil Rights Act of 1960); and E. REDMAN, *THE DANCE OF LEGISLATION* (1973) (Emergency Health Personnel Act of 1970).

878. See CORTE SUPREMA DE JUSTICA (COSTA RICA), IICA-PRACA, & ITCO, *CICLO DE CONFERENCIAS SOBRE DERECHO AGRARIO* (1973), especially, the article by R. Sáenz entitled *Derecho y Legislación Agraria en Costa Rica*, *id.* at 37-46; ASAMBLEA LEGISLATIVA DE COSTA RICA, IICA-PRACA, & ITCO, *SEMINARIO NACIONAL DE REFORMA AGRARIA PARA PARLAMENTARIOS Y DIRIGENTES POLITICOS*, MEMORIA 6.1-6.2.8 (1969); and Sáenz, *Problemas Legales de la Reforma Agraria en Costa Rica*, in IICA-PRACA, ITCO, *et al.*, *SEMINARIO NACIONAL DE REFORMA AGRARIA PARA ESTUDIANTES UNIVERSITARIOS* II.6.1-II.6.11. Regarding recent developments, see R. Zeledón, *Un nuevo instituto de derecho agrario: La empresa comunitaria de autogestión campesina*, 34 *REVISTA DE CIENCIAS JURIDICAS* 33-47 (1978); and A. Porras Zúñiga, *Proyecto de interpretación sobre la jurisdicción agraria en Costa Rica*, 39 *REVISTA DE CIENCIAS JURIDICAS* 53-66 (1979).

historical material, are found in an outstanding study written in 1961 by José Manuel Salazar Navarrete,⁸⁷⁹ who became the first Director (*Gerente*) of ITCO when it was created in 1962. Other studies and papers also contain valuable material on various aspects of agrarian reform in Costa Rica.⁸⁸⁰

Second, the efforts of proponents of agrarian reform from 1948 to 1955 deserve fuller treatment than they have received here. It would be particularly useful to examine in greater detail the process through which the early bills presented in 1951-1952 evolved into the 1953 draft Agrarian Law and then through two subsequent drafts before it was introduced in the Legislative Assembly in July, 1955, as the draft Law to Create the Institute of Lands and Land Settlement. Alvaro Rojas, who played a key role in drafting successive versions of the bill, worked closely with Agriculture Minister Bruce Masis in promoting agrarian reform during this period, and is an invaluable source of information for any student interested in pursuing the details of these developments. Especially interesting would be to explore the extent to which the CIA-sponsored overthrow of Jacobo Arbenz in Guatemala, in June 1954, affected President José Figueres' attitude toward agrarian reform, an issue which had figured prominently in his 1953 campaign. Figueres apparently had close ties with the CIA during this period.

Third, the "career" of Law No. 2825 from 1961 to the present represents a fascinating story of the political struggles which have determined the practical impact of agrarian reform legislation in Costa Rica. This period was extensively researched by this writer, but due to limitations of time these results must await future presentation. Certainly, any student interested in the application of the law following its passage should find the above material of considerable value.

The approach adopted in the present study would appear to have been a fruitful one, given the fact that very few if any Costa Ricans have an overall picture of the process which led to the promulgation of the Law of Lands and Land Settlement in 1961. It is of great importance to know, for example, that under the 1961 law

879. TIERRAS Y COLONIZACION EN COSTA RICA (1962).

880. See, e.g., E. LIZANO, COMENTARIOS SOBRE ECONOMIA NACIONAL 33-39 (1971) (essay entitled *En torno al problema agrario*, written in 1963); J. Riismandel, Costa Rica: Self Image, Land Tenure and Agrarian Reform, 1940-65 (Thesis, Univ. of Md., 1972); and, containing valuable material on ITCO programs, A. Hernández Rodríguez, La Reforma Agraria y el Caso de Costa Rica (Thesis, Univ. de C.R., 1970).

ITCO obtained the final say over the transfer of *all* national reserve lands to its administration, to be used as it determined in carrying out its programs. Few individuals in Costa Rica — even among current proponents of agrarian reform — are fully aware of the victories achieved by Fernando Volio and other reformers in 1961. The present study, drawing together the strands of a story which is virtually unknown in Costa Rica, provides an overall view of the history of the agrarian reform law which should be of interest both to those who may in the future seek to amend or replace the law and to those interested in discovering the full reach and potential application of its current provisions.

