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Free Trade and Free Societies: The Effects of CAFTA on Democratic Institutions in Central America

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CLAREMONT McKENNA COLLEGE

**FREE TRADE AND FREE SOCIETIES: THE EFFECTS OF CAFTA ON
DEMOCRATIC INSTITUTIONS IN CENTRAL AMERICA**

SUBMITTED TO

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ABSTRACT

During the debate over the ratification of the United States-Central America-Dominican Republic Free Trade Agreement (CAFTA), the Bush Administration argued that implementation of a free trade agreement would help strengthen the nascent democracies in Central America. As a bilateral agreement, CAFTA would not only foment greater trade liberalization by expanding market access and eliminating trade barriers, but also help transform the entire commercial frameworks in Central America and promote economic development. These implications are not just economic – in particular, its provisions on intellectual property and investment rights, government procurement and labor standards affect the political institutions underpinning democracy and rule of law. This thesis assesses the role in which CAFTA has affected democratic institutions in Central America. It employs a methodology known as the Democratic Audit to evaluate consequences to four dimensions of democracy – the electoral processes, open and accountable institutions, civil and political liberties, and civil society. It demonstrates the value of using the Democratic Audit to assess a trade agreement's political effects with an application to Mexico after NAFTA. Then this work considers the case studies of El Salvador and Costa Rica, the most salient examples of democratic institutional change after CAFTA, by drawing on original research especially into the electoral politics and civil society development in these countries. Ultimately, the thesis argues that the most significant institutional effects of CAFTA have been its role as a political issue, rather than its content, in galvanizing popular opinion and reinvigorating electoral politics and civil society – ironically, not the consequences that the Administration originally had in mind. The research demonstrates that, even if some conclusions cannot be drawn due to the recency of CAFTA, the framework it has employed will be an invaluable tool for assessing future trade agreements.

CHAPTER 1

Introduction

In a 2005 address at the Heritage Foundation, a prominent Washington think tank, former United States Trade Representative and Deputy Secretary of State Robert Zoellick alleged that the implementation of a trade agreement with Central America would help consolidate democracy in a region beleaguered by a history of political authoritarianism and violence. The United States-Central America-Dominican Republic Free Trade Agreement (CAFTA) offered more than just an arcane debate on tariff levels, rules of origin, and intellectual property rights, a chance to weigh the entire political implications of regional economic integration. Zoellick called the impending agreement “the logical culmination of twenty years of democratic and social progress in Central America, nurtured and encouraged by the United States.”¹

According to Zoellick, CAFTA was an instrument to reinforce the budding democratic institutions in Central America established less than two decades prior. He explained that, “[CAFTA] will strengthen the foundations of democracy by promoting growth and cutting poverty, creating equality of opportunity, and reducing corruption.”² As per his reasoning, trade-induced growth would grant citizens a greater economic stake in their society, encouraging them to participate in their democracy. This oft-asserted

¹ Robert Zoellick, “From Crisis to Commonwealth: CAFTA and Democracy in Our Neighborhood” (lecture, the Heritage Foundation, Washington, D.C., May 16, 2005). Available at www.heritage.org/research/tradeandforeignaid/hl884.cfm: 3.

² Ibid., 4.

theoretical association between market capitalism and liberal democracy supports many of the claims enunciated by free trade proponents, but determining the actual strength of this relationship is far more complicated than they presume. This central argument, posed by Zoellick in the run-up to the U.S. Congress's approval of CAFTA, is the genesis for this thesis – to what extent has CAFTA strengthened democracy in Central America?

The Bush Administration employed the rhetoric of “democracy promotion” throughout the negotiation process. In January 2002, President George Bush announced that he would undertake formal trade talks with Central America, starting a multiyear negotiation process that culminated with the trade ministers of each country signing an agreement in 2004. Pursuant to the 2002 Trade Act that granted the President “fast track authority,” President Bush notified Congress before signing the trade agreement. His letter of intent to formally enter into a free trade agreement with Central America expresses this association again between trade liberalization and democratization:

Our Central American partners have made dramatic progress in transitioning from countries wracked by civil war to peaceful, democratic societies. This agreement will write a new page of our history with Central America – one that depicts sustained engagement in support of democracy, peaceful regional integration, economic opportunity, and hope.³

In this thesis, I will explore the accuracy of this rhetoric by evaluating the results of the Central American Free Trade Agreement on democratic political institutions in Central America. I will construct a methodology through which the influence of an international free trade agreement on domestic politics can be gauged. By considering

³ George W. Bush, *Notification of intention to enter into a free trade agreement (FTA) with the governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua*. Message to the House Committee on Ways and Means, 108th Cong., 2d sess., H. Doc. 108-159 (February 20, 2004).

different dimensions of democracy, this procedure will be able to isolate the factors and elements in CAFTA that have left the greatest impact on democratization in this region. In doing so, it will contribute original research and analysis to investigate a subject untouched by current scholarship. Most of the literature on trade agreements tends to focus on economic and socio-economic factors, and the recency of CAFTA even further reduces the amount of published work on the topic. Based on the theories that link economic growth with democratization and the actual copious language in CAFTA devoted to institutional capacity building, I will hypothesize that CAFTA has had a generally positive effect on democracy in Central America.

The remainder of this chapter is devoted to providing context to CAFTA by tracing its roots in the market capitalist reforms of the previous decade and the justifications articulated on both sides to sign such a transformational agreement. A general explanation of the textual content of CAFTA and the negotiation process will follow. Ultimately, this chapter serves as an introduction from which to launch into deeper analysis of the agreement's political results.

Free Trade Agreements

Bilateral free trade agreements proliferated after World War II. Despite a coordinated effort to establish multilateral or global agreements through the General Agreement on Tariffs and Trade (GATT) and later the World Trade Organization, many states pursued agreements with specific countries for more than economic reasons. Bilateral free trade agreements create preferences and disparities in the international

system while trying to achieve certain foreign policy objectives. They can distort trade if they divert the flow of goods, services and capital to less efficient producers than other countries outside the bilateral relationship.⁴ However, countries often employ bilateral trade agreements as diplomatic tools for foreign policy interests, as they can be negotiated to reward partners with economic privileges and to underscore a strategic alliance.

Developing countries in particular pursue preferential trade agreements to improve their access to foreign, developed markets and to integrate themselves into the new system of global competition. These agreements also help contribute to domestic growth by promoting foreign investment and expanding the internal goods market.⁵ While in some instances trade alone accounts for small changes in the economy, its impact can multiply the effects of domestic fiscal or monetary policy.

The economic rationale for free trade is well founded; in fact, support for trade is nearly ubiquitous among economists, no matter their ideological bent. The principle of comparative advantage, that countries should export the goods at which they are more efficient and import the rest, underpins more sophisticated theories of international trade, such as the Heckscher-Ohlin Model. These models demonstrate that trade is economically efficient and enables populations to consume goods above the level at which they can produce in autarky. However, as the models note, trade does redistribute wealth among social sectors. Thus, they reveal the central paradox facing countries in

⁴ U.S. Congressional Research Service, *The Dominican Republic-Central America-United States Free Trade Agreement* (RL31870, January 8, 2009) by J. F. Hornbeck, 4.

⁵ Jeffrey J. Schott, "Free Trade Agreements: Boon or Bane of the World Trading System," in *Free Trade Agreements: U.S. Strategies and Priorities*, ed. Jeffrey J. Schott (Washington, D.C.: Institute for International Economics, 2004), 10.

liberalizing trade flows – do the costs to the society outweigh the economic benefits of trade?

The amount of trade's benefits is often difficult to gauge. The models show that free trade lowers prices for consumers, a nationwide improvement in welfare that may actually seem negligible in some instances. Also, greater focus on one industry may diminish the ability of another industry to succeed. In developing countries, for example, agricultural sectors have endured significant obstacles after the enactment of trade agreements while the heavy manufacturing sector has expanded. Remnants of protectionism, such as agricultural subsidies and quotas, or inadequate implementation of the trade agreement can explain many of these real hardships encountered.

On its own, liberalizing trade does not primarily attempt to liberalize politics; trade is by definition an economic phenomenon. Yet trade can unintentionally result in an inordinate number of social and political changes as well. Free trade changes the economic structure, and because of its income distribution effects, it can especially give birth to popular movements to express their dissent or affirm their satisfaction with neoliberal ideology. These movements engage people in the political process and thus help in democratizing the system.

Often, foreign policy objectives trump economic interests in executing free trade agreements. Greater access to the relatively miniscule Central American market provided little advantages to the U.S., but it still piloted the trade negotiations. In this way, CAFTA resembled the trade agreements signed with Israel and Jordan in the 1990's. In terms of economic clout and size, Israel and Jordan pale against the United States, and

these countries overwhelmingly benefited from trade liberalization far more than the U.S. Yet the U.S. implemented free trade with these partners out of its foreign policy, rather than economic, interests to solidify its bilateral relationships.⁶ The Office of the U.S. Trade Representative, the executive agency charged with coordinating and negotiating the American foreign trade agenda, assesses the level of cooperation between U.S. foreign policy goals and the possible influence of free trade to economic growth and democratization before entering negotiations with a potential trade partner.⁷ Trade can serve as a reward to weaker allies for their support of American policy as well as a means to further American goals in that country. “Countries that are prosperous encourage political pluralism and a strengthening of democratic governance. In turn, these countries are more stable politically and better markets for U.S. exporters and investors.”⁸ The intricate relationship among free market capitalism, economic growth and democracy – the subject of Chapter 2 – thus coalesces behind free trade agreements.

Free Market Reform in Latin America and the Antecedents of CAFTA

The notion of trade as an economic panacea for development came into vogue in the mid-1980's, and trade fervor swept Latin America especially in subsequent years. Market liberalization forged a new economic and political direction for many of these nations as they transitioned from authoritarian, state-driven economies or from outright conflict. Such is the case in the small countries of Central America, where during the

⁶ Schott, 52.

⁷ Ibid., 370.

⁸ Ibid.

1980s – the so-called “Lost Decade” – Guatemala, Nicaragua, El Salvador and Honduras (constituting all the CAFTA signatories except Costa Rica), endured violent civil wars and government-sponsored repression. At the same time, the economies across the hemisphere collapsed under the foreign debt crisis that followed the 1982 Mexican peso default. Structural adjustment programs to restore the Latin American economies forced these states to abandon the import substitution industrialization that had initially delivered remarkable growth rates but had swollen their foreign debt. As Central America eased out of its conflicts, its governments accepted the dominant economic paradigm, later known as the Washington Consensus, and embarked on market-based reforms. These included privatization of state enterprises, stabilization of currency and inflation, deregulation of industries, and liberalization of trade flows. By minimizing the state in economic affairs, these reforms also marked a fundamental turning point in the restructuring of political institutions.⁹

The processes to broker peace in Central America also attempted to establish democracies in a region until then ruled by dictators from the oligarchic elite or repressive military juntas. The countries’ authoritarian past could have possibly frustrated the democratic experiment. Costa Rica has always proven an exception to the norm, as this country has maintained a stable democracy since 1948 in part due to its lack of armed forces. Still, even in this case, the economic restructuring of the late 20th Century exerted pressures on that country’s democratic institutions. In these countries,

⁹ Jochen Hippler, “Democratisation of the Third World After the End of the Cold War,” in *The Democratisation of Disempowerment: The Problem of Democracy in the Third World*, ed. Jochen Hippler (London: Pluto Press and the Transnational Institute, 1995), 23.

democratization had to come in tandem with economic development. Exclusion from the economic system because of the widespread poverty further excludes citizens from in the political process. Incorporating people once marginalized from society would expand and solidify the limits of democracy.¹⁰

The pro-market ideology, also called neoliberalism, became hegemonic across Latin America. The region began to integrate itself into the global economy by promoting competition and attracting foreign investment through state privatization programs, bank deregulation and strengthening of investor protections. The reduction in trade and non-tariff barriers invited multinational corporations to extend their operations in the region. Mexico and Central America in particular saw a rise in the *maquila* or low-technology manufacturing sector, and all countries in the region increased their exports of low-skill manufactured goods.¹¹ Bilateral agreements to expand trade and to promote economic growth did not necessarily lead to technological advancement in these countries; instead, they forced Latin American countries to rely on their supply of natural resources and unskilled labor rather than improve their human capital and potential for economic growth.¹²

Bilateral trade agreements, including most notably CAFTA in 2002, were seen as stepping stones to the establishment of a larger multilateral pact. At the 1994 Summit of the Americas, held in Miami, delegates from all countries in the Western Hemisphere except Cuba announced a goal to establish the Free Trade Association of the Americas

¹⁰ Xavier Gorostiaga, "Problems and Chances of Democracy in Central America," in Hippler, 77.

