
Naboth's vineyard

*José Calvo**

Our Property

There is a case to be made for common property as opposed to private. We have property in common: there is traditional knowledge, the air we breathe, the roads, streets, and sidewalks, the parks, and the beaches —sometimes. In some cultures the land was common property, more or less.

But private property was a fact of life even among the Incas and the Mexicans because the two concepts interact. It is also true that we own property and we share it at the same time. In the case of land, the sense of property is probably an instinct; the territorial imperative, which shows us that even common property is not common to all. This is our country but it is cut into pieces belonging to different people, and the social order demands that this arrangement be respected. Its violation always has dire consequences. Owning some-thing gives us a sense of security and there is nothing more threatening to our security than inroads into our property, especially when we have endeavored to acquire it; when it was not inherited.

For a person that I have recently seen here questioning the existence of common property rights to prove that all property is private, I have known dozens who question the right to private property of land "because land is productive". You can own your watch, your clothes, your car, your house, etc. they say, "because they are not productive", and they call these arguments "science". When I questioned this classification I was told it came from the science of agrarian law. The reader doubtless knows whence these scientific arguments came.

But these arguments are usually espoused by people who dislike the property of others. They

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want it to be common so that they may control it, make it theirs. This revisioning of private property is wielded as a pretext, and to the local standard bearer of this gospel it was a bonanza which made him a potentate, and wealthy to boot.

A different thing is the aspiration that we may all own some land which therefore limits the amount of it we may own, but this does not come through some one administering the common property, and making it theirs.

My purpose here is then to discuss the hypocrisy that surrounds the revision of our property rights, which are written in the law of the land and therefore guaranteed. These rights are questioned, limited, and violated every day and with different pretexts, by those who want to limit them or make them void.

This appropriation was ruthlessly practised by the Communists in the Soviet Union for the benefit of the apparat (social cleansing) with predictable unsuccessful results. But they, of course, made no pretence of being a state of law. The practice was copied here by their sympathizers regarding the property of land -not other forms of property- so that we have a schizoid attitude whereby a person may own all the property he may gather provided it is not land, and whereby a person may be expropriated of even a small amount of property, if it is land. Can you imagine the upheaval if we expropriated INTEL, even with payment, or if we harassed them so they would have to leave, as it was done with the fruit companies? All investment would halt, and we would face complete isolation. The value of what is on the land can be much greater than that of the land, but so far it is not jeopardized here; except by the employees of state enterprises. But nevertheless the land grab is also hurting us.

When a congressional commission was discussing the law of territorial planning, where five different state institutions vied to handle that fat regulation and none wanted to relinquish what they

already controlled, a government official told me that the law in Costa Rica allowed for fifty odd limitations on private property (of the land, of course) without "emptying the concept", meaning without payment -Can you imagine a law that gave 10% of all property transactions to the municipal government? Or a law that prevented aged farmers from inheriting their land to their children because of the high taxes involved? This is what we have in Costa Rica.

This has led us to what is called agrarianism; a separate legal treatment for the property of land, characterized by arbitrary procedures and a cavalier attitude that fostered the grab, although it dressed it in legal robes.

It also fostered corruption: the procedure to facilitate the grab, and the appearance of all kinds of unscrupulous people, like the go between locally called *zopilotes*, the lawyers, land surveyors, professional associations which shelter them, and the ultimate beneficiary who is the usurper, squatter, precarist, or *pobrecito* -the little man. A thief may claim a piece of your land with three obviously false witnesses. The lawyer handles the claim without any responsibility to check its propriety although he can easily do it. The judge orders the inscription of the claim on the lawyer's word. The National Registry registers it without responsibility, because that responsibility belongs to the lawyers and topographers who are in turn account-able to their unions. And the unions claim to have no responsibility because that is something to be decided in court. This hanky panky has spread to urban properties, which can be stolen with impunity and with the only recourse of the civil suit -the *juicio ordinario*— for the dispossessed. Our ministers may say that "the thieves are in the streets" meaning that they are outside of their ministries, but we all know that they have to be inside too for the theft to take place, and that this will not be stopped until the behaviour is recognized. But this is impossible because it bounces against the impervious myth of paradise island. It is much easier to reject the charges, to blame them on the evil disposition of the critic, and to denounce him as unpatriotic.

Grab the land for efficiency

The world suffered recently the mania of collectivisation, Soviet style, which required the murder of millions of farmers on the completely unfounded assumption that the big farm would be a more efficient way of cultivating the land; and also, of course, because it was a form of increasing the power of the *apparat*; a form of appropriation.

This efficiency concept related to size was not new. Marx saw it in England's scientific agriculture where it was the result of the enclosures, and where it had already failed by the time of its adoption in the Soviet Union. This big farm concept has now taken hold in the U.S. The big farm there is not a typical capitalistic enterprise. It is a corporation belonging to its stockholders, who have nothing to say in its administration, but the process was not effected through thievery and murder but through sale -the land is PAID and the pain has been considerably lessened since the days of *The Grapes of Wrath*.

Grab the land for the little guy (the pobrecito)

The Soviet influence was felt here in the form of *agrarianism*. Your property right is not violated for the benefit of the common because that was not politically correct here before the environmental movement gave them an acceptable justification, but for the benefit of the little guy, the *pobrecito*. Agrarianism is an agrarian reform seal completely disconnected from economic reality, in that it goes contrary to the urbanization-industrialization evolution of society, and wants everybody in the rural áreas -and then some- to become small farmers. It copied from the Soviet Union the concept that all property is stolen -"*La propiedad es un robo*"- and is held by people who own property themselves, and much of it, and who prospered greatly by stealing the property of others to foster social "justice".