To the outsider, the approach employed should be of interest in that it describes in great detail the world in which Costa Rican reformers moved and operated in attempting to bring about the passage of agrarian reform legislation. It is within this world of imperfectly drafted texts, shrewd political maneuvers, and at times bitter resistance to change that social reforms in Latin American democracies are frequently forged, often by the narrowest of margins.

Moreover, the careful study of "the career of a law" would appear to be an extremely promising way to gain an increased understanding of how law and legal institutions function in Latin America in the highly politicized area of major social reform. Reference to historical materials may help the outside researcher understand more fully the pace of social reform in Latin American societies. American researchers, accustomed to the dramatic changes which occurred in the United States during the civil rights struggle of the 1960's and the Supreme Court decisions of the Warren era, perhaps need to be reminded at times that social change is not a one-way street leading to the desired goals of progress. In Costa Rica, and perhaps in Latin America in general, the pace of social reform may appear glacial in comparison with the pace of change in the United States in the 1960's.

Yet, such change does occur in Latin America, and the hunger for instant evidence of desired social reforms should not lead one to prematurely conclude that the absence of dramatic results means that no change is occurring at all. It is too early to conclude, for example, that agrarian reform has failed in Costa Rica, or that a revolution will be necessary in order to carry one out. The results are simply not in yet. Change, after all, has a way of suddenly accelerating, as well as slowing, and this is true not only in Latin

America.

Using the historical approach of the present study, what can be seen is the gradual growth of the political support which may lead to implementation of progressively more far-reaching programs of agrarian reform. Within this process, law has been both the reflection of and the instrument for generating increased political support. It has been a stop-start, intermittent process of change, but one which viewed within a longer historical perspective reveals clear and steady progress by the proponents of agrarian reform.

Influenced by the examples of Guatemala and Bolivia, the movement for agrarian reform in Costa Rica might have led to the passage of legislation in 1954 or 1955 had it not been for other, less antagonistic priorities, the general economic situation, and the fall of the Arbenz regime in Guatemala in June, 1954. While the 1955 bill died in the Legislative Assembly, a draft law of agrarian reform had been openly discussed for the first time. Reform efforts in the Assembly in 1955 clearly helped to forge the consensus in favor of agrarian reform within the PLN which became increasingly evident beginning in 1958. The debates on the agrarian reform chapter in the 1959 Law of Economic Encouragement led to the enactment of the idea of agrarian reform into law, if not the operative provisions needed to implement actual programs in the field. Opposition to agrarian reform was vehemently manifested during these debates, which were the occasion for one of the most open discussions of the fundamental issues involved which has ever taken place in the Assembly. By 1960, agrarian reform had gained such widespread support in the country that even its staunchest opponents were careful not to question the desirability of some kind of "agrarian reform." Instead, they concentrated on trying to weaken the law enough so that they could live with it.

Nonetheless, the reformers succeeded in passing a law with surprisingly strong provisions, given the temper of the times. Despite the lack of effective implementation of agrarian reform during ITCO's first ten years, gains have been made in the growth of political support for the execution of effective reforms programs. To be sure, this process was slowed by Daniel Oduber's loss of the Presidency in 1966 and by President José Figueres' barely concealed hostility to agrarian reform during 1970-1974.

Still, despite the many setbacks — and to some extent, precisely *because* of them — political support for agrarian reform has

continued to grow, so that the country now seems at the point where increasingly far-reaching programs may be carried out during the next five to ten years. This is particularly true in view of the passage of new laws establishing agrarian tribunals and strengthening the financing of the Institute (now renamed the Institute of Agrarian Development or IDA),⁸⁸¹ and in view of Carlos Alberto Monge's election to the Presidency (1982-1986).