¹¹ Duncan Green, "A trip to the market: the impact of neoliberalism in Latin America" in *Developments in Latin American Political Economy*, ed. Julia Buxton and Nicola Phillips (Manchester: Manchester University Press, 1999), 20.

¹² *Ibid.*, 21.

(FTAA). The FTAA would reduce or eliminate all barriers to inter-hemispheric trade. The negotiation of many bilateral accords notwithstanding, talks to create the FTAA began to falter after 2001 due to a groundswell of opposition from the governments of larger countries in South America and from civil society organizations. The breakdown of the Doha Round of World Trade Organization negotiations and a deal cut among FTAA negotiators that allowed individual countries to opt out of certain provisions in the language further gutted the potential agreement.¹³ With the prospect of hemispheric free trade dimming, the Bush Administration campaigned even stronger for ratification of CAFTA. Ultimately the FTAA was pronounced dead at the 2005 Summit of the Americas in Mar del Plata, Argentina.

Because of their small size and economic influence, each Central American country needed to find partnerships with one another and outside the region to fuel their development. Regional integration provided a first step to establishing larger economic ties. In 1959, the Central American countries created the Central American Common Market, a customs union with a common external tariff, but it collapsed after twenty years amid the violence across the region. Attempts to restore the political system also sought improved regional integration in order to tackle the economic and social challenges that pervade Central America with a stronger, unified voice. In the Tegucigalpa and Guatemala Protocols of 1991 and 1993, respectively, regional leaders sought to revive the Central American Common Market by establishing a lower common external tariff and harmonizing the tariff schedules of each individual country.

¹³ For a detailed evaluation of the FTAA negotiations, consult Jeffrey J. Schott, *Does the FTAA Have a Future?* (Washington, D.C.: Institute for International Economics, 2005).

In addition to this common liberalization plan, Central American states individually began to dismantle their trade barriers as part of pro-market reforms in conjunction with peaceful democratization. By the middle of the 1990's, the region possessed some of the lowest tariff levels in Latin America; average import duties in the CAFTA countries fell from 45 percent to 7.1 percent.¹⁴ These policies help expand trade flows between Central America and the rest of the world, making the region relatively open compared to the rest of the hemisphere. Entering into CAFTA negotiations, Central America already possessed few barriers to trade left to dismantle.

Additionally, by then Central America enjoyed preferential access to American goods through the Caribbean Basin Initiative, approved in 1983. This initiative allowed Central American countries (and other parties to the agreement) the ability to purchase a substantial number of U.S. products duty-free. In particular, the Caribbean Basin Initiative expanded regional textile trade, conferring on Central American manufacturers considerable privileges to export apparel to the United States.¹⁵ Yet Central American countries feared that their standing as trade partners would diminish after the U.S. signed the North American Free Trade Agreement (NAFTA), which bestowed new privileges to Mexico. Frustrated, Central American countries lobbied for "NAFTA parity," or equivalent terms of access as Mexico had obtained in NAFTA. Their governments presented U.S. President Clinton with a potential trade agreement during his visit to Costa Rica in May 1997. The proposal called for immediate "NAFTA parity" and the

¹⁴ Carlos Felipe Jaramillo and Daniel Lederman, *Challenges of CAFTA: Maximizing the Benefits for Central America* (Washington, D.C: World Bank, 2006), 18, 21.

¹⁵ *Ibid.*, 22.

start of negotiations for a permanent free trade agreement. Lacking the Trade Promotion Authority (fast track) privileges he needed to enter into further trade negotiations, Clinton declined the offer, and the notion of a trade agreement with Central America was tabled.¹⁶

The Bush Administration renewed the possibility of trade liberalization with Central America in January 2002, facilitated by the Congressional approval that year of Presidential fast track authority.¹⁷ Changes to preexisting trade relations with Central America with the passage of the Caribbean Basin Trade Partnership Act (2000) basically made the regulations equivalent to NAFTA in terms of market access. Still, Bush promoted the negotiation of a permanent, bilateral trade agreement specifically with Central America.¹⁸ The agreement was modeled after NAFTA with respect to the elimination schedule of tariff and non-tariff barriers and the language particular to intellectual property rights, services and investment.¹⁹ In certain respects CAFTA actually surpassed its predecessor – mechanisms were included to enforce investor rights, labor, and environmental provisions.²⁰ CAFTA enhances the privileges enjoyed by the

¹⁶ José M. Salazar-Xirinachs and Jaime Granados, “The U.S.-Central America Free Trade Agreement: Opportunities and Challenges,” in Schott, *Free Trade Agreements: U.S. Strategies and Priorities*, 226.

¹⁷ Throughout this thesis, in contexts specific to CAFTA provisions, the term “Central America” will refer to the five countries that are party to the treaty – Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua – and will exclude Belize and Panama. Also, general references to Central American CAFTA signatories, unless otherwise specified, will include the Dominican Republic, even though that country is not geographically a member of Central America.

¹⁸ Congressional Research Service, 8.

¹⁹ Carlos A. Imendia, “Fondo de Desarrollo del CAFTA: Una propuesta,” in *Revista Centroamérica en la Economía Mundial del Siglo XXI* (San Salvador: Universidad Centroamericana “José Simeón Cañas,” 2003), 20.

²⁰ Office of the U.S. Trade Representative, *CAFTA Rhymes with NAFTA But Is Better in Many Ways* (Washington, D.C.: Office of the U.S. Trade Representative, June 2005).

Caribbean Basin Initiative and other preferential trade agreements by establishing reciprocal duty-free treatment for U.S. exports to Central America. In this way, it makes little adjustment to the existing rules that allowed nearly 77 percent of Central American goods to enter the U.S. without tariffs.²¹

Economic rationales fail to explain the American enthusiasm for signing CAFTA. This economic juggernaut dwarfs Central America: trade with the DR-CAFTA countries accounts for only 1.5 percent of all American commerce abroad, and their combined GDP equals less than 1 percent the size of the American economy.²² Upon implementation, American consumers would enjoy duty-free access to a plethora of Central American products, and American farmers would take advantage of an even larger market for agricultural goods. These advantages were hardly momentous – far more significant in economic terms were the increased potential opportunities for investment by U.S. corporations. Overall, though, U.S. strategic interests were at play – CAFTA supposedly would promote economic and social stability in Central America. This objective had major national security and foreign policy implications, given the large transnational crime and narcotics problems threatening Central America. Signing CAFTA would also signal to the rest of the hemisphere a U.S. commitment to free trade and toward the eventual FTAA.²³

Increased trade with the U.S. would afford significant commercial opportunities for Central America as well. Central American trade with the U.S. before the agreement

²¹ Office of the U.S. Trade Representative, *Free Trade with Central America: Highlights of the U.S.-Central America Free Trade Agreement* (Washington, D.C.: Office of the U.S. Trade Representative, 22 April 2009).

²² U.S. Congressional Research Service, 8.

²³ Salazar-Xirinachs and Granados, 229-33.

amounted to 56 percent of exports and 44 percent of imports, demonstrating the economic caliber of this relationship.²⁴ CAFTA would open foreign trade even more by promoting and diversifying regional agricultural and textile exports, attract foreign investment, and supposedly improve economic institutions. This would theoretically trigger significant economic development, especially as the Central American industries adopted new technologies requiring higher skill sets and, in turn, compensating workers at a higher wage. Politically, it would further deepen an alliance with the United States.²⁵ Detractors complained that the development potential was a delusion, as trade liberalization would only improve those low-skill industries in which Central America possessed a comparative advantage. In particular, it would increase the dependence on agricultural export and depress real wages. Thus, CAFTA would not alleviate poverty after all.

The U.S. International Trade Commission, an agency in the Commerce Department, forecast that after full implementation, CAFTA would increase U.S. exports to Central America by \$2.7 billion or 15 percent, while imports would increase by \$2.8 billion, or 12 percent. This boost in trade would have a minimal effect on the American economy.²⁶ Still, the U.S. exported nearly \$11 billion in goods to Central America in 2003, more than its exports to Russia, India and Indonesia combined. Across Latin America, only Mexico will exceed the market for American exports created by

²⁴ U.S. Congressional Research Service, 10.

²⁵ Salazar-Xirinachs and Granados, 234-6.

²⁶ U.S. Congressional Research Service, 15.

implementing CAFTA with the five Central American countries plus the Dominican Republic.²⁷

CAFTA's Content and Language

The economic effects of CAFTA, however, derive from only one part of the trade agreement's provisions. The agreement deals with far more subjects than tariff procedures and market access; it purports to modernize commercial regulations and institutions as a whole. In this way, CAFTA can be considered a transformational policy with repercussions beyond the economic sphere. These repercussions are felt in the democratic institutions.

The preamble to the trade agreement reveals much about the intentions of the parties that adopted the agreement. The first clause resolves to "strengthen the special bonds of friendship and cooperation among their nations and promote regional economic integration." Rather than begin the trade agreement with trade-related articles, the signatories opted to signal their foreign policy goals. While the majority of the twenty clauses deal with trade-related matters, a few also refer to the goals of strengthening commercial regulations and labor and environmental standards. These stipulations are significant themes in the agreement and will become central to this thesis, as they demonstrate that CAFTA deals with far more than just trade laws.

Expanding free trade, of course, forms the fundamental objective of CAFTA. As a regional trade agreement, CAFTA itself is composed of identical obligations and

²⁷ Office of the U.S. Trade Representative, *Free Trade with Central America: Highlights of the U.S.-Central America Free Trade Agreement*.

commitments for all parties, but each country defined its individual schedule to implement the market access provisions with the United States. The agreement supersedes and enhances market access provisions, which govern trade barriers such as tariffs, quotas and rules of origin, extended by the U.S. to Central America under previous preferential treaties such as the Caribbean Basin Initiative and the Generalized System of Preferences. Each country negotiated an individual period over which to phase out tariffs on its most sensitive goods. More than eighty percent of American consumer and industrial exports and more than half of current American agricultural exports to Central America would become duty-free immediately, and the remaining tariffs would be eliminated in stages over the subsequent ten to fifteen years.²⁸ In turn, the provisions would lift tariffs on Central American textiles, one of that region's largest exports, and give these goods preferential protections to make them more competitive against apparel imported from Asia. Unique to this treaty are the duty-free benefits granted to products with fabric produced in Mexico and Canada to encourage integration of the textile industries across North and Central America.²⁹ Agricultural commodities, also essential for the Central American export market, faced remarkable changes as a result of CAFTA. Tariff elimination would occur over a negotiated timeframe for "sensitive goods" – crops like maize, potatoes and rice with considerable importance to the agricultural sector. Notwithstanding intense lobbying from the U.S. sugar industry, CAFTA pledged to double the quota on sugar imports from Central America, but did not

²⁸ Office of the U.S. Trade Representative, *Free Trade with Central America: Highlights of the U.S.-Central America Free Trade Agreement*.