They even created a special judicial system with special application of the law, or exemption from it, to apply it to the property of the land of others so they could take it away with impunity, without payment, while becoming benefactors of the poor: the "*pobrecito*". This activity developed a symbiosis with plain crooks that take advantage of the mess by which the state transferred the responsibility of taking care of our property to

mayors-*alcaldes*-, unscrupulous lawyers and land surveyors whose word is accepted by their professional unions. These are havens of malpractice where their victims are received with hostility and who wash their hands because anyway you are condemned to the ultimate solution of our state of law: the civil suit against the thief and against its assistants and accomplices.

From the *pobrecito* to hanky panky

Such an easy temptation to steal -such an open invitation-, could not remain restricted to the property of land, and it spread to other things, like your own house, that can be transferred to another person overnight without your knowledge. When the scandal reaches the media now and then, the authorities justify it one way or another. "The thieves are in the street" has been a recent anthological ministerial declaration. As if the thieves did not need inside co-operation. Corruption is a much more logical motive for the behaviour of depredation of the property of others, and it shows its dirty hand in all these deeds.

Grab the land for the environment

And then we have the newest form of dishonesty in the treatment of the property of *others*¹, the appropriation of natural resources based on ecological pretexts, which is practised by state officials or governments and by non governmental organizations on a scale and through means comparable to Mr. Stalin's. This is a form of criminal behaviour treated well by Dr. Tom Dietz, professor of Environmental Political Geography of the University of Amsterdam, in his book *Appropriation of Natural Resources*, International Books, (1996). I quote him here, translating back to English -because my complimentary copy was lost- from the resume I did in Spanish for UPANACIONAL as a contribution to their efforts to obtain payment for the tens of thousands of small farmers expropriated to create the national parks and biological reserves which give Costa Rica a good environmental name abroad²:

1. I insist on emphasizing the property of others, because the behaviour would not be so despicable if it treated in the same manner the property the property despoiler.

Strange alliances are formed with foreign donors whose environmental agendas cooperate with ethnicist politicians. After the World Bank president announced in 1987 the bank's backing of projects with environmental approaches, almost all the governments around the world immediately developed plans of environmental action. Local provincial and municipal governments did the same. Numerous ONGS campaigning on environmental issues experienced a rapid growth in activity and financial strength. And to consultants, the world interest in environmental development became a veritable gold mine. The weaker the recipient, the easier for the donor to impose its conditions. New hunting and forest reserves were designed, and the human inhabitants were forcibly expelled by police or military expeditions which kicked them out, burnt their houses and their crops, and confiscated their cattle. It is allowed to shoot at ivory smugglers. Ecofascism sees environmental conservation as more important than the survival of the people, and if these suffer or die it is because they do not fit in the system.

Dietz sees three kinds of rights over natural resources:

1. The deed or title right to own them.
2. The right to use them as with indigenous people, and
3. The right to intervene in resource affairs, which voids the title right allowing governments and ONGs to dispossess the owners, which is the case of our thousands of small farmers in Arenal, Monteverde and everywhere whose treatment at the hands of our governments I have compared to Stalin's collectivisation of farms above. Cases like Santa Elena fall in this category too, although those owners have to be paid, however reluctantly it is done; and however expensively both in money and in prestige. -Worse than being fingered as a thief is being forced to give up the booty on top.

Had he come to Costa Rica, Dietz would have added a fourth kind of right:

4. The right of the little guy (the *pobrecito*) in its two

2. Don Mario Sancho, one of our literati, used to say that we Costa Ricans get abroad much more credit than we deserve. Nothing has changed in 50 years.

forms:

a) that of the squatter on public or private land with the help of a big business inter-mediation and the tolerance of the authorities, and

b) that allowed by the overriding principle of *usucapio* or grab by use. Whatever may be construed as use, in duration, land area and mode; as it can be claimed by your workers and associates with the advise, the consent, and the active collaboration of the legal establishment. The required time of occupation to grab has been decreasing from 10 years, then 5, then 2 as for *Vivienda Campesina*, and they have ended up proposing only one year in the project of law for "the agricultural enterprise". (!) The property title is then worthless. Agrarian law sees our property with a jaundiced eye and acts against it when we are not people of power and influence. I am sure Dietz would also call this fascism.

I fully realize this is an unpopular cause as the self-righteous enemy rides the steeds of land reform and environmental protection, and hides behind the myth of paradise island. Those who dare to protest are accused of lack of patriotism. But patriotism is not fostered by a denial of our faults and a refusal to change. A healthy society accepts both its panegyrist and its critics. We are not here naive revolutionaries proposing to change the system. We are saying that we have agreed to play a game with certain rules and that these rules have to be respected, or else we have to abandon that game and play another. The paradise claim is especially absurd when we choose to ignore the evidence, or to compare ourselves with the basket cases of the world instead of choosing the civilized nations. How much better if we could get rid of pharisaism, cynicism and dishonesty in our deals. Let us try.

Xenophobia and Demagoguery

It is pure cynicism when our government announces that we "recovered our sovereignty over Santa Elena which has been traditionally assaulted by foreigners³ and presents our actions as a fight against a U.S national, unacceptably protected by his government without saying that the action of that government was a demand for

fair payment of the confiscated property which we were trying to avoid, and which had to be settled in a foreign court at considerable higher cost to us, both in money and in prestige. Because the case could not be settled here.

When the environmental land grab began some twenty five years ago, we could still live with the contradictions of a full time civil servant becoming a millionaire, a big farmer, the owner of saw mills, a president, the recipient of renowned environmental world prizes, and a friend of drug traffickers. But globalization has changed us too, and today we should not mention such men as examples of patriotism or environmentalism. Accountability is here to stay and the powers that be will soon find it out.