The Law of Lands and Land Settlement, which has made possible ITCO's uncertain but steady progress, has played a very important part in generating this increasing political support. There is no longer any serious debate over whether or not agrarian reform is desirable in principle; rather, it is limited to the nature, scope, and level of funding of specific programs. IDA's (formerly ITCO's) mandate to resolve squatter problems is now widely accepted, and as the dimensions of the agrarian problem become increasingly acute, there will be broad agreement as to IDA's primary responsibility for developing the programs necessary to deal with it. In this process of political mobilization, the 1961 Law of Lands and Land Settlement passed as the result of the determined efforts of Costa Rican reformers has been of critical importance. In short, viewed from a historical perspective, the impact of the exhortatory function of law can be clearly discerned.

In Latin American democracies, and of course in other countries as well, law is of central importance in the promotion and implementation of major social reforms. Yet law is often overlooked by those engaged in development studies, a field dominated by economists, sociologists, political scientists, and others and in which lawyers, except for the relatively brief period in which law and development studies were funded, and even then only to a limited extent, have been conspicuous by their absence. The former, by virtue of their training, an assumed irrelevance of law, or the very complexity of the law itself, have tended to ignore a phenomenon which is often at the very heart of the development process in the democratic countries of Latin America. Yet if one is to understand the success or failure of a major social reform such as agrarian reform, law is certainly one of the more important factors to be taken into consideration.

As we have seen, one way of looking at law and social change is to view law as an instrument of political mobilization in certain

881. See Part One, 14 *LAW. AM.* 172 n. 33 (1982).

areas where very strong interests clash; as providing the framework within which issues are formulated and decisions are made; as a means of allocating decision-making authority and selecting action-channels for implementation; and as providing a series of levers which if activated might speed the implementation of social change. Certainly these are matters which merit serious and sustained investigation, whether that be undertaken by lawyers or by researchers from other disciplines. Laws and the legislative process leading to their enactment, moreover, provide an excellent source of "hard" evidence with respect to the changing political currents in which major social reforms are born, prosper, and sometimes die. In this sense, study of "the career of a law" should provide valuable information to students of the major social reforms which are central to the processes of social and political as well as economic development in Latin America.

This study has attempted to provide an overview of the actions and decisions which led to passage of the 1961 agrarian reform law in Costa Rica, while providing a coherent explanation of the import and reach of its provisions. Throughout, an effort has been made to suspend judgment, at least temporarily, in seeking to understand events in Costa Rican terms. Thus, while many "gaps" may have become apparent, the customary exhortation to close them has been avoided as far as possible. In part, this restraint has been justified on the ground that such deficiencies as exist will be apparent to Costa Rican and foreign readers alike, though each may draw different conclusions as to how they might be overcome or avoided in the future.

As noted, prescriptions to close the gap have been a common ingredient of many law and development studies. Howard J. Wiarda notes, for example:

Most studies of Latin American politics and government and of the legal-constitutional frameworks that undergird them have emphasized the vast chasm which is seen between the "ought" and the "is," between what the formal written rules call for and the way Latin American systems actually operate, or between the enactment of a law and its implementation. It matters little whether one examines the literature regarding Latin American law, constitutionalism, the traditional tri-partite division of powers [executive, legislative, judicial], elections, public administration, or more recently, agrarian reform, tax reform, or any of a number of newer areas of public policy, one finds the same preoccupation with these same gaps, usually accompanied by the

same prescriptive admonition that they should be closed, that some greater correspondence must be forged between what the law and the Constitution say and actual operating practices. Implicit in this prescription, ordinarily, is the idea that once these gaps have been closed, the Latin American countries will begin living up to the liberal, representative, and democratic norms expressed in their laws and Constitutions.

Much of the thrust of the present essay, however, points toward the inadequacy of what kind of normative, prescriptive, and essentially ethnocentric approach. . . .⁸⁸²

Many such gaps, both with respect to the legislative process and with respect to the specific normative provisions of the law, could be found in the material presented in the preceding pages. The primary thrust of the present study, however, has been rather to contribute to an understanding of the complex reality in which such gaps occur. The usefulness of such an approach is suggested by Wiarda:

[I]t is precisely these gaps and lags, the patterns of sporadic, disjointed, discontinuous, and uneven modernization, the phenomenon of mixed, overlapping, and heterogeneous social groups, ideologies, norms, legal philosophies, and governmental institutions pertaining to quite different epochs that are at the heart of the Latin American development process and that, it seems to me, should form the core of scholarly focus.⁸⁸³