²⁹ "Adoption of the Central American Free Trade Agreement," *American Journal of International Law* 98, no. 2 (2004): 351.

commit the U.S. to reduce its farm subsidies, to the chagrin of CAFTA critics.³⁰ In negotiations, the delegates managed to erode once stubborn agricultural protectionism while still recognizing the importance of protectionist policies to support this vital sector, seen in the careful tariff elimination schedules.

Beyond its stipulations on market access, CAFTA transforms the commercial framework under which the Central American governments and economies operate. By incorporating chapters that deal with investment, intellectual property rights, government procurement, services, and labor and environmental standards, the trade agreement presents a significant opportunity to advance a market-based economic agenda. In many cases, it introduces foreign competition in sectors once regulated extensively by the state. This issue is particularly contentious and exposes CAFTA to some of its most strident resistance. While advocates observe the benefits of improved competition to economic efficiency and development, detractors express outrage that such an international treaty could breach the powers of Central American governments to govern their economies. For example, the investment stipulations grant nondiscriminatory rights to foreign parties, thus reducing the leverage of the Central American regulatory state to protect against any investment by a multinational corporations considered predatory or in conflict with the interests of the local population. Raúl Moreno, a noted Salvadoran economist and outspoken opponent of CAFTA alleges, “with these ‘extra-commercial contents, the

³⁰ Jaramillo and Lederman, 41-5.

agreements invade the sovereign competences of states and affect the compliance and effectiveness of economic, social, and cultural rights of the population....”³¹

Of particular importance to a study of political institutions are the subjects of intellectual property and government procurement regulations, arbitration procedures, and environmental and labor standards. The intellectual property laws in Chapter 15 encompass patent and copyright laws and extend protections for digital music recording and software. These safeguards in effect deal with a more recent phenomenon in the informal economies in Central America and have provoked specific concern because they would crack down on pirated media sales – a reliable source of income for many poor individuals. CAFTA signatories agree to improve their intellectual property laws and their enforcement. These norms ensure that all businesses and trademark holders receive equal treatment and that patent rules resemble U.S. standards.³² Granting Central American firms equivalent rights does not necessarily suggest that they will effectively have equivalent leverage and protections as U.S.-based multinational corporations. CAFTA opponents fear that the laws will enable more influential American companies to expand their trademarked businesses into Central America to the detriment of native enterprises. One study of the availability of pharmaceutical drugs in Guatemala determined that CAFTA’s monopoly protections privileged brand-name drugs over their generic versions, thereby reducing access to generics and inflating drug prices.³³

³¹ Raúl Moreno, “Free Trade Agreements, CAFTA and FTAA: Key Pieces in Accumulation of Transnational Capital,” in *The Bush Doctrine and Latin America*, ed. Gary Prevost and Carlos Oliva Campos (New York: Palgrave MacMillan, 2007), 173.

³² U.S. Congressional Research Service, 22.

³³ Ellen R. Shaffer and Joseph E. Brenner, “A Trade Agreement’s Impact on Access to Generic Drugs,” *Health Affairs* 28, no. 5 (2009): w957-w968.

In terms of government procurement, or the contractual acquisition of goods and services by government agencies, in Chapter 9 CAFTA grants non-discriminatory rights to potential contract bids by Central American public and private entities, enabling Central American firms to purchase U.S. federal and state government contracts and vice versa. The provisions require fairness and transparency in bidding processes, including advance notification of public purchases, and they clarify that bribery or corruption in bids is a criminal offense according to all the Central American legal codes.³⁴ By strengthening these laws, the trade agreement effectively restricts opportunities for corruption, for example by arranging contracts through non-competitive procedures or through personal connections. The text of the agreement further obligates the Central American governments to create an impartial mechanism to review compliance with the procurement and transparency laws and to invalidate any entity that has committed fraud.³⁵

CAFTA builds on regulations in NAFTA to create norms for the U.S.-Central American market. The procedures in CAFTA to resolve commercial and labor disputes are identical. If initial government-to-government consultations do not come to a consensus, an arbitration panel comprised of independent experts determines if a violation occurred. Under this outcome, the petitioning country can demand monetary remuneration or suspend trade benefits.³⁶ Because the dispute provisions recommend fines as the primary penalty, this arbitration method is considerably stronger against

³⁴ U.S. Congressional Research Service, 21.

³⁵ Jaramillo and Lederman, 62.

³⁶ Office of the U.S. Trade Representative, *Dispute Settlement: Equivalent Procedures & Remedies for Commercial and Labor Disputes* (Washington, D.C.: Office of the U.S. Trade Representative, July 2007).

offending governments while not potentially damaging to ordinary workers who might suffer from trade sanctions. By creating a permanent process, CAFTA creates expectations for businesses and governments and intends to create a more enforceable legal framework. Partly because of this framework, the CAFTA arbitration provisions are stronger and more transparent than those prescribed by NAFTA,³⁷ although that treaty, to its credit, did pioneer the inclusion of investment dispute mechanisms among trade agreements.

Closely related to the question of dispute regulation and intellectual property rights are the possible environmental issues posed by CAFTA. Enemies of free trade claim that these agreements permit large corporations that locate operations in developing countries to exploit feeble environmental regulations and enforcement in nations with which they have no relationship beyond their financial investment. While this was a large issue in the American ratification of NAFTA, the U.S. Congress – civil society organizations engaged in the debate notwithstanding – expressed fewer objections to environmental standards in CAFTA because of the inclusion of environmental language in the text itself. Nonetheless, significant concerns in Central America did remain about the environmental impact of the treaty.

The negotiations of CAFTA involved the input of environmental groups in the process through the public submissions text of its Environmental Chapter (Chapter 17). CAFTA was the first trade agreement to include a public submissions mechanism in its body, building off of a side agreement to the NAFTA negotiations. In addition, the

³⁷ *Ibid.*, *CAFTA Rhymes with NAFTA but Is Better in Many Ways.*

negotiators signed an Environmental Cooperation Agreement to identify goals and benchmarks to coordinate legislative action to protect the Central American environment.³⁸ Ten Central American environmental advocacy groups sent a letter to Robert Zoellick declaring their support for CAFTA because of its Environmental Chapter. In particular, they lauded the specific language calling on all countries to enforce their national environmental regulations: “the proper enforcement of national laws is precisely what will help mitigate environmental degradation in the region and the reason why we endorse the environmental provisions set forth in this agreement.”³⁹ They solicited continued civil society participation in the negotiations as well to guarantee that the environmental provisions were not degraded. The governments established a commission in the Secretariat for Central American Economic Integration, a pre-existing body, to monitor environmental matters in the region.

More than environmental concerns, though, the question of labor rights as embedded in the text provoked criticism of CAFTA. Chapter 16 explains CAFTA’s commitment to labor standards among its signatory nations. Modeled after provisions in NAFTA and the U.S.-Jordan Free Trade Agreement, it obligates members to “not fail to effectively enforce” the labor statutes already integrated their legal codes. Defiance of this pledge can subject the offending country to arbitration through the dispute settlement procedure entailed in CAFTA and to fines or trade sanctions.⁴⁰ This threat of retaliation

³⁸ Ibid., *Environmental Firsts in CAFTA* (Washington, D.C.: Office of the U.S. Trade Representative, February 2005).

³⁹ Ibid., *Support from Environmental Groups* (Washington, D.C.: Office of the U.S. Trade Representative, February 2005).

⁴⁰ U.S. Congressional Research Service, *DR-CAFTA Labor Rights Issues* (RS22159, June 2, 2005) by Mary Jane Bolle, 3.

makes CAFTA the strongest yet among U.S. free trade agreements in terms of labor protections.

In addition to this disciplinary approach, CAFTA and its side negotiations also detail particular ways that each Central American country and the Dominican Republic can modernize their labor ministries to improve regulation. Through trade capacity initiatives passed alongside CAFTA ratification, the U.S. government authorized funds specifically for this purpose. The substance and efficacy of these projects will be explored in detail in the El Salvador chapter.

During the negotiation process, the Vice Ministers for Trade and Labor in the CAFTA countries published a joint report on the implementation and enforcement of labor standards in their country. Published under auspices of the Inter-American Development Bank, its recommendations became key in the development of additional trade capacity projects. The “White Paper,” as it is known informally, identified six priority issues for each country: enhancing labor law implementation, improving the budget and personnel needs of the labor ministries, strengthening the judicial system for labor law, establishing protections against discrimination in the workplace, eliminating the worst forms of child labor, and promoting a “culture of compliance.”⁴¹

The Bush Administration claimed that the Central American nations already upheld relatively high labor standards due to their compliance with international norms. The White Paper cites a study by the International Labor Organization that demonstrated that provisions in the constitutions and legal codes of every CAFTA country largely

⁴¹ DR-CAFTA Ministers of Trade and Economy, “The Labor Dimension in Central America and the Dominican Republic.” April 2005, viii-ix.

conformed to all of its fundamental labor standards.⁴² Nonetheless, this insight did not assuage the apprehensions of CAFTA's critics, who emphasized its possible liabilities for labor rights. CAFTA does not obligate signatories to approve stronger labor standards than those already in place. Indeed, the threat of penalties for inadequate enforcement could discourage countries from adopting improved laws if their governments cannot guarantee that they could enforce these new laws either.

CAFTA critics contended that the agreement's language was not tough enough to have a positive effect on labor rights. One report by the International Labor Rights Fund, commissioned by the U.S. Labor Department, called the working conditions in the CAFTA countries "dismal," and that systemic deficiencies frustrated attempts to enforce existing labor laws. Dissatisfied with these negative findings, the Labor Department tried, unsuccessfully, to suppress the report, and upon its public release, one department spokesman derided the report as "rife with unsubstantiated and unverifiable claims, questionable statistical data, and biased statements of findings and conclusions."⁴³ Such obfuscation did not ultimately sway the Congressional vote on the legislation, as the Senate approved CAFTA a day after the media reported the story.

Civil society groups in the U.S. and Central America also renounced the agreement for its weak labor rights protections. Human Rights Watch claimed that the agreement did not require that countries comply with international labor standards – rather, it exhorted them to "strive to ensure" compliance – nor did it create any impetus

⁴² International Labor Office, *Fundamental Principles and Rights at Work: A Labor Law Study* (Geneva: International Labor Organization, 2003).

⁴³ Quoted in Juan Forero, "Report Criticizes Labor Standards in Central America," *New York Times*, July 1, 2005.

for them enforce their existing laws. “CAFTA provides little meaningful incentive, however, for parties to improve protections for workers’ human rights.”⁴⁴ Congressional Democrats also criticized a lack of explicit guarantees of rights to unionize and to prohibit child labor and employment discrimination.⁴⁵ The substance and veracity of such arguments will be explored in detail in the subsequent chapters, as the labor provisions of CAFTA will be a significant component of this thesis.