Santa Elena was confiscated under this set of values to increase our national parks and our environmental standing abroad, through the same dis-honest means and with the same purpose that have been extensively used with impunity against tens of thousands of our peasant farmers, who have been deprived of their farms and kicked out without any compensation and without any alternative means of livelihood. It is to these poor devils, most now in their seventies, that the government is asking to be patient because there is no money left after this "effort" (an unavoidable compulsion) to pay for Santa Elena. But we in the farm movement have been demanding that these small farmers be paid, without any success through the last three administrations, and we must say that there is no intention to pay, and no institution which cares about them. Of course, they have no access to the US government either, and the environmental groups that praise us abroad for our ecologic sensitivity, couldn't care less. The human rights movement intervenes to defend the victims of political oppression, but not the victims of theft, and our ombudsman is too busy practicing "political control", and defending collective rights, to do any-thing for persons.

Considering the area involved in these confiscations to enlarge national parks, it is fair to say that our government does not have the

Murciélago and Puerto Soley, where I almost left my bones in 1949, are in that area, and the foreigners who forced us to go to defend it, were Tacho's National Guard allied with the Costa Rican politicians who now appeal to patriotism.

capacity to pay unless it were by returning the land, some-thing which is not "politically correct". Let the peasants bust. If they were Indians, the Europeans would be actively defending their property rights, but they are only "whites", as they condescendingly call them.

Morice

I have been surprised by the schizoid national attitude to the private property of land for many years. Since the case against Morice, which also had xenophobic connotations because he was a Nicaraguan who killed a parasite or squatter on his farm in Guanacaste (what is now called a *precarian occupier or precarist*). There was then a round table at the University of Costa Rica, with everybody going against the farmer and only Mr. Barahona Streber (his lawyer, and a man of unquestionable courage) defending his property rights. All of his interventions were boisterously booed and jeered by an auditorium, which contained several students from wealthy families, and several poor ones; all infected with the fashionable indoctrination. The wealthy ones are now handling their parents estate, and the poor ones be-came wealthy politicians and functionaries, still unwilling to condemn violations against the property rights... *of others*. Given their power in the establishment, their own property is never violated.

But that was a time of uninhibited identification with the left. No other position would have been "politically correct", and there was no evidence yet of the hypocrisy that many of those students and leaders were going shortly to show, although nobody has ever confronted them with it. Perhaps because there was nobody then with a different attitude: a case of shared guilt.

Some years later I heard the arguments against private property exposed by a fellow who in time became executive president of ITCO - the "agrarian reform" Ministry in Costa Rica. Only this time the arguments were plainly pharisean as this man was already the owner of several houses for rent, which he had financed by buying insurance policies of INS and then getting loans on them; some-thing that necessitated a certain political leverage.

In fact the agrarian reform institute of Costa Rica was for several years the real estate agency of several big politicians and their minions, who bought cheap and worthless lands and sold them to ITCO, which then settled there some poor devils who were thus condemned to fail. It was also a shelter for foreign Communist exiles of importance who acted there as "advisers".

One has to agree that the concept of private property may have to be revised as the population increases; unless it may turn out that the most efficient production of food requires big tracts of land. One has to agree that unlimited acquisition of land by wealthy foreigners may compromise the sovereignty of a country. Something which will continue to be of importance as long as the nation state is the competing unit.

But whatever the case may be, the rules have to apply to everybody, and they have to be respected. At any rate, the person who disputes the right of others to own property should not own property himself; or at least not own much property any-way. One may accept that such persons may, through their influential positions of power, confiscate someone else's property, but they should also procure their prompt payment at a fair price, without dragging their feet year after year with the collaboration of the judicial system and everybody else, which turns us into a nation of thieves.

Small wonder if we then have all our houses thoroughly covered with iron bars, and our tourist guides tell our visitors that this is an evolution of the grills in Spanish architecture!

Let's face it, if the owner of Santa Elena had not had recourse to Mr. Jesse Helms and the U.S. government, he would not have been paid, or he would have had to take whatever he was given by a local court. Let's face it, the tens of thousands of local peasant farmers whose farms were confiscated by the state will not be paid, because they do not have recourse to Mr. Jesse Helms. It's that simple.

And although the revelation of these truths infuriates those guilty of such shocking behavior, who then accuse us of lacking patriotism. It is a matter of common sense -not to appeal to a sense of decency which is lacking- that patriotism is

better saved by honesty, if only because there is no chance of these things not being known.

All societies have problems, and most recognize them, as a first step to their correction. It is a sign of immaturity to deny angrily our faults, attributing to the critic some evil purpose, or some incapacity to recognize our perfection.

Let's face it, our only chance to change has to come from the exertion of pressure from abroad, (thus the language of this contribution.) If we refuse to launder our dirty linen in private, it has to be washed in public because locally there is no conscience of impropriety, or at least only the victims see it, and they are not influential: that is why they are victimized in the first place.

The best position to take before this serious problem is to recognize that the country will benefit from our efforts, and that it will suffer harm from those who impede change by not recognizing that we do have a grave problem.

Agrarianism: Ideology, means and Procedure, honesty

This sorry state is complicated by the fact that there is no alternative procedure, but the civil suit - the *juicio ordinario*. This is it. There might be an ample amount of evidence of wrongdoing so that a court might simply nullify the irregular deed right away and return us the property, but not in Costa Rica. The court here will do everything possible not to return the property to the owner. Maybe because they think that to do so they would be recognizing their error, or out of an unwillingness to make a decision whose responsibility is diluted by distributing it to as many officials as is possible. Or may be the real purpose is work butter for gremial feather bedding.