One need only consider Law No. 2825, containing a mixture of texts from widely differing sources, to confirm the validity of this statement. Wiarda continues:

In the literature, usually the ideal types at either end of the continuum are stressed — be it in terms of indicators of social, political, or legal-constitutional development — while the hodgepodge and frequently crazy-quilt patterns that lie in between are dismissed with a qualifying phrase. Such mixed and out-of-joint patterns, the cross-currents of both traditional and modern co-existing side by side, are, however, at the heart of the transitional process in which *all* the Latin American nations currently find themselves. . . . Furthermore, the fact that the law may be seldom applied, or may be applied more to some than to others, tells us a great deal about the nature and workings of the Latin

882. Wiarda, *Law and Political Development in Latin America: Toward a Framework for Analysis*, 19 AM. J. COMP. L. 434, 460 (1971).

883. *Id.*

American socio-political systems.⁸⁸⁴

Instead of focusing on prescriptions for closing the gaps, he suggests,

[W]e must recognize and come to grips with the dilemmas of Latin American underdevelopment realistically, on its own terms and in its own context. We must explore the way the Latin American systems function regardless of the supposed gaps that exist, comprehend how in Latin America these "gaps" can be bridged, glossed over or even ignored altogether, and examine the various devices that exist for doing so, the frequently ingenious patchwork solutions that are devised, and the way a little "grease" here or a little cement there can hold the system together temporarily or enable it to slide through from one crisis to the next. . . .⁸⁸⁵

Among the aims of the present study has been to describe the legislative process which led to the passage of agrarian reform legislation in Costa Rican terms. It is the story of how a law of major social reform came into being in one Latin American country. The "lessons" which emerge are complex and laden with ambiguity, and perhaps cannot be reduced to a single list of propositions or hypotheses. That may be quite a significant finding in itself. In any event, hopefully the reader has gained considerable appreciation and perhaps some "feel" for the process through which a program of major social reform may be enacted into law in Costa Rica,⁸⁸⁶ and perhaps in other Latin American democracies as well. Such an appreciation of the complexities and ambiguous nature of the reform process should complement, and ultimately contribute to, other studies which are more "scientific" in approach.

In this connection, Hirschman makes the following observation, which is especially apropos:

Most social scientists conceive it as their exclusive task to discover and stress regularities, stable relationships, and uniform sequences. This is obviously an essential search, one in which no thinking person can refrain from participating. But in the social sciences there is a special room for the opposite type of en-

884. *Id.* at 460-61.

885. *Id.* at 461-62.

886. Compare GANTZ & WEISENFELD, Part One, 14 LAW. AM. 199 n.128 (1982), which describes the legislative history of the 1959 Law of Industrial Encouragement. For an outstanding study of the legislative process in Costa Rica in general, see C. Baker, *Costa Rican Legislative Behavior in Perspective* (Thesis, Univ. of Fla., 1973).

deavor: to underline the multiplicity and creative disorder of the human adventure, to bring out the uniqueness of a certain occurrence, and to perceive an entirely new way of turning a historical corner.⁸⁸⁷

The latter approach, utilized in this study, is particularly appropriate in seeking to understand the process of major social change. Argues Hirschman:

The importance of granting equal rights of citizenship in social science to the search for general laws and to the search for uniqueness appears particularly strong in the analysis of social change. One way of dealing with this phenomenon is to look for "laws of change" on the basis of an understanding of past historical sequences. But the possibility of encountering genuine novelty can never be ruled out — this is indeed one of the principle [sic] lessons of the past itself. And there is a special justification for the direct search for novelty, creativity, and uniqueness: without these attributes change, at least large-scale social change, may not be possible at all.⁸⁸⁸

The experience of Costa Rican reformers in passing the 1961 agrarian reform law is of considerable relevance to the country's neighbors to the north. While the implications of the Costa Rican experience cannot be fully developed here, a few suggestive observations may be offered. A first point of cardinal significance is that, however limited its distributional effects, the 1961 agrarian reform law and the establishment of ITCO have succeeded in maintaining a belief in the legitimacy of the government among the most desperate of the rural poor who, absent ITCO programs, might potentially have become so alienated as to heed the call for violent solutions to their urgent personal situations. ITCO beneficiaries, however, view the Institute's programs as successful; moreover, they exhibit a high degree of political participation, and generally have quite positive attitudes toward the government.⁸⁸⁹ The lesson appears to be that agrarian reform may be a key instrument in maintaining or achieving legitimacy.