Apprehensive of entering into an obviously asymmetrical trade relationship, the Central American negotiators requested technical assistance in executing many of the conditions of the agreement. Chapter 19 committed the parties to coordinate trade capacity building projects that would help these governments develop the capabilities to handle these trade and non-trade related obligations and to benefit from trade liberalization. Each country submitted a National Action Plan detailing its individual needs, which could be met through technical or financial assistance. During the Senate debate, the Trade Representative’s office consented to supporting \$40 million in labor capacity building projects in order to secure Democratic votes. The provisions of this allocation were to fund projects to strengthen labor enforcement by the Central American trade ministries and to underwrite monitoring of working conditions by the International Labor Organization. While the Administration heralded this authorization as substantiating its attention to labor conditions in CAFTA, outside observers remained

⁴⁴ Human Rights Watch, *CAFTA’s Weak Labor Rights Protections: Why the Present Accord Should be Opposed* (New York: Human Rights Watch, March 2004), 2.

⁴⁵ Elizabeth Becker, “Amid a Trade Deal, A Debate Over Labor,” *New York Times*, April 6, 2004.

skeptical that the relatively paltry allocation would be sufficient enough to render them effective.⁴⁶

Trade capacity building engaged a number of different actors in the CAFTA negotiation process. Additional projects receive funding from other U.S. federal agencies, the private and non-profit sector, and regional organizations and development banks, through coordination by a Trade Capacity Building Working Group.⁴⁷ Projects vary from programs to help Central American businesses to take advantage of new opportunities to expand their market abroad, to build or purchase modern infrastructure, and to develop the rural agricultural sectors.⁴⁸

After President Bush first announced his intention to sign a free trade agreement with Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua in January 2002, negotiations of CAFTA from start to finish lasted over two years. They occasioned nine separate rounds between January and December 2003, with Costa Rica appealing for additional meetings with the American delegation. The U.S. began separate discussions to negotiate a separate free trade agreement with the Dominican Republic in January 2004, but in March of that year, the two countries announced that they would attach that agreement to the pending CAFTA agreement, as the Dominican Republic was willing to accept the framework laid out by CAFTA.⁴⁹ On May 29, 2004, the U.S. and the Central

⁴⁶ Human Rights Watch, 6.

⁴⁷ John Audley and Vanessa Ulmer, *Strengthening Linkages Between U.S. Trade Policy and Environmental Capacity Building* (Washington, D.C.: Carnegie Endowment for International Peace, July 2003), 13.

⁴⁸ *Ibid.*, 7.

⁴⁹ The common political, economic and social background in Central America is imperative to this thesis. Conversely, as the historical and political context of the Dominican Republic aligns it with the Caribbean Basin, not Central America, an evaluation of this country falls outside the

American countries formally signed the trade agreement in Washington D.C., with an additional ceremony held in August to incorporate the Dominican Republic.⁵⁰

Once the presidents of each country party to CAFTA signed the agreement, they submitted it to their respective legislative branches for ratification. El Salvador blazed ahead by first ratifying CAFTA in December 2004, followed by Honduras and Guatemala the following March. The Dominican Republic and Nicaragua affirmed their participation in the fall of 2005, while Costa Rica delayed its decision until after a popular referendum narrowly approved CAFTA in October 2007. The trade agreement entered into force in stages, depending on the ratification schedule of each country: throughout the year following March 1, 2006, the U.S. implemented CAFTA with all parties except Costa Rica, where implementation occurred on January 1, 2009.

In the United States, controversy over CAFTA protracted the legislative decision to approve the agreement. Pursuant to the Trade Promotion Authority, Congress could only approve or reject the trade agreement as signed by the Executive without inserting amendments. Strident opposition from Democrats due to the labor and environmental provisions in the treaty complemented the outcry from populist Republicans who feared that CAFTA would cost American jobs in a reprise of NAFTA. In June 2005, the Senate approved the legislation with a vote of 54 to 45. The House of Representatives decision

scope of this thesis. Because CAFTA represents a political issue in and of itself, this thesis will henceforth call the agreement CAFTA, ignoring the prefix (or suffix, in some cases) “DR,” which refers to the inclusion of the Dominican Republic. This is not to downplay the role of this country in the context of trade – in fact, in 2009 U.S. bilateral trade with the Dominican Republic exceeded trade with any other CAFTA member – but to adopt the language generally employed in political discussions of the agreement in Central America.

⁵⁰ For a detailed chronology of CAFTA negotiations, consult U.S. Congressional Research Service, *The Dominican Republic-Central America-United States Free Trade Agreement*, 30-1.

in July endured some parliamentary drama, as the Republican leadership kept the vote period open beyond the customary limit to garner last-minute support – CAFTA finally passed with a miniscule 217-215 margin along mostly party lines.⁵¹

Because of the divergent implementation dates, the availability of data describing the economic effects of CAFTA for each participant ranges. Since they are all different countries, the data is not uniform, but the overall similarity in the Central American cases enables us to make comparisons and draw conclusions about the impact of CAFTA on the whole region. Between 2006 and 2009, U.S. exports to CAFTA countries (including the Dominican Republic) have increased by \$3.1 billion, or 18 percent, and imports from that region have increased by \$750 million, or 4 percent.⁵² One analysis by the U.S. Agency for International Development determined that industrialization through CAFTA-related initiatives has failed to reduce rural poverty, even while employment in the agricultural sector has declined in relative terms. In fact, rural poverty has actually increased across the region. USAID thus determined that “the agricultural sectors are ill-prepared to compete under CAFTA-DR or in the global economy.”⁵³ Other studies have corroborated this finding. Overall, many of the claims argued by CAFTA proponents have yet to come to fruition – unemployment has not dropped substantially, nor have

⁵¹ Edmund L. Andrews, “House Approves Free Trade Pact,” *New York Times*, July 28, 2005.

⁵² Calculated from data available at International Trade Administration, “Trade Stats Express.” National Trade Data.

⁵³ U.S. Agency for International Development, *Optimizing the Economic Growth and Poverty Reduction Benefits of CAFTA-DR*. (Washington, D.C.: U.S. Agency for International Development, September 2008), 2.

prices for normal consumer goods.⁵⁴ One major difficulty, however, is in isolating the effects of trade liberalization on these economies that are already subordinated to the world market. Therefore, one must be skeptical of all studies linking economic indicators to CAFTA.

The 2009 financial crisis in particular affected Central America, and its negative consequences may have overshadowed any strides made through trade liberalization. Extensive trade and financial integration with the United States through CAFTA exposed Central America to the crash emanating from that economic powerhouse. According to one estimate, during the crisis a 1.0 percent drop in U.S. Gross Domestic Product (GDP) correlated to a 0.7 to 1.0 drop in Central American aggregate economic activity.⁵⁵ As more in-depth assessments of the economic indicators for El Salvador and Costa Rica will demonstrate, the crisis reversed positive growth trends in the region. Its impact on other social measures already altered through CAFTA, however, is still open for debate.

Procedures

This thesis will evaluate the effects of CAFTA to the democratic political institutions in Central America. Without any conventional methodologies to consider this topic, I have developed my own procedure for its analysis. In Chapter 2, I will provide a theoretical foundation to this study in which I consider definitions of democracy, political liberalism, and their relationship to market capitalism and economic development. With

⁵⁴ The Stop CAFTA Coalition, "Introduction," in *DR-CAFTA Year Two: Trends & Impacts* (Washington, D.C.: Stop CAFTA Coalition, 2007), 7.

⁵⁵ Andrew Swiston, *Spillovers to Central America in Light of the Crisis: What a Difference a Year Makes* (Washington, D.C.: International Monetary Fund, February 2010), 4.

this theory I will construct my methodology, basing myself on the Democratic Audit, a framework that categorizes four distinct dimensions of democracy that the trade agreement has influenced. To demonstrate the validity of my model, in Chapter 3 I will apply the methodology to Mexico after the implementation of NAFTA, a case with a wider body of literature to demonstrate the effects of that trade agreement on its democratic transition.

In the substantive sections of my thesis, I will apply my methodology to two selected case studies, El Salvador and Costa Rica. In both cases, I will consider evidence from a variety of primary sources to determine the effects that CAFTA has had thus far on these countries' democracies. The political institutions in El Salvador, as I allege in Chapter 4, experienced a weakly positive effect because of CAFTA. Costa Rica is more difficult to assess because of the short duration of its implementation, as I explain in Chapter 5. I determine that as a policy itself, CAFTA had a positive effect on democracy, while its textual obligations have had an indeterminate effect thus far. In Chapter 6, I reflect on the two case studies, drawing also from the NAFTA example, and I provide comparisons and conclusions from them. I finally offer some recommendations for the use of my methodology to appraise future trade agreements.

El Salvador and Costa Rica are both particularly strong cases to consider the effects of CAFTA. As a strong advocate for the agreement and the first country to implement CAFTA, El Salvador is an obvious choice, especially given the longer length of time that the agreement has been in force there. Costa Rica, on the other hand, offers a peculiar case because of its distinctive political history and democratic stability. The

prolonged ratification period culminating in a nationwide referendum on CAFTA ratification also makes Costa Rica remarkable; still, as I will show, my methodological framework is strong enough to assess this unusual episode.

The Dominican Republic does not share the same history and social context as Central America, even though their economies are similar. Thus, I did not include it in my analysis. Nicaragua and Guatemala would also provide some lessons, but there is a greater dearth of data and analysis of CAFTA's impact in these countries. The 2009 constitutional crisis in Honduras, in which the army deposed President Manuel Zelaya in a coup d'état, complicates the exercise of the trade-democracy methodology because of the sudden abrogation of democracy in that country. In fact, the U.S. threatened to suspend its commercial privileges immediately after the coup, which disrupted foreign investment and trade.⁵⁶ For these reasons, Honduras does not serve as an adequate case currently for this study.

In closing his remarks at the Heritage Foundation, Robert Zoellick maintained that, "it would be a mistake of historic proportions if we turned our back on these struggling democracies" by not ratifying CAFTA.⁵⁷ Now, almost five years after the U.S. Congress approved the agreement, it has already left a mark on the democratic institutions in Central America. Determining the magnitude of these consequences – and indeed, the truth of the Administration's claims – will become the fundamental objective of this thesis.

⁵⁶ Sara Miller Llana, "The big loser in the Honduran political crisis? The economy." *The Christian Science Monitor*, November 3, 2009.

⁵⁷ Zoellick, 6.

CHAPTER 2

Theory and Methodology

Before embarking on an in-depth analysis of the effects of CAFTA on Central American democracy, it is essential to consider the theoretical foundations of the various aspects involved. A democracy encompasses a number of different factors, even some that may seem only indirectly or tangentially related to economic changes. However, CAFTA has had such a transformational experience in Central America that it has left an impact to some extent on all these factors. In this chapter, I will discuss the scholarship on democracy and its link to the economy to construct the methodology I will employ throughout the rest of this work. First, I will review the modern definitions of democracy itself, in particular the work of Joseph Schumpeter, and show how a narrow definition fails to capture the political questions to be addressed in this study. Next, I will consider the relationship between market capitalism, free trade and political democracy, offering some general theories of how liberalizing trade might impact a country's political institutions. I will then proceed discuss the theoretical underpinnings of civil society, one particular dimension of democracy studied in this thesis. I will then ultimately use this theoretical background to explain the Democratic Audit.