The injurious actions taken by judicial officers against the property of others, with no personal responsibility, will not be rectified by those who took them or by any one else. And the recourse is to either lick your wounds and do nothing to recover your property, or the civil suit, expensive, protracted beyond any regard for the duration of human life, and adverse. Because the agrarian case cannot escape the inertial emotion that our political indoctrination has engendered against the

property of others, a shielding attitude that is in fact not different than that of a thief, whereby the occupation is more important than the legal tittle and makes it void.

If you can prove that you "occupied" the land for a certain time; or if the owner cannot prove that, you did not, the land is yours. You cannot even let a poor devil live in your farm house without him claiming it as his own after a while, unless you have all kinds of legal documents specifying the terms of his occupation. Better let the poor devil live in the open even if you are not using your house, than risk losing it, or even more, if you decide to go to court to recover it through some misguided confidence in the law.

It was under those inauspicious auspices that our agrarian tribunals were born but could never take hold. Because they are based on a different set of values than those applying to other forms of property, and also because the same judge that sees the civil and penal cases sees the agrarian ones, as it was in our case, (see why me ahead). There he rejected the penal causes, saw the *juicio civil* on the same subject, and granted an unwarranted two year extension; approved by a superior agrarian tribunal, and by the Judicial Inspection as a right of the judge; his attribution. The change of judges afterward did not help either, as the case grows cancerously through legal subterfuge, and each new judge sees it as an extremely complicated case that it is better to postpone.

I hear there has been considerable doubt on the functionality of these agrarian tribunals. And so their priesthood got the idea of gaining a new life by adding the environmental tribunals to the agrarian ones. An absurd idea when we consider that one half of our population lives in the city and that this has the higher consumption and environmental impact.

The reinforcement idea was later changed to add only the rural environmental tribunals. But something must have happened in the meanwhile, as UPANACIONAL and PALA's intents of cooperation -invited by the judges themselves during their visit to the Congressional Mixed Commission charged with giving guidelines for an agricultural policy- were never answered, despite

our suggestion that these are matters where everybody will benefit by consensus. This might illustrate how our democracy itself is a mere formal one without substance, as participation would force the powerful élites to relinquish some power.

The agrarian judges did send to the mentioned congressional commission a complete program for an agricultural policy which would have been a preposterous invasion of fields -otherwise common here in agriculture-, but I do not believe this was the profession of the law riding the field of agriculture. It was rather a political conspiracy; the old ideology prodding on after the fall of the curtain, and mimicking a production scheme. Or perhaps a priesthood trying to hide the death of their god.

Many agrarian lawyers who have left that establishment are of the opinion that there will be no answer. That the insiders only want us to approve what they propose or to impose it without our participation: the top down arrogant attitude so common among us which inevitably leads to confrontation; especially at a time when all the privileges of power are being revised.

What we as true farmers -many claim that dedication without having it- thought we might help to correct, was the agrarian classification of a case going against the victim from the very beginning. Because it is placed in the scope of agrarian reform, where we are invariably seen as the bourgeois land owners -even if we own only 4 hectares- and the fellow who claims your property is seen as a sort of poor devil, trying to survive against the slavery imposed by the kulaks. In fact, I understand that all this dense ideological contamination was imported from the Italy of Palmiro Togliatti -the boss of the biggest Communist party in the world. The importers were the young lawyers we sent to do graduate work there, after paying for their education here. This ideological attitude is as inimical to farmers as it was in the Soviet Union that epitomized it by killing 10 million farmers who resisted the forced collectivization imposed on them by Stalin, after the short relief of the New Economic Policy, and which had such catastrophic effects on soviet agriculture, as farm collectivization did on all socialist countries.

The main grabbing instrument here though was the *demasía*; any land in excess of the area specified in your deed, "because that which is nobody's belongs to the state". The state itself belongs to these big shots. If on measuring your farm it turned out to be less than specified in the deed, the state would not pay you this difference, which I would call "escasía", out of a sense of balance or justice, and of a lack of comprehension of the arcane science of law, to be sure.

As will be seen in the next episode of this serial, (*why me?*), chances are we will have to go to them for an appeal or revision; but it will be on the true merits of our case, which we are willing to submit to anyone, and not on any special consideration of leverage, clemency, or pity.

From *usucapio* to plain *capio*, or why me?

As so many of the things that happen in immature societies, this one sounds like a joke. I myself am one of those non influential people who can be easily victimized. Although I never thought so when I was at the negotiation table, as a farm leader defending the peasant farmers of Arenal and Monteverde, whose properties have been confiscated and they themselves kicked out by armed force.

One day, when I was closing my dairy farm because there was ample evidence that I could not rely on my associate and I could no longer oversee it myself, I found this building being constructed on the farm, which is my wife's property. It turns out that a Germán exporter of "organic" bananas had signed a contract with someone other than the owner in which I appear as renting them two hectares out of the four hectares of her small farm. The builder knows the contract is spurious because he has not bothered to get my signature as the supposed leaser before erecting his building. As a relative is involved in the hoax, we try to renegotiate the terms of the contract, which the "organic" exporter refuses because he also knows something we ignore: that the relative of mine has obtained a property title for 1/2 ha of our farm through the Law of *Vivienda Campesina*.

We then found out that *Vivienda Campesina* is a Costa Rican law which allows anyone to claim up to two hectares in someone else's property, supposedly to build a home -as it was done in our property, although the person who did it rented the land, as she lived in a better house than ours. This sorry deed is done with the complicity of a lawyer who assumes no responsibility for it, with the blue print drawn by a topographer on top of our existing blue print, with three false witnesses who sign the same identical declaration, and of a mayor (*alcalde*) who orders the registration on the word of the lawyer, and to an I.D. number, to hide it better.