The relationship between political legitimacy and rural violence or insurrection is central to an understanding of the current

887. A. HIRSCHMAN, *A BIAS FOR HOPE* 27 (1971).

888. *Id.* at 28. See also "The Search for Paradigms as a Hindrance to Understanding," *id.* at 342-60.

889. M. SELIGSON, *PEASANT PARTICIPATION IN COSTA RICA'S AGRARIAN REFORM* 161, 193-94, 227-28 (1982).

crises in Central America. In Guatemala, indigenous processes of social reform were blocked in 1954 with the overthrow of the Arbenz government. While there have been periods of civilian and moderate military rule, recent regimes have resorted to brutal repression in dealing with problems in the countryside—and elsewhere. It remains to be seen whether the current government, having conducted a reign of terror in the countryside in early 1983, may now move toward the agrarian and other reforms which will be required if legitimacy is to be restored.⁸⁹⁰

El Salvador has traditionally been extremely slow to deal with the need for agrarian reform. Following the 1969 war with Honduras, Salvadoran presidents attempted to introduce limited reforms, but in each case the programs were ultimately blocked by the landed oligarchy and their allies within the military. While massive reforms have been legislated and partially implemented since the October 1979 coup, the pattern appears to be repeating itself. About the only thing that can be said at this point is that if the country is ever to emerge from civil war, land reform will inevitably be an important part of the process.⁸⁹¹

Honduras has traditionally been the most peaceful, if the poorest, of Costa Rica's northern neighbors. While land reform began under an elected and progressive president in the early 1960's, he was overthrown in 1963. Agrarian unrest was a key precipitating factor in the 1969 war with El Salvador,⁸⁹² but in the early and mid-1970's significant progress was made on agrarian reform. This process seems to have slowed or halted by 1978, but could regain momentum following the election of a Liberal president in 1981. This possibility could be checked, however, by the growing influence and power of the conservative head of the military.⁸⁹⁴

The situation in Nicaragua is fluid. Some 20% of the country's land, belonging to Somoza and his friends, was confiscated follow-

890. On agrarian reform in Guatemala, see generally, R. HOUGH, J. KELLEY, F. MANN, S. MILLER, R. DEROSSIER & M. SELIGSON, *LAND AND LABOR IN GUATEMALA: AN ASSESSMENT* (1982) (AID/Washington).

891. See, e.g., L. SIMON & J. STEPHENS, JR., *EL SALVADOR LAND REFORM 1980-81* (2d ed. 1982) (Oxfam America Impact Audit); D. BROWNING, *EL SALVADOR: LANDSCAPE AND SOCIETY* (1971); W. DURHAM, *SCARCITY AND SURVIVAL IN CENTRAL AMERICA* (1979); and *EL SALVADOR: CENTRAL AMERICA IN THE NEW COLD WAR* 157-87 (Gettleman et. al. eds. 1981).

893. See J. ROWLES, *EL CONFLICTO HONDURAS-EL SALVADOR* (1969) Y *EL ORDEN JURIDICO INTERNACIONAL* 19-27, 50-68 (1980).

894. See generally DURHAM, *supra* note 891; and T. ANDERSON, *THE WAR OF THE DISPOSSESSED* (1981).

ing his fall in July 1979. A land reform law was passed in August 1981, and, at least initially, it seems to have been administered in a fairly moderate fashion. The future of agrarian reform in Nicaragua will very much depend on the direction that country's government ultimately takes.⁸⁹⁵

At least with respect to Guatemala, El Salvador, and Honduras, it seems clear that agrarian reform will be prerequisite for the establishment of peace and domestic tranquility in the countryside. Given the different situations existing in each of these countries, the example of Costa Rica is only suggestive. But the suggestion is strong: somehow the reform process must be restarted and allowed to proceed.