A General Definition of Democracy

Since the ancient Greeks proposed a system of government based on popular rule, philosophers have pondered the definition of democracy. Aristotle offered the first essays on democracy in *Politics*, and up through the twentieth century, political theorists such as Locke, Mill, Rousseau and others have contemplated the role of government as a tool to express popular will. Collectively their writings are known as the “classical definitions” of democracy. It is outside the scope of this paper to define them all, especially as their qualitative explanations often fail to capture specific arrangements of institutions and processes that occur in modern democracies. In addition, they often do not address the relationship between democracy and capitalism, the central theme of this thesis. A review of modern theoretical literature should begin with Joseph Schumpeter’s landmark *Capitalism, Socialism and Democracy*, which serves as a key twentieth century text for comparative analyses of political economy. In it he connects the political variables of democracy with economic variables that frame a market or command economy. From this foundation we will launch our discussion of the relationship between democracy and trade.

Schumpeter first defines the classical definition of democracy as “that institutional arrangement for arriving at political decisions which realizes the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will.”¹ However, he criticizes this explanation for its reliance on some semblance of “common good,” an amorphous notion not easily

¹ Joseph Schumpeter, *Capitalism, Socialism and Democracy*, 2nd ed. (New York: Harper & Brothers Publishers, 1947), 250.

standardized. Furthermore, the definition supposes that “‘the people’ hold a definite and rational opinion about every question” and thus, in a democracy, they select representatives to legislate their opinions into policy.² Schumpeter rejects this claim and posits that, “the role of the people is to produce a government, or else an intermediate body which in turn will produce a national executive or government.”³ Note that this claim downplays actual decision-making while emphasizing the election of legislators themselves to make the decision. From this basis Schumpeter concludes that “the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote.”⁴ He articulates what would come to be the rational voter argument, suggesting that each person voted based on personal preferences. A variety of motivations, then, would explain the majority’s decision for casting ballots.⁵

Schumpeter’s ultimate definition of democracy is therefore remarkably limited. He circumscribes the political system itself to emphasize elections alone as its hallmark. Ultimately, then, the *strength* of a democracy should be considered only in light of its capacity to hold free and fair elections to form a government. Thus, in his characterization, “extraneous” concepts about civil liberties, civil society, and the institutional rule of law then do not determine a democracy, since they have nothing to do directly with votes.

² Ibid., 269.

³ Ibid.

⁴ Ibid.

⁵ Frank Cunningham, *Theories of Democracy: a Critical Introduction* (London: Routledge, 2002), 10.

If we employ Schumpeter's strict definition of democracy, then this entire question of democracy in Central America post-CAFTA is moot. Every country in the region currently possesses a functioning electoral process to some extent to select leadership. The free trade agreement made no changes to voting procedures in the country, and therefore did not affect democracy in the Schumpeterian sense. Nonetheless, because a democracy in fact encompasses more than mere vote-getting, we can reasonably argue that the agreement had an impact on other institutions that comprise democracy.

The Schumpeterian model is still useful to consider in light of this assumption. His definition reduces democracy to a duality between "present" and "absent." Democracy, instead, should be considered along a gradient of sorts.⁶ In particular, the political institutions that uphold the democracy are essential to measure because of this gradient. Even when a country exercises an electoral process considered relatively fair, the ability of the political class mandated to secure a functioning society depends on the strength of the government institutions and civil society to preserve and protect civil liberties, the hallmark of a liberal democracy. Rhetoric about expanding democracy is empty unless the legislature enacts the proper regulations, the executive bureaucracy carries them out adequately, and the judiciary adjudicates violations. Institutions such as parties, bureaucratic agencies, and civil society organizations, accepted as legitimate by the population, facilitate a functioning democracy.⁷

⁶ Claude Ake, "Devaluing Democracy" in *Capitalism, Socialism and Democracy Revisited*, ed. Larry Diamond and Marc F. Plattner (Baltimore: The Johns Hopkins University Press, 1993), 28.

⁷ Robert Pinkney, *Democracy in the Third World*, 2nd ed. (Boulder: Lynne Rienner Publishers, Inc., 2003), 31. See also Jochen Hippler, "Democratisation of the Third World After the End of

Popular legitimacy serves to support state institutions. A democratic system must perform effectively to satisfy the expectations of the majority of the electorate and also subdue any powerful anti-democratic groups that might threaten the regime.⁸ If society determines that the existing political institutions are appropriate and can adequately uphold liberal ideals, it deems these institutions legitimate.⁹ Without legitimacy or public faith in their capacity, the institutions will fail to achieve their objectives. This is particularly true with regards to the rule of law and the public organizations that swore to protect it. Endemic corruption and lax enforcement of laws that undermine the business climate reduces popular legitimacy of regulatory bodies and the judicial system.

Scholars spend careers attempting to construct a definition of democracy, and this paper does not intend to embark on this task either. It must suffice to point out that theoretical approximations of democracy often fail to capture the essence of the real thing, especially considering the plethora of democratic experiences across the world and throughout history.

The Central American Free Trade Agreement obligates more than just trade law adjustments: it mandates that the Central American countries reform their labor, environmental, administrative and government procurement laws. These are political issues that affect government institutions, and the enactment of CAFTA had consequences to their strength and effectiveness. In El Salvador, as we will later see, the trade agreement and its accompanying programs entailed certain strengthening in terms

the Cold War,” in *The Democratisation of Disempowerment: The Problem of Democracy in the Third World*, ed. Jochen Hippler (London: Pluto Press and the Transnational Institute, 1995), 27.

⁸ Seymour Martin Lipset, “Some Social Requisites of Democracy: Economic Development and Political Legitimacy,” *The American Political Science Review* 53, no. 1 (1959): 86.

⁹ *Ibid.*

of the judiciary and labor standards. The results of these attempts, then, will be studied through the Democratic Audit.

Capitalism and Democracy

CAFTA intended to expand market capitalist reforms in Central America with an aim to also further democracy. A capitalist society generally refers to one that maintains a competitive, market-driven economy wherein private individuals or firms largely control the means of production without the inference of the state.¹⁰ Profit, then, is a guiding motive of all members of the society. The notion that capitalism functions best under conditions that allows personal choice and freedom would suggest that liberal democracy, which is a political system founded on upholding individual liberties, is its corresponding political system. Jochen Hippler calls democracy, “nothing but the application of the capitalist, free-market form to politics: parties and politicians are the providers of services who have to compete for customers (voters); votes are money and voting is buying.”¹¹

Even Marx accepted the link between liberalism and capitalism. In a liberal democracy, the presumed political equality of every citizen could be premised on limited state influence and acceptance of economic inequalities. Together, this produces, “...a political system in which the majority of citizens could be co-opted into supporting an order in which capitalists remained dominant.”¹² This conclusion allowed Marx to

¹⁰ See, for example, Cunningham, 46 and Dahl, 167.

¹¹ Hippler, 18.

¹² John Peeler, *Building Democracy in Latin America*, 3rd ed. (Boulder: Lynne Rienner Publishers, Inc., 2009), 17.

develop his notion of a communist society that rejected the inequalities fundamental to capitalism. In the literature, scholars tend to contrast capitalism with socialism, “where the presumption that guides political and economic policy is to achieve substantial social equality and to promote cooperation.”¹³

Seymour Martin Lipset laid the groundwork for subsequent theories linking economic development and capitalism with democracy. Recalling that political philosophers harkening as far back as Aristotle have asserted that only in wealthy societies could the population participate in the political system without resorting to demagoguery, Lipset demonstrates empirically that average wealth, degree of industrialization and urbanization, and levels of education are higher for more democratic countries.¹⁴ Increased wealth is causally related to democratic development in part because it serves to improve the social conditions of the working class and helps consolidate a middle class. A strong middle class, in turn, tends to support economic and political stability – the central goal articulated by CAFTA supporters. He suggests that “the poorer a country, and the lower the absolute standard of living of the lower classes, the greater the pressure on the upper strata to treat the lower classes as beyond the pale of human society.”¹⁵ Yet Lipset’s argument seems rather dated, suggesting pervasive, pathological discrimination among the elite class.

¹³ Cunningham, 46. Many scholars also make the additional distinction between a purely socialist society and social democracy, which tries to marry the egalitarianism of socialism with the market-based structure of capitalism.

¹⁴ Lipset, 75.

¹⁵ *Ibid.*, 83.

Lipset observed that with increased wealth, the most powerful social groups had greater sources of income and means to provide for themselves independent of the state.¹⁶ Meanwhile, the lower classes could benefit from greater redistribution of wealth in terms of social programs and better labor standards, and they would be less tempted by radical, undemocratic ideologies.¹⁷

Robert Dahl says that “polyarchal” democracy has never endured in a nonmarket-based economy, and likewise democracy has *only* endured in countries with market economies.¹⁸ He then suggests that economic growth, stimulated by a market economy, is more favorable to democracy because improvements in standards of livings reduce areas of conflict. Successful market economies thus tend to engender pressure for democratization.¹⁹ Market capitalism also creates a property-owning middle class interested in education, personal freedoms, the rule of law, and political participation: “the middles classes, as Aristotle was first to point out, are the natural allies of democratic ideas and institutions.”²⁰ Although he qualifies his argument that economic development is hardly unique to democratic countries, he concludes that market-based systems tend to improve development and render the circumstances for democratization.

The relationship between capitalism and democracy is not necessarily bi-directional: “capitalism is a necessary – though not sufficient – condition for democracy

¹⁶ Pinkney, 22.

¹⁷ Lipset, 83.

¹⁸ Many other authors have made this claim as well using empirical evidence. See Peter Berger, “The Uncertain Triumph of Democratic Capitalism,” in Diamond and Plattner, 3.

¹⁹ *Ibid.*

²⁰ Robert Dahl, *On Democracy* (New Haven: Yale University Press, 1998), 168.

but democracy is *not* a precondition for capitalism.”²¹ Democratization must occur inherently through political processes, but the political factors involved at times coincide with economic factors. Francis Fukuyama points out that economic development, a factor denoted by Lipset, is even less likely a cause of democratization than a market-based economy itself. Some underdeveloped economies, such as Costa Rica and India, have nonetheless sustained substantive democracies, while Nazi Germany and Japan during the 1930’s managed high economic growth while under undemocratic conditions.²² Indeed, the record of countries sustaining undemocratic regimes but rapid growth is substantial; China since Deng and Russia since Putin are two notable examples.

The Heritage Foundation publishes its annual *Index of Economic Freedom* to provide quantitative measurements to levels of market capitalism around the world. Economic freedom refers to the individual ability to make economic decisions unfettered by state interference. Ten specific freedoms weighted equally comprise the index: business freedom, trade freedom, fiscal freedom, government size, monetary, investment, financial freedom, property rights, freedom from corruption and labor freedom.²³ The editors demonstrate using multi-year analysis of their published indices that higher levels of economic freedom are correlated to higher per capita gross domestic product (GDP), and that GDP grows faster in freer economies.²⁴ The elements of economic freedom are closely associated with liberal democracy, as “an individual who is economically free can

²¹ Berger calls this relationship “asymmetrical.” See Berger, 5.

²² Francis Fukuyama, “Capitalism & Democracy: The Missing Link,” in Diamond and Plattner, 102.

²³ Kim R. Holmes, Edwin J. Feulner and Mary Anastasia O’Grady, eds. *2008 Index of Economic Freedom* (Washington: The Heritage Foundation, 2008), 40-1.

²⁴ *Ibid.*, 4.

fully control his or her labor or property. This economic component is related to ... political freedom.”²⁵ While the government must exist to protect property rights and enable the market to function, the *Index of Economic Freedom* describes any additional state involvement in the economy as an infringement on liberty. Applying these premises, any policy – including one generated by a trade agreement like CAFTA – that seeks to open any economy and in essence advance its freedom will lead to economic growth, higher standards of living and greater political freedom. The components of CAFTA in particular have an effect on several of the specific freedoms listed by the *Heritage Foundation*.