All this is done without bothering to notify the neighbors, or the owner of the land. With no recourse for the owner if he does not find out what has happened to his property within three years, in which case he can sue to try to recover. Without penalties of any kind for the defendant should he lose the litigation that might then take place if the owner wants to try to recover his property. Without penalties of any kind against the witnesses if they perjured themselves. With the legal bills of the defendant paid by the state. With any debts he might have incurred on the property assumed by the owner if he recovers it. And with the owner obliged to pay him the "improvements" he might have done, or simply says he has done to the property if recovered. A shot in the back is a less squalid action, since you might miss or someone might see you, and you would meet retribution.

The applicant for *Vivienda Campesina* does not even have to have a need for the land. As in this case, where the person who obtained title on our land, is married to a fellow who owns land in the same neighborhood, and who lives in a modern expensive house built in his own legitimate land. In fact a much better house than our own, and also obtained through the *pobrecito system*, reinforced with the political agreement of 4-3 that allows our families to hedge their dole from changes in power: the wife joins one political party, the husband the other. The law is for people who do not have a house, but as with any violation of this law, this is for the victim to fight at his own cost, nobody else is responsible.

The history of this law is very revealing. The record shows its ostensible purpose was to balance the construction of urban and rural housing "due to the fact that many peasants did not own a piece of land to build on". It was only for families who did now own a house. — Although it is now applied to the individual members of the family: if the house is in the husband's name, the wife has a right to more land for her own house, or to rent it. In fact all the family members.

According to the project, this piece of land of up to two hectares could be then acquired after 3 years of peaceful possession attested by three adjoining land owners.

To show their social sensibility all the Commission members protested against having to use the term *precarist* which in fact had replaced the term *parasite*.

But there were some qualms in the Legislative Commission dealing with this project: what was possession, why three years of occupation, what if there was someone with a more legitimate right to the land.

A lawyer from Technical Services explained to the Commission that the definition of possession is too slippery; that the time of occupation required was first 10 years then reduced to 5, and in this law to 3 -it should be said that the law of the "agricultural enterprise", concocted by the very same people, tried to reduce it to 1 year⁴; that under the law you really do not lose your property of real state through abandonment as this is often un-avoidable; and that if the property in question already had an owner he would recover it if reclaimed within three years,— which is not true as shown by our case—. The lawyer from Technical Services also said that in this law "the importance was not in what is said as in what is not said". — Indeed.

The Communist Congressman almost carried the day. He defended the two hectares because peasants also need a yard. He argued that peasant neighbors quarrel much and or that reason asked that the three adjoining owners

4. I witnessed and disapproved of the whole absurd top down intent. Which was to reduce the time for grabbing to one year by hiding it in a pile of policy trash; the usual bad habits.

testimony not be required, but "only three witnesses period", thus tying the hands of one of the contenders: possibly the owner. He moved that the required time of occupation be reduced to two years.

Finally, only one adjoining land owner was required: it is much easier to find one dishonest adjoining neighbor than 3 in a row, but the President succeeded in requiring also the testimony of some honorable personality, in this case the President of the local School Board.

The Supreme Court was consulted, but they delayed their opinion too long, and finally wrote a letter saying they were about to send it when one of the magistrates informed them that the project had been agreed upon, and that therefore "there only remained to be sorry about it".

In the plenary discussion the project was given first place over a list of 80 which had precedence, and it was approved. *Vivienda campesina* (peasant homes) which was the purpose of this law is not required once you get the land. The occupants can claim the land for whatever purposes they wish!

But a year later the law was back in Congress for an amendment. The requirement of an adjoining neighbor and of the President of the School Board as witnesses was too much of a limitation for dishonesty, and it was eliminated, substituting the "three witnesses period" the Communist congress-man had proposed originally. A dishonest person claiming some else's property can now choose three likewise persons at will. There were other refinements, like a Civil Judge being required if the up to two hectares were valued at more than 25 dollars, and the mayor if at less (!) -in our case, 1/2 hectare of fiat land shown by the submitted blueprint to be right in the middle of a village of 5000 was valued at less than 25 dollars, and rented for 200 dollars a months once obtained. Some *vivienda campesina*. But the major was not required to even notice this. That is for us to fight in civil court. We may paraphrase now the Technical Services lawyer: those not appearing in these procedures, are much more important than those appearing.

The symbol of the pobrecito is The Man With The Hare Lip and the phenomenon so pervading

among us that I have suggested the name "*pobrecitism*". But here I have to acknowledge a *mea culpa*: the fellow involved was my associate, a relative of mine whom I tried in vain to help overcome his destitution, while we made a farm as insurance against our approaching old age, at such an enormous cost that I had much better paid him a pension and saved something for myself. It re-minds me of the Indian lady who used to complain of Gandhi's anti industrial preaching's in India: "it costs a lot of money to keep *Bapu poor*".

Capio against us

So, it turns out we are saddled with the law of *vivienda campesina*. The Germán exporter of "organic" bananas (the usurper) signs another contract with the new owner (the pobrecito or under-dog), although he, the usurper, still refuses to get out of the extra 11/2 hectares he occupied under the former fraudulent contract, and his new contract is on 1/2 hectare.

When we found this, and on the advice of an agrarian lawyer, my wife (let us call her the victim to highlight the travesty) filed three penal demands: one against the underdog who obtained a fraudulent title on her property, one against the three witnesses who gave the same false testimony with periods and commas, and one against the usurper, the Germán company which occupied and built with an obviously false contract, signed another contract for 1/2 hectare with the new "owner", and refused to leave the 11/2 hectares it was occupying under the old false one.