As for Americans and other outsiders, there is a final point which perhaps cannot be overstressed. The realities of Costa Rica and the other countries of the isthmus are complicated and have deep historical roots. No policy toward the region based on the super imposition of a cognitive map dominated by Cold War and other ideological assumptions can be successful. Efforts at reform aimed at improving the life of the poor in these countries are not new. An example may illustrate this point. Fernando Volio's great uncle, Jorge Volio Jiménez, founded the Reformist Party (*Partido Reformista*) in 1923, which, running on a platform calling for agrarian and other social reforms, won some 20% of the votes in the general elections held in December of that year. Throughout an illustrious career, Volio helped sensitize the entire nation to the need for social reforms. Yet his efforts at reform were inspired not by Marx or Lenin, but rather by a deep admiration for Tolstoy, fostered by a disciple of the latter in his early school years; and by the new social doctrines of the Church, embodied in Pope Leo XIII's 1891 Encyclical "Rerum Novarum" and whose spirit deeply affected him during his studies under Cardinal Mercier at the University of Louvain, in Belgium. One other aspect of his career is poignantly suggestive today. In 1912 Jorge Volio led a band of cohorts who joined the Liberals in Nicaragua in their struggle against the intervention of over 2,000. Fighting heroically, he was gravely wounded in combat against the marines and their Conservative allies at the battle of León. When he returned to Costa Rica, he was

895. See generally D. Kaimowitz & J. Thome, *Nicaragua's Agrarian Reform: The First Year (1979-80)*, in *NICARAGUA IN REVOLUTION* 223-40 (T. Walker ed. 1982); J. BOOTH, *THE END AND THE BEGINNING: THE NICARAGUAN REVOLUTION* (1982); and J. COLLINS, *WHAT DIFFERENCE COULD A REVOLUTION MAKE? FOOD AND FARMING IN THE NEW NICARAGUA* (1982).

greeted as a hero at the train station in Heredia by a large crowd.⁸⁹⁶

In Costa Rica itself, the challenge faced by present day reformers is indeed great. According to one estimate based on projections made by the International Labor Office, the growth rate in the agricultural sector will drop markedly between 1970 and 1990, with unemployment rising to an estimated twenty-three percent. By 1985, the job deficit in the countryside is expected to reach some 200,000 jobs.⁸⁹⁷ Whatever the validity of these estimates, it is clear that the demographic explosion of past decades will soon result either in increasing pressure on the land, with attendant squatter conflicts, or a mass migration by the rural unemployed to the cities where few jobs await them, or, what is more probable, both of the above.

If these pressures on the land should fuse with growing political support for the effective implementation of agrarian reform, what will be the possibilities for implementing such programs within the established framework of democratic government and respect for law? To a very large extent, those possibilities will be shaped by law and legal institutions. For under a democratic system law sets up the boxes or categories within which such issues are framed and resolved. Law creates deadlines for action, allocates decision-making authority, and establishes standby mechanisms and procedures which can be used to meet new social demands or problems. Imaginative use of law and legal institutions may enable reformers to provide the government with the flexibility of action needed to meet problems which are on a new and unprecedented scale, while still maintaining other traditions that are proudly held.

When demographic data are matched against projected new employment, it is clear that "the agrarian problem" will increase rather than disappear in Costa Rica in the coming years. The challenge therefore is clear. In seeking to meet it, perhaps reformers can not only build on earlier reforms, but also draw encouragement from the efforts and successes of those who have gone before them — men such as those whose actions are described above. As did

896. See M. VOLIO, *JORGE VOLIO Y EL PARTIDO REFORMISTA* 14-41 (1973); and RODRIGUEZ VEGA, *supra* note 755, at 49-55, 97-115. Cf. *supra* text accompanying notes 490-93. Regarding the U.S. intervention in Nicaragua in 1912, see S. BEMIS, *THE LATIN AMERICAN POLICY OF THE UNITED STATES* 162-64 (rev. ed. 1971).

897. INTERNATIONAL LABOR OFFICE, *SITUACIÓN Y PERSPECTIVAS DEL EMPLEO EN COSTA RICA* 130-31 (1972). See also SELIGSON, Part One, 14 *LAW. AM.* 159 n. 1, at 162-69.

men like Fernando Volio and his colleagues, perhaps they shall succeed in forging reforms which are much better than anyone might have reason to expect.