On the other hand, just as he outlines the argument that capitalism supports democracy, Dahl offers some reasons why market economies hinder it. Market capitalism requires extensive government regulation and enforcement of laws, contracts, and property rights in order to maintain competition.²⁶ By sanctioning the government’s minimal role in the market without firm restrictions on it, the state can easily begin to expand its function. Yet without oversight, self-interested economic actors have no incentive to consider the common welfare, especially if personal and societal interests are in conflict. A totally unfettered market will render harm on some social sectors, yet the state, the institution responsible for its supervision, may impose some regulations considered undemocratic. Those who oppose government economic policies must still obey them. Many civil libertarians hence argue that the democratic government will

²⁵ Ibid., 39.

²⁶ Dahl, 175.

encroach on personal freedoms and liberties because of its enmeshment with the economy.

This reasoning is a practical rather than theoretical critique of capitalism and democracy. More convincing on the purely theoretical level is the question of inequalities generated by a market economy. The capitalist land-owning class has a stake in democratic change, and they often seek to consolidate power in their interests, rendering undemocratic shifts. This reasoning is particularly key in light of the question of a free trade agreement's political effects, given that free trade frequently exacerbates wealth disparities, at least in the short term. Because of profit-driven competition for resources, a capitalist system invariably creates inequalities among those who benefit and those who do not from the market. Consequently, this translates into political inequalities. Therefore, a market-based democracy favors the class that controls capital in terms of privileges and power: "citizens who are economically unequal are unlikely to be politically equal."²⁷ In underdeveloped countries like those in Central America, historically the elite landowners who comprise a narrow minority of the population command authority over the majority because of the political resources generated by their assets. This phenomenon conflicts with the theory of a democracy in which each citizen possesses the same opportunities for self-determination. As Peeler notes, "capitalism and liberal democracy are increasingly in tension because the former inevitably generates inequality, while the latter presupposes equality."²⁸

²⁷ Ibid., 158.

²⁸ Peeler, 214.

Although the connection between economic development and political freedom has been established, the impact of democracy on social welfare is more ambiguous. Dahl suggests that *human development* is one justification for supporting democracy. This element can be empirically considered across democratic and non-democratic regimes or among different democracies of similar strength. Of course, as Dahl notes, the qualities that determine a measure of human development vary, and it is difficult to accurately quantify them.²⁹ The World Bank and the United Nations do have standardized human development indicators, and the preponderance of their usage in academic and applied research renders these measures relatively authoritative. Human development includes estimations of poverty and standards of living, phenomena that are directly affected by the economy, a component of which is trade.

Nonetheless, economic growth does not always translate into better living conditions for every member of the population, and the inequalities of capitalism can cripple some sectors of society. Although democracies tend to fund social services at a higher rate than do non-democracies, the conclusion that such welfare programs produce higher living standards is more tenuous.³⁰ Peeler compares the per capita GDP growth rates, Gini coefficients (a measure of income inequality), and the UN Human Development Indicators over the period 1990-2005 in several democratizing Latin American countries that also underwent predominately neoliberal, market-based economic campaigns. He observes that the neoliberal reforms were associated with

²⁹ Dahl, 56.

³⁰ Michael Ross, "Is Democracy Good for the Poor?" *American Journal of Political Science* 50, no. 4 (2006): 860.

slowing economic growth and aggravated wealth disparities but also improved social conditions. "...There is some evidence that democratic governments have at least been able to mitigate the worst effects of neoliberalism."³¹

Globalization and Democracy as Foreign Policy

Although democracy is a domestic notion, generally referring to a system of government within a specific country, it has become a key objective for foreign policy. The idea that democracies tend to safeguard peace between one another more than non-democracies is the principle of democratic peace theory, which has become a guide for many foreign policy decisions around the world. More powerful nations have sought to export democracy abroad through military actions to preserve fragile democracies and to establish democracy in a new setting or through instruments of soft power to promote the cultural values of a liberal society.

A country's transition to democracy may not rest solely on external forces, but in many instances foreign influences have been significant catalysts in the process as long as other preconditions are present.³² Of course, in several cases Western countries and the United States in particular have backed authoritarian regimes over democratically elected governments. A plethora of examples are in Latin America, including the American support of the 1973 coup against Salvador Allende in Chile and of the Contras against the Sandinista government in Nicaragua in the 1980's. To this day, the U.S. aligns itself with democracies only when those governments are in the American interest.

³¹ Peeler, 163.

³² Pinkney, 36.

Especially since the fall of the Soviet Union and the global shift toward market economies, exporting capitalism is intertwined with exporting democracy. In fact, a proliferation of market democracies is the stated ultimate goal of U.S. foreign policy for both humanitarian and self-interested reasons.³³ Given the relationship between these economic and political systems, it is simple to observe how foreign policymakers have conceptualized it as normative; that is, that this relationship should drive policy decisions. The case that former Trade Representative Robert Zoellick made – that free trade under CAFTA would support Central American democracies – epitomizes this fact. By expanding economic freedom and decentralization to Central America, the United States is reinforcing political freedom through democracy in these countries through its foreign policy decisions.

Through economic globalization, capitalism has flourished. Reduced barriers to trade and foreign investment, improved methods of communication and transportation, and rapid technological innovation has opened up international competition for resources and enabled enterprises to extend their operations and influence across national borders. Yet globalization may not afford such benefits to political democracy. A reduction in the state's control over its country may inhibit it from adequately safeguarding civil liberties that could be potentially exploited by multinational corporations. The entrenchment of foreign heavyweight companies in underdeveloped countries with weaker labor standards or judicial systems can further undercut the political institutions' capacity in a David and Goliath-like conflict. In other instances, the smaller recipient country's government may

³³ Hippler, 13.

enact one policy counter to the interests of the people in order to preserve ties with the foreign country and to avoid risks of capital flight.³⁴

International businesses tend to support democracies that protect the rule of law and enforce commercial property rights that safeguard their profits. The need for transparency and accountability in international commerce can foster greater government attention to strengthening its political institutions. If popular resistance builds against a government seen as aligned with foreign capitalists instead of with native interests – regardless of the veracity of that claim – the businesses may lean to support a suppression of democracy.³⁵ Additionally, if a government over-regulates foreign investment to shield workers and the environment from deleterious business activities, the foreign firm is more likely to pull out of the country and thus eliminate the advantages from globalization there altogether.³⁶

On the other hand, globalization could promote democracy in that it engenders economic development and capitalism. The theories noting the beneficial relationship between the systems have already been discussed. Free trade and liberal capital flows supposedly reallocate international resources to their most efficient manner through Ricardian comparative advantage, and likewise democracy allocates political power to its most efficient use.³⁷ On a social level, by lowering barriers to communication, globalization opens exposure to democracies around the world and helps create a network of transnational civil society to defend political freedoms. Additionally, globalization

³⁴ Cunningham, 200. See also Quan Li and Rafael Reuveny, “Economic Globalization and Democracy: An Empirical Analysis,” *British Journal of Political Science* 33, no. 1 (2003): 36.

³⁵ Pinkney, 37.

³⁶ *Ibid.*, 139.

³⁷ Li and Reuveny, 32.

can undermine the undemocratic political authority of the elite classes because decentralization of economic policymaking reduces the role of the state, earlier under command of the elite. Liberalization will improve the standing of the popular classes while guaranteeing political stability, so the upper classes can still maintain their social positions but with less arbitrary influence.³⁸ It is valuable to remember that globalization is an exogenous phenomenon that has occurred in part due to fortuitous and indiscriminate processes, while liberalizing trade and capital flows is a deliberate economic and foreign policy action. Yet these policies harness the expansion of globalization to a specific end, so it is logical and appropriate to attribute some of the political and social consequences of globalization to calculated international politics.

Market capitalists allege that liberalizing international trade helps solidify the so-called democratic peace. Economic interdependence renders conflict less likely because of the increased damage caused through severing bilateral ties.³⁹ Peace-seeking is a natural goal for deepening economic integration; it served as a primary motive for the European Union, and it also was a goal for CAFTA in further integrating the historically war-torn Central American states. Yet trade does not merely affect international relationships: economic theory declares that international trade increases aggregate income but alters the distribution of wealth within a country. For this reason, domestic politics come into play as some sectors compete for advantages from liberalizing trade, while others detrimentally affected by trade will lobby to maintain government

³⁸ Nita Rudra, "Globalization and the Strengthening of Democracy in the Developing World," *American Journal of Political Science* 49, no. 4 (2005): 705.

³⁹ Patrick J. McDonald, "Peace through Trade or Free Trade," *Journal of Conflict Resolution* 48, no.4 (2004): 547.

protectionism. Such competition takes place within a representative democracy comprised of various interest groups. McDonald even argues that by transforming the domestic distribution of power based on wealth, trade reduces the influence of social groups interested in warfare while simultaneously strengthening the influence of those groups that benefit from peace and trade.⁴⁰ Domestic welfare programs to compensate for the short-term structural losses and adjustments in the economy further promote stability and democratic rights under conditions of globalization.⁴¹

Through an empirical study of 127 countries over 26 years, Li and Reuveny try to ascertain the relationship between democracy and economic globalization – the latter by examining the aspects of trade openness, foreign direct investment (FDI), portfolio (financial) investment inflows and the spread of democracy. The evidence they find is mixed: “trade openness and portfolio investment inflows negatively affect democracy. [...] FDI flows positively affect democracy, but the effect weakens over time. The spread of democratic ideas promotes democracy persistently over time.”⁴² Trade’s tendency to reallocate income distribution and expand inequalities explains its negative impact on democracy, according to the authors. They also conclude that opening up a country to foreign financial flows compels it to enhance its institutions and enforcement of the rule of law, but this positive outcome is outweighed by the vulnerability to rapid capital flight that can lead to financial collapses. Finally, the communication opened through globalization exposed civil society groups in the democratizing nation to global

⁴⁰ Ibid., 568.

⁴¹ Rudra, 720.

⁴² Li and Reuveny, 30.

ideas and methods of democracy, thereby bolstering their capabilities through information to demand change.⁴³

The conclusions that Li and Reuveny draw offer important predictions for the present analysis as well. One can postulate that globalization, exemplified by CAFTA, has and will continue to make the Central American democracies liable to injury through augmented income inequalities and over-reliance on investment from abroad, namely from the United States. At the same time, however, globalization may beneficially impact their political institutions and reinvigorate their civil societies, a claim that supports my initial hypothesis. These variables are part of the Democratic Audit that shall be performed.

Civil Society and Democracy

Just as a liberal system of government can encourage economic growth and market capitalism, it also supports the inclusion of varied interests in the political realm. Formally outside the realm of the state and the economy, popular organizations exist in democratic societies that express the will of ordinary citizens. Collectively referred to as the “civil society,” this assortment of groups ranges from diffuse grassroots associations pressing for local change to hierarchical advocacy machines that lobby at a national or even international level. Larry Diamond has defined civil society as “the realm of organized social life that is voluntary, self-generating, (largely) self-supporting,

⁴³ Summarized from Li and Reuveny, 43-6.

autonomous from the state, and bound by a legal order or a set of shared rules.”⁴⁴ More than just encompassing the body politic, civil society places citizens in the public square. Indeed, these are the groups that facilitate social movements that have effected grand change across the world. Political theorists have hailed the civil society as a bulwark of democracy because it represents popular opinion and engages the citizenry in political decision-making. The level of vigor among the civil societies in Central America during the negotiation and after ratification of CAFTA serves as one of the key dimensions in tracking the political effects of the agreement through the Democratic Audit.