A judge of our acquaintance warned us that the penal law was not the proper way "because violations against private property are not a crime in Costa Rica", and he was right. This is, in fact the reason why we so strenuously -and in vain- objected the Law of Observancy, which has jail penalties of up to 5 years for violators of the intellectual property rights of the big corporations, when our humble property can be violated without punishment; an attitude we attribute to malinchism, or worse.

The district mayor (*alcalde*) who had ordered the registration of the new title in the first place, rejected the victim's witnesses "because they themselves said the underdog had lived on our property", -which she had, as my associate's wife,

and an on and off milk maid in our dairy farm: as allowed by the inconstancy of her character. Then the major sent the claim against the fraudulent title holder to the county court, and the case against the usurping company to the provincial court, disarming the victim's case.

At the county court, judge X rejected the victim's penal claim against the fraudulent title holder (the underdog) on the grounds that the alcalde had rejected the victim's witnesses, and then he granted the usurping company an unwarranted two year extension on the penal case against them.

So, the victim has to file the inevitable civil suit (*juicio ordinario*) against the fraudulent title holder. But judge X at the county court, who had seen the penal claims too, postpones her civil suit for the same two years he gave her penal claim against the usurping company. A state of law is a many splendored thing.

A new judge sees the *juicio ordinario* against the underdog (the new title holder) and decides to make it extensive against the usurper, which pitches the victim with one lawyer and three witnesses against two lawyers and six "witnesses" the underdog and usurper.

Then the penal case against the usurper is also thrown out of court for "lack of sufficient evidence". Although we have had three separate inspections by The National Union of Small Farmers (UPANACIONAL) and as many pleadings by them to the usurper to cease his occupation of land beyond the boundary of his contract.

We shoot down Vivienda Campesina

A petition to a superior agrarian court in San José to cancel the extension of two years given to the civil suit to match that given to the penal claim against the usurper is also rejected. So since the victim has to wait anyway, and since this court procedures gives her little hope of recovering her property, she files a petition for unconstitutionality of the law of *Vivienda Campesina* to see if she can thus reinforce her position and rid the country of a shameful law. An organization for the defense of private property does not show the least interest in any of this; they only wanted her association fee. A small "farmers" union declines to back up her

petition on the grounds that they had many members who were hoping to obtain land through that law. But she did get the back up of UPANACIÓN AL and the law was eventually declared unconstitutional, as it so obviously was. Otherwise it would have remained in our codes until hell freezes over.

Did you know that we may have a state of law at odds with the constitution?

Back to the juicio ordinario

So the civil suit resumed, and there was a trial at the farm which started with a confessionary in which my wife, as the claimant, had to answer some questions put against her by the lawyer of the defendant (the underdog); in this case with a clear intention of defamation, as many of them concerned her private life. This is something akin to a bull fight which starts with the picador breaking the neck of the bull, so as to make more unequal an unequal context. Which makes me believe that the procedure might be a form of racial atavism. To the victim's credit, and that of her lawyer, nobody even suggested availing ourselves of that procedure, though there was an ample supply of rocks and glass roofs.

Fortunately the topographer the victim had asked as an expert, finally made it to the trial at the farm, as he was not cited by the court, something we found the night before. This expert was requested some months back when we found the draft of the confiscated part was drawn up on top of the victim's existing blue print, and that two drafts were drawn, compounding the fraud by steps: first a draught mentioning the owners name, which was later modified to delete the name of the owner and used for *Vivienda Campesina*; all of which was so certified by the expert the victim paid. And then the judge went through minute inspection of irrelevant details which took two whole days:

The defense "witnesses" testified that we never cultivated the land and that it was cultivated by the underdog (the defendant). And then they went out to inspect the signs of that claim: whether these rusty barbed wires here indicate the limits of her occupation, or those stumps there the remains of her old chicken house. (her *gallinitas*).

The underdog's witnesses never saw our 25 cows there, for the rotation pastures where they grazed during the previous 20 years, for did they see the cooperative truck which came to transport our milk production every other day. All of which ought to have demonstrated to the judge that her witnesses were lying. Our case was amply reinforced by the abundant demonstrations of the fraudulent procedure used to obtain the deed, not to mention the fact that by this time we have had the law of Vivienda Campesina under which this was done declared unconstitutional and taken off the books, which we now suspect was working against her (how dare you!). It is obvious that the sympathy of the law is with the underdog, the poor little one, the pobrecito, which is in this case for all practical purposes, a bigger dog than we are. And not withstanding that the mere concept of an underdog is perverted when this type of animal is given that denomination.

What the defense witnesses did see there were the little cows (las vaquitas), the little hens (las gallinitas), and the little fruit trees (los arbolitos) of the defendant: Everything put in the diminutive to enhance the "pobrecito" image that guarantees the sympathy of the establishment for the delinquent.

The "organic" certifier was also a witness for his customer-associate, as we have no concept of what is conflict of interests. At lunch time the lawyer for the usurper began a conversation with my wife, and when she told him that the "certifier" should not have appeared as a witness for his client and that he was perjuring himself, his lawyer threatened her with... you guessed it: a suit for defamation!

On top of all that, one of the victim's witnesses had been tampered with, but we are advised against compromising our own witness.

Oh this is such a difficult case!

A year after the trial the decision is yet pending, supposedly because "the case is so complicated and difficult". Worse yet, some months ago, the underdog filed another juicio ordinario against us, at a cost of 500,000 colones to the pobrecito and an equal amount to us. This one based on the fact that several years ago we had the area of the small farm rectified to fit our blueprint. The same area

which had been cultivated for over 40 years by one owner, with the same boundaries, with some of the same original bounding neighbors, and the same plot where the fraudulent *usucapio* title holder had worked as our associate for 20 years. All our bounding neighbors, and the countersuers themselves, were witnesses to the process of rectification they now ask to be canceled, or use as a dilatory tactic. The time to appeal the said rectification expired several years ago, but true to the arbitrariness of agrarian law, the judge accepted the demand anyway, and so, here we go again.