Alexis de Tocqueville contemplated the role of the civil society in *Democracy in America*, observing how the active participation of American citizens in voluntary civic organizations helped stimulate democracy. His descriptions laid the groundwork for further theoretical notions of civil society. In the 20th Century, Lipset presages the argument that civil society is a key instrument of democratization. His so-called “intermediate organizations and institutions which can act as sources of countervailing power [against the state]” are associated with increased wealth.⁴⁵ They can be sources for new ideas or means to channel citizen participation. Civil society organizations also legitimize and express political activism in ways that are appropriately heard by policymakers. They can lobby on behalf of particular policies or for the political system itself, serving to uphold democracy in fact by questioning it in a public forum.⁴⁶

⁴⁴ Larry Diamond, “Rethinking Civil Society: Toward Democratic Consolidation” *Journal of Democracy* 5, no. 3 (1994): 5.

⁴⁵ Lipset, 84.

⁴⁶ Geraint Parry and George Moyser, “More Participation, More Democracy?” in *Defining and Measuring Democracy*, ed. David Beetham (London: SAGE Publications, 1994), 50.

Civil society is distinguished by its relationship with the state. As an intermediary between private citizens and their government, which purports to act in their will under a democracy, civic organizations present the interests of individual classes of people in a way that is separate from legislative representation. Unless the state co-opts civil society in a corporatist scheme, per se, civil society organizations can act relatively independently in the public sphere, sharing a diversity of ideas and seeking some objective from the state, such as policy changes, benefits or compensation for damages. In a democracy in particular, civil society acts as a check on state power and abuses: “indeed, a vibrant civil society is probably more essential for consolidating and maintaining democracy than for initiating it.”⁴⁷ It offers a means for citizens to participate in their government while bypassing customary channels. Political parties, for example, can become insulated from the actual tenor of the public and support minoritarian programs while offering the people no opportunity to voice their discontent. By focusing citizen concerns – even outrage – civil society groups can offer a stronger, united voice with greater leverage to exert over the state.

The practices that civil society organizations use for influence range vastly, and groups disagree on the appropriate methods to employ depending on the circumstance. Public protests, demonstrations and violence pose the greatest immediate challenge to the state, and often most clearly demonstrate solidarity in opposition. This type of public mobilization, though, can backfire and enable greater repression of civil society.⁴⁸ Such has been the case for social movements against authoritarian regimes across Latin

⁴⁷ Diamond, 7.

⁴⁸ Sidney Tarrow, *Power in Movement* (Cambridge: Cambridge University Press, 1994), 103.

America, but even after the region's democratization. Public protests, for example, were key methods employed by anti-CAFTA coalitions. However, democracies permit larger, freer expressions of citizen opinion, and civil society organizations have adopted more legitimate means to become incorporated into the normal public discourse.⁴⁹

Freedom of association lets citizen groups often form informal or formal networks, thus integrating civil society even more. Some organizations distribute independent, alternative information that can often contradict the mainstream media, especially if the press seems closely associated with the state or parties.⁵⁰ Think tanks, chambers of commerce and professional business groups, student coalitions, human rights watchdogs, and labor unions are common examples of civil society organizations that spread information about government programs and policies. Economic reforms requiring a broad base's backing have often sprouted new civil society actors that engage citizens for or against the policy by providing information on its predicted consequences.⁵¹ Once a policy has been passed or defeated, then, these organizations often have still empowered ordinary citizens to remain involved in public affairs, thus sustaining the civil society as long as supporters do not become disillusioned with the mission.⁵²

Increasing economic freedom and decentralization should theoretically encourage the cultivation of civil society. By minimizing the space occupied by the state, economic liberalization empowers private organizations, both for-profit and non-profit enterprises,

⁴⁹ Peeler, 130.

⁵⁰ Diamond, 10.

⁵¹ *Ibid.*, 11.

⁵² Tarrow, 170-3.

to provide more efficient ways to provide services to the community. “Neoliberalism sees [non-governmental organizations] as a vehicle for democratization and as a means to strengthen civil society.”⁵³ A capitalist society consists of rent-seeking organizations competing for profits, and social groups can arise and develop in the marketplace, independent of state control. Berger says that “capitalism creates space and opportunity for civil society,” contrasting it with socialism, in which such a space is absent because of the preponderance of the state in society.⁵⁴ The “capitalist class,” the so-called owners of the means of production, need not be democrats themselves, “for it is the consequences of capitalism, *not* the motives of capitalism, that create the space for democracy.”⁵⁵

In Latin America, social movements arose after the 1980’s to counter neoliberal reforms taking place across the region. Interestingly, many movements and their associated organizations sought to devolve power from the state, much like the economic plans themselves, but not to an extent that decentralization vitiated certain social sectors. Instead, the Latin American civil society called for increased popular participation, more egalitarian policy decisions, and greater accountability to enhance the new democracies.⁵⁶ Social cleavages rendered by economic reforms especially revitalized the civil society in these countries. Trade unions and agricultural cooperatives, organizations frequently co-opted or subjugated by the earlier authoritarian regimes, recognized new chances to take

⁵³ Laura Tedesco, “NGOs and the retreat of the state: the hidden dangers,” in *Developments in Latin American Political Economy*, ed. Julia Buxton and Nicola Phillips (Manchester: Manchester University Press, 1999), 138.

⁵⁴ Berger, 6.

⁵⁵ *Ibid.*

⁵⁶ Ian Roxborough, “Citizenship and Social Movements under Neoliberalism,” in *Politics, Social Change, and Economic Restructuring in Latin America*, ed. William C. Smith and Roberto Patricio Korzeniewicz (Miami: North-South Center Press, 1997), 59.

advantage of the democratic space and to speak out against market reforms that would marginalize the social sectors that they represented.⁵⁷ On the other hand, large masses of the population unincorporated in the capitalist economy, such as rural farmers, have only managed to coalesce into small, informal civil society groups that may vocalize their members' concerns but have no real influence on politics.⁵⁸ As we shall observe in the civil society sections of the El Salvador and Costa Rica chapters, CAFTA provided the catalyst for these smaller groups to establish inter-organizational relationships and begin to build a stronger coalition.

Overall, theories of social movements and civil society tend to be rather vague unless they include clear examples of such organizations. Fortunately for the application of the Democratic Audit, the indices pertaining to the civil society allow us to isolate certain characteristics and factors that particularly influenced the cultivation of a country's civil society.

Constructing and Adapting the Democratic Audit

This thesis will attempt to measure the political effects to Central American democracy caused by CAFTA. Therefore, it is necessary to employ a standard construct by which to appraise them. Beetham attempts to perform a "Democratic Audit" by using an index that will become crucial for this thesis. After considering the numerous classical and more recent theories of democracy, Beetham concludes that they all agree that democracy refers to a type of decision-making process. From this principle he

⁵⁷ Peeler, 131.

⁵⁸ Ibid., 102.

asserts that popular control and political equality are fundamental; “[democracy] claims that such decision-making should be ... subject to the control of all members of the collectivity considered as equals.”⁵⁹ The principles of popular control and political equality inform his democratic audit by serving as general standards. He further breaks down these two standards to construct measurable criteria. Political control is separated into four audit dimensions: (1) popular elections for the legislature and the head of government; (2) open and accountable government and institutions; (3) guaranteed civil and political rights or liberties, and (4) civil society.⁶⁰ Beetham visualizes these conditions as equal-sized components in a single pyramid, as each one is necessary for survival of the whole. Any democratic audit must consider the two principles of democracy that Beetham outlined: “a complete democratic audit should examine each segment in turn, to assess not only the effectiveness of popular control in practice, but also the degree of political equality in each area.”⁶¹

Beetham’s Democratic Audit consists of answering thirty discrete questions, or “indices,” grouped into the four audit conditions. The Democratic Audit is a very useful standard for this thesis. As a broad characterization of democracies, it can be applied to different contexts around the world. Furthermore, it dissects and systematizes the distinct elements incorporating liberalism and democracy, thereby considering more than just the qualities offered by Schumpeter. The four conditions are continuous, which further allows for a better evaluation of an external impact to the democracy.

⁵⁹ David Beetham, “Key Principles and Indices for a Democratic Audit” in Beetham, 28.

⁶⁰ Adapted from Beetham, 28.

⁶¹ Ibid.

For this thesis, I have adapted Beetham's four dimensions to help consider the effects of an external trade agreement on a democracy. The dimensions in my Democratic Audit are: Electoral Processes, Open and Accountable Institutions, Civil and Political Liberties, and Civil Society. Below are listed the indices that I consider most relevant to the analysis at hand. I determine "relevance" based on how I believe that a trade agreement and its consequent changes in economic structure and development, political institutions and civil society development can have an impact on a democracy. In this sense, I consider the way that CAFTA has affected or altered the index question, if at all. Many specific indices I will not consider, as trade agreements would have no impact whatsoever on a particular characteristic of a democracy. Nonetheless, I will still consider the consequences to the four general dimensions of democracy, even if a particular index is not affected. The four dimensions thus serve as the major scheme from which I will evaluate the cases of NAFTA in Mexico as an exemplar and then CAFTA in El Salvador and Costa Rica. The indices, then, serve to elaborate certain points. While it would be difficult to score the impact of the trade agreements on the four dimensions without some quantifiable standard, at the end of each section I will provide a concluding assessment of the implications. I will assert that the agreement has had a positive, neutral, negative or indeterminate effect to the specified dimension.⁶² My four ratings will allow me to pronounce a general grade in the conclusion of each chapter.

⁶² My rating will be based on quantitative and qualitative cases for each dimension. A "neutral" rating will mean that the results are mixed between positive and negative effects. "Indeterminate" means that I lack enough data to offer an adequate assessment.

Below, I have reiterated the four dimensions that I will consider and the particular indices I have selected to help clarify my evaluations. I also show how I have adapted certain dimensions for use in an analysis of trade agreements. My adaptation of the methodology is original and necessary because this is not the author's intended use of the Democratic Audit. However, it provides a simple categorical framework that includes four major elements of democracy. The four dimensions can further be divided into two groups upon which a trade agreement will have a different impact. For the Electoral Processes and Civil Society dimensions, CAFTA and similar agreements do not specify any statutory changes, but they do leave an impact as a phenomenon and policy issue for public debate. For the Open and Accountable Institutions and Civil and Political Liberties dimensions, the agreements and side negotiations did include certain textual stipulations with an effect on these conditions. In my case studies, I will recognize and distinguish between CAFTA as a policy itself and as a document with certain language.

Electoral Processes

- *How effective a range of choice and information does the electoral and party system allow the voters?* In my analysis, I consider how the political parties dealt with the free trade issue.
- *What proportion of the electorate actually votes?* Did CAFTA influence voter participation or behavior at all?

Open and Accountable Institutions

- *How systematic and open to public scrutiny are the procedures for government consultation of public opinion and of relevant interests in the formation and implementation of policy and legislation?* In terms of CAFTA, this question deals with how the government sought popular opinion on the trade agreement. The

text of the accord also seeks to improve government openness through its procurement laws.

- *How accessible to the public is information about what the government does?* This question is related as well to issues of corruption and institution building, in addition to the issues in the aforementioned index.

In this case, I use the term “institutions” differently from general “democratic institutions.” Here, I refer to government agencies and organizations, rather than the traditions and dimensions of an entire democracy. In this dimension, I will measure the quality of democracy using quantitative indicators, the laws passed by the national governments to implement the trade agreement, and individual case examples.