I also have the impression that we are here under another local modification of the ancient roman principle of *in dubio pro reo* which had already been extended to *in dubio pro latrone*, and to *in dubio pro natura*, and is now taking all as in dubio pro latrone, which reinforces pro natura in the case of the appropriation of natural resources.

Snails go much faster than our *justicia pronta y cumplida*, (prompt and fair justice) And I bet they play fairer. But globalization is changing us fast, and our judicial system is no longer the sacred cow it was, as people are demanding accountability there too. No power has a better claim to respect and admiration than the proper administration of justice. And none is more despicable when it does not live up to its responsibility.

Watching the tremendous inefficiency and shameless lies of this dismal process, I have suggested elsewhere that an Arab majlis is much better. There the sheik appoints a committee to investigate the claim on the spot, without the restrictive pipe vision of our trial, and without chosen witnesses.

As we are not pobrecito property grabbers, for privileged bureaucrats, we have to try to defend the property that might save us from ending our days in the gutter; for all the champions of social sensibility care. They will see it as a form of punishment for non conformity, and it will probably be that way, as we can not stoop.

It is very discouraging to meet this stubborn ganged up official refusal to recognize faults and correct them. The unfairness of the law is compounded with the unfairness of its application. I remember the devastating effect of the question of

senator Bush -the ex president's father- on the excesses of Joseph McCarthy: " Have you no shame?" Woe that we could respond to that taunt too, because McCarthy did have some left after all!

Now Defamation and Calumny. The relentless state of law, or how to foster corruption and persecution

There now developed a corollary skein that may or may not be a part of the tissue described although it fits so well. The reader will remember that a Germán exporter of "organic" bananas got onto our property by taking advantage of the fraudulent title obtained there through the means explained, and that he occupied four times the area fraudulently titled. He refused to leave our land until we sued him with the inevitable juicio ordinario , where we got nowhere.

When I was trying to get this company to stick to the 1/2 ha they had rented and out of the rest of the farm -with the mediation of UPANACIONAL, the National Small Farmers Union whose testimonies of several inspections on the spot the court threw out as unsatisfactory evidence- we also realized that this company had a fraudulent operation: our farm, which up to three months before their occupation, and for the last 20 years, had been submitted to intensive agrochemical applications, had been certified as organic so they could operate. All farmers delivering bananas there, whom we knew, were using agricultural chemicals on their farms, but were certified as organic by this company's certifier. None of these farmers were given the organic certification, for were they submitted to inspections. And they were being sold -deducted from their fruit deliveries and without receipt- an organic fertilizer manufactured by a company belonging to the same operation, at twice the market price plus a 50% charge for the organic certification, and with an erroneous label.

So I wrote a letter asking for the intervention of the state authorities in charge of overseeing organic agriculture. And a few weeks later I was sued for defamation and calumny against the company in question and against its manager, to whom these authorities had provided a copy of my letter. Otherwise nothing was done. Not even the "organics" here or in Germany, who are so adept

to denounce the big banana companies, especially if they are American, answered my letters. Which, considering the religious nature of that movement, is the equivalent of a church refusing to investigate a paedophylic priest because he is one of them, or for fear of hurting the church.

The legal problem for my defense now was that, although all the charges I had made were true, I had repeated the manager's lie to me that he was the certifier, and he was not. So I had in fact calumniated him. The charge of defamation was based on the fact that I had sent copies of my letter to the two or three other institutions charged with supervising organic farming in Costa Rica, and the thing was to prove that I had not done that to smear the guy. The unsavory character of the manager and of his operation was of no importance, and not under the scope of responsibility of the court, or of anyone else. Which is of course the purpose of these draconian defamation laws. They do not allow us to fight corruption; they punish the whistle blower. When corruption can not be denounced, the country gets a passing grade and we are all very happy. We may not have the substance, but we have the form, and that is enough for us. I had a good lawyer, but his worry was how to get me through that open flank described, and mine was to make an exposé even if I was condemned. The only thing I could not document was whether this outfit enjoyed the export subsidy since it was impossible to find out who the exporter was. It also figures.

Unlike the trials to try to recover our property, this did come fast. I had with me at the trial several true farm leaders, because we were determined to make an exposé. But the trial was postponed when the accuser, realizing at long last that we were after blood too, regardless of punishment, did not show up. To avoid the consequences his lawyer said the fellow had to travel to Germany to see a sick relative, and the judge accepted the excuse without any documentary proof and over the protests of my lawyer. Afterward the case was allowed to prescribe.

This anti defamation law allows a crook to punish anyone who dares to denounce him. The judge will apply the tunnel vision to the case, so that not a finger will be moved to investigate the accusation that brought the suit, or any other

evidence related to the charges of defamation. If you said the fellow stole a million pesos, but could only prove that he stole half a million, you will be found guilty of defamation and he will not be found guilty of theft, because that has nothing to do with the suit.

At long last the investigation

It was felt in government circles that since the action against me was finished, that should be the end of my complaint regarding the "organic" hoax.

But, all this had come about because we had asked for an investigation, and we wanted it.

I find disquieting coincidences all along, but it may be paranoia. I have had this feeling on other occasions when I had to fight evident corruption, for the last thirty years, always without success.