Civil and Political Rights

- *How clearly does the law define the civil and political rights and liberties of the citizen, and how effectively are they defended?* The trade agreement and the accompanying capacity building projects intended to improve labor and environmental rights. Given the significance of labor rights to the civil liberties of the citizenry, this question is one of the most important of the indices analyzed.
- *How well developed are voluntary associations for the advancement and monitoring of citizens’ rights, and how free from harassment are they?* This question as well deals with the labor rights question, especially with regards to the rights to voluntary unionization and collective bargaining.
- *How effective are procedures for informing citizens of their rights, and for educating future citizens in the exercise of them?* Certain recommendations of the White Paper included improvement of mechanisms to inform laborers of their rights.

As I have noted earlier in this thesis, one of the strongest complaints against free trade is its tendency to disrupt domestic labor practices. Because of the vital importance of labor rights to one’s personal civil liberties, especially in countries with poor records on labor

standards, I will narrow my investigation of civil and political rights to specifically how the trade agreement affected labor rights. CAFTA language also more specifically dealt with this theme, so the evidence is more substantial and related to initiatives undertaken because of the agreement. I can be more conclusive in my evaluation of civil liberties by adapting this dimension in this manner.

Civil Society

- *How widespread is political participation in all its forms; how representative of different sections of society is it; and how far is it limited by social, economic or other factors?* In this sense, this questions addresses which sectors of the population does that civil society represent, and how capable it is in advancing its cause. While a trade agreement entails nothing about non-governmental organizations, many groups were involved in the ratification process and have flourished on account of CAFTA.
- *How far do the traditions and culture of society support the basic democratic principles of popular control and political equality?* In my analysis, I will not consider a transformation of traditions, which can be generational, but rather how the civil society approaches the democratic process itself.

A potential problem with the Democratic Audit, however, is that Beetham intends for his it to be assessed for the United Kingdom. He belies his earlier criticism of Schumpeter and his apologists, who also based their definitions of democracy on Western European states. Can the Democratic Audit serve our purposes in considering four relatively nascent and fragile democracies in Central America? I would argue that they do, using an assertion made by Beetham himself: while cross-national comparisons can be valuable, the context of each country is particular to that nation's history and political system. Differences in political institutions, for example, among countries do not mean

abandoning generalizable criteria. “What matters is not that all should conform to a single model, but how far the distinctive arrangements of each can meet the democratic criteria, which have been specified in intentionally generalizable terms.”⁶³

Beetham concludes that similarities in context do of course allow for a better cross-national assessment. For this reason, an evaluation of Central American countries is especially appropriate for the Democratic Audit because of their common historical and political experiences. The Democratic Audit will be the standard through which we will judge the political effects of CAFTA on the Central American signatories. Because of the clear linkages discussed between democracy and market capitalism, it is possible to study the means by which an initiative to develop the latter will also develop the former. In the next chapter, I will test my methodology by employing Democratic Audit to analyze how NAFTA has affected Mexico. This successful use of the Audit will demonstrate its legitimacy as a tool to study CAFTA and the two selected case studies, El Salvador and Costa Rica. Using primary research and data analysis, we will see how the trade agreement has affected any number of the specified Audit indices in addition to entire dimension themselves.

⁶³ Beetham, 31.

CHAPTER 3

Mexico and NAFTA: A Test of the Democratic Audit

The four dimensions of the Democratic Audit – the electoral process, open and accountable institutions, civil and political liberties, and an active civil society – can serve as qualitative indicators of the state and health of a democracy. They also can be used to gauge changes generated by external forces, a free trade agreement for instance. I argue that trade agreements can have such a positive effect on the political system. In order to reinforce this hypothesis and apply the reviewed theoretical literature, I will demonstrate how the North American Free Trade Agreement (NAFTA) has affected Mexico, namely by strengthening its democratic institutions. This will act as a test of the methodology and show that it works to review the link between similar free trade accords, like CAFTA, and domestic politics. The consequences of NAFTA have been well investigated, and although certain aspects of the Mexican example distinguish it from the Central American cases, this example can provide a standard to create and test my methodology. The similarities in the two agreements and in their circumstances prove the validity of this test. From the conclusions I draw from studying NAFTA, I can more adequately apply the methods to the Central American countries, El Salvador and Costa Rica, I have selected using the Democratic Audit.

NAFTA is particularly relevant, as it was the first trade agreement of its kind that the United States signed with a major trading partner in the developing world. While a

preponderance of its content dealt strictly with trade, it still nonetheless established a new definition of economic integration, and even transforming the entire notion of national sovereignty.¹ Because NAFTA and the events and dialogue that accompany it encompass issues of labor, government services, the environment and social restructuring besides economic integration, George Grayson called NAFTA a turning point in international treaties. “[T]he NAFTA agreement broke the mold of international trade discussions and guaranteed that any future negotiations would be viewed and reviewed by an increasing broad array of social actors.”² This wide range of voices will become crucial in the negotiations and implementations of CAFTA a decade later.

As mentioned in Chapter 1, NAFTA served as a template from which to base the CAFTA negotiations. Much like CAFTA, the text of NAFTA itself ranges from language governing the phasing out of tariffs on agricultural and manufacturing goods to provisions on financial services. Over the first ten years, most import tariffs were eliminated, and the average Mexican tariff fell from 12.0 percent in 1994 to 1.3 percent in 2001.³ The law also permitted the U.S. and Canada to access Mexico’s financial services market. Particular to government and institutional reform, the accord equalizes government procurement procedures, improves intellectual property laws, and creates compatible health and industrial standards. Finally, the law creates a dispute arbitration

¹ George Grayson, *The North American Free Trade Agreement: Regional Community and the New World Order*, ed. Kenneth W. Thompson (Latham, MA: University Press of America, Inc., 1995), 224.

² Ibid.

³ Daniel Lederman, William F. Maloney and Luis Servén, *Lessons from NAFTA For Latin America and the Caribbean* (Palo Alto: Stanford University Press and Washington, D.C.: The World Bank, 2005), 30.

mechanism to resolve investment and business conflicts.⁴ These sections are particularly important in testing the institutional rule of law variable given in measuring the trade agreement's political effects. Notice the similarities between this content and the language of CAFTA described in Chapter 1; these parallels facilitate a comparison of NAFTA and CAFTA and the use of the same methodological procedures for both.

Grayson has called the relationship between economic growth and political democracy a "*leitmotif of NAFTA* – specifically the belief that trade-impelled perestroika would stimulate a glasnost in a political system long characterized by authoritarianism and manipulation"⁵ (emphasis added). The evidence of this relationship can be observed in the process of democratization that did occur after NAFTA's implementation. The NAFTA case is imperative to the rest of this thesis as it provides a clear instance in which a trade agreement had an influence on politics in that country. Following NAFTA as a prototype, the content of CAFTA includes comparable sections to integrate trade between the United States and Central America. Therefore, reviewing NAFTA and Mexico can provide a significant background to my evaluation of CAFTA. The successful application of the Democratic Audit to an analysis of the effects of NAFTA on Mexico offers a structural framework from which a similar analysis can be conducted using CAFTA and El Salvador and Costa Rica.

⁴ See Grayson, 101-5.

⁵ Grayson, 239.

The Roots of NAFTA

The history of the Institutional Revolutionary Party (PRI) regime in Mexico consists of oscillations between economic nationalism and globalization. Much like their peers throughout Latin America, the PRI governments in the mid-20th Century sustained a model of import-substitution industrialization that limited foreign influences. Restrictions on foreign direct investment blocked mainly U.S. corporations.⁶

The inward, state-directed economic model helped consolidate the PRI's authoritarian reign. Corporatism assured that the PRI could manage and circumscribe social and economic sectors to consolidate the authority of the presidency.⁷ "Mexicanization" of enterprise gave the state a hand in directing industry through public investment and ownership.⁸ This historical involvement of the state in the Mexican economy is significant to this analysis; the economic decentralization and openness engendered by free trade under NAFTA helped lead to the growth of political pluralism and democratization that the country subsequently experienced.

Mexico's "miracle" growth under import-substitution did not last forever, and by the mid-1970's, it became evident that the domestic production of goods that were available for better quality from abroad was relatively inefficient. In 1982, the economy collapsed as a consequence of falling oil prices, high interest rates and a monumental current account deficit.⁹ Under President Miguel de la Madrid, Mexico initiated an

⁶ Sidney B. Weintraub, "The Interplay between Economic and Political Opening in Mexico," *Proceedings of the American Philosophical Society* 137, no. 1 (1993), 68.

⁷ Anna Hernández Chávez, *Mexico: A Brief History* (Berkeley: University of California Press, 2006), 278.

⁸ *Ibid.*, 302.

⁹ *Ibid.*, 70.

austerity program that highlighted privatization of publicly owned corporations. He also spearheaded the country's entry into the General Agreement on Tariffs and Trade (GATT) in 1986, a first step to liberalizing the economy.¹⁰

De la Madrid's handpicked successor, Carlos Salinas de Gortari, arrived in office amid accusations of rampant electoral fraud. The alleged illegitimacy of the 1988 election became a rallying cry among civil society later for greater political change in Mexico as NAFTA was under debate and then again after it came into effect. Despite lacking a solid mandate, Salinas embarked on a bold economic project to build on de la Madrid's initial reforms, which garnered him more popular support personally than his party enjoyed.¹¹ Salinas promoted a package that consisted of constraining the state's role in the economy and promoting greater competition through privatization and liberalization. Initiatives under de la Madrid and Salinas led to the privatization of more than 900 state-run companies, and Salinas spearheaded a constitutional reform that allowed for greater private ownership of the *ejido* land plots, one of his most significant domestic economic achievements.¹²

Free trade was his most substantial goal: "President Salinas himself formulated much of his domestic agenda around the concept of NAFTA and its ultimate approval."¹³ Salinas accelerated his predecessor's trade liberalization project by eliminating almost all import permits, which were used to protect domestic industries and sustain the import-

¹⁰ Ibid.

¹¹ Weintraub, 73.

¹² Roberto Salinas-Leon, "Free Trade and Free Markets: A Mexican Perspective on NAFTA," in *NAFTA and the Environment*, ed. Terry L. Anderson (San Francisco: Pacific Research Institute for Public Policy, 1993), 17.

¹³ Roderic Ai Camp, *Politics in Mexico*, 5th ed. (New York: Oxford University Press, 2007), 260.

substitution model. Trade liberalization reduced the burden of importing manufactured goods at high prices and lowered costs throughout the economy. Noted scholar of Mexico Sidney Weintraub interprets Salinas's action as a means to "...create a whole new set of vested interests in the new policy," purportedly a coalition that would eventually support a full-fledged trade agreement.¹⁴ Recognizing the importance of foreign capital to fund Mexican recovery, Salinas lifted the tariffs in part to allay concerns in the U.S. government and the American financial sector of Mexico's stability.¹⁵ From 1988, Salina's election, to 1994, the year NAFTA came into force, foreign investment in Mexico increased by 350.1 percent.¹⁶

Salinas managed to insert free trade, already a goal for the Americans, as a topic in his negotiations with the U.S. on Mexican debt reduction.¹⁷ President George H.W. Bush, with whom Salinas had fostered a close relationship, committed himself to realizing a trade agreement with Mexico and Canada in 1991. In order to sell the plan to the Mexican electorate, Salinas made "new nationalism" the hallmark of his administration, in which he preserved the spirit of Mexican nationalism that buttressed the old PRI economic model while dramatically shifting its characteristics. Because privatization and trade liberalization were key objectives for the nation, they qualified as "nationalistic."¹⁸ The issue of national sovereignty still