To carry out the investigation, the Ministry of Agriculture could not send their inspectors directly to check with the farmers we knew were delivering to this organic outfit. The law, we were told, required that they only investigate those in a list of growers furnished by the company under investigation! The ones they chose. And they could not investigate only the suspected party but had to include all the processors of organic bananas in the country: And the investigation turned out to consist of a sampling survey of fruit for analysis of chemical residues, which were never found anywhere. In other words, the suspect was given a white wash, which might have something to do with the fact that the political 4-3 sharing of power was conspicuously present on both sides of this "investigation": one in the company, one in the ministry. In fact, we had shown them the proof of this inconvenient family relationship to no avail: can't win any one.

Everybody was lily white, as we suspected they would be, although we had some hope when the government told us they had fired everybody, down to the secretaries and drivers, in that particular office. We later found they did fire down to drivers, but not starting from the top. It is fair to say that we do not blame the heads of these offices either, there is not much they can do to change the establishment, the civil administration, the 4-3 sharing of political power, or the mutualism with

business that fosters corruption: except perhaps to give us credit for objective criticism.

HELP anybody!

It occurred to us that we needed protection as persons. You know, the ombudsman's idea. Since there is here considerable evidence of malpractice, we might at least get some help from the professional unions which claim to watch the performance of their associates as the main reason for their existence. Their recognition of improper procedures would fortify our battered spirits, and might perhaps help our case in court. So, relentless optimists that we are, we made our appeals some two years ago.

At that time there was at the ombudsman's office a rare case of a lawyer (he is no longer there) who thought the abuse against my wife was evident, and suggested as a first step, that we appeal to the Judicial Inspection. The result was that the Judicial Inspection asked the judge whether he had acted improperly against her leaving her defenseless, and he said no. The procedure dictates that then he did not compromise her defence. The rest of the investigation rejected intervention on the basis of several laws and articles, one of which is that the fraudulent inscription in the National Registry was ordered by an alcalde (a judge) on the recommendation of a lawyer; that if the blueprints were fraudulent, that is not the responsibility of the Registry but of the professionals who made the blueprints; that malpractice is the responsibility of the professional unions; and that any way, this case was in the hands of the court where they could not interfere: or, let us say, in the hands of God.

We have mighty little confidence in this god; especially now that we committed the sacrilege of shooting down the jewel of their code: the law of Vivienda Campesina. But they are unresponsive anyway, and all this business of agrarian tribunals

5. Some non elected, self appointed, life long leaders claim to represent a landless membership who pays no fees and have no power of assembly. They adopt the non farm agendas of their donors: labor unions, state monopolies, environmentalists, and a land reform agrarianism that panders to peons and tenants, would not solve their problems, and complicate ours.

is hostile and injurious to the *true farmers*⁵; a set up that we ought to reject as unjustifiable. There has to be one law for all, or we will end up with a judicial system for urban property, one for rural property, one for the rural environment, one for the urban environment, one for men, one for women one for heterosexuals, one for homosexuals, etc. with a priestly caste and one *pontifex maximus* for each, and all very phoney.

Now going back to our appeals, we knew that the ombudsman and the unions could not interfere with the court of law. In fact we knew that our ombudsman has no teeth and could only make recommendations. That is what we were expecting, although we knew the Costa Rican ombudsman also has this collective turn of mind which takes this institution to focus its actions on things like combating a law to balance the budget, or on lowering taxes, or on the political control which corresponds to the National Assembly, or on Human Rights, or to mediate in political conflicts, but not on the problems of persons; something which may be due to the exclusive socialist diet the generation now in charge grew on, to the fact they are politicians, and to the fact that European ideas do not travel well in the tropics.

The topographer's union (*Colegio de Topógrafos*) accepted our claim reluctantly and dragging their feet. They gave us contradictory information, always with a hostile attitude. They could only get in touch with the two fellows who shared the responsibility for the draft which was illegally drawn, but if they did not respond, we had to file the inevitable civil suit. The civil suit is the Costa Rican cure all. But knowing of our appeal to the ombudsman's office, they told us they would continue their investigation. It has rendered nothing after two years except that the malpractice of one of the fellows can not be prosecuted because it prescribed.

The lawyers' union (*Colegio de Abogados*) rejected our complaint after two years of investigation because: "The lawyer who handled a case of *Vivienda Campesina* did not have the obligation to check the information given to him by

his client" which he can repeat without responsibility. -A local motto could very well be *eso no me toca a mí*: that is not my responsibility-. The hand of an unscrupulous lawyer was evident in the shenanigans of this client's application. But we can not say of which lawyer (!), although we can say that two plus two equals four. The appeal to the union was also rejected because all the evidence that this lawyer did know that specific property had title and owner is circumstantial (in dubio), and because the union does not have to intervene in a case which is already in the hands of the court. -In the hands of God, thus assigning some sort of divinity to the powers that be- Of course, if this thing were not in court, where we may still lose; it would have already been lost, and mighty good the union's intervention would do us then.

There is a circular inevitability here, and you always end up going full circle to where you started. To the contributors to that circularity everything is perfect, may be because it is a circle. Everybody says *eso no me toca a mí*; that is not my responsibility.

Whenever men have to give up after having done everything they could, they say "it's in the hands of God". That means there is nothing we can do, yet it also means: "we don't have to do anything". There is an audible sigh of relief when our bureaucrats find that the case is in court, as it has to be if anyone is to do something, someday.

I hope to have shown the way private property is treated in Costa Rica with the purpose that this may change, and because this is our duty as Costa Ricans, and not that of foreigners. As farmers we have to endure the constant criticism that we do not want to change in response to the demands of globalization, when we are one of the sectors that has changed the most. I propose the best way to get out of this impasse is for us to ask in our turn: And how about you?

Our king Ahad will not relinquish Naboth's vineyard, and our dogs will not lick his blood; they will lick Elijah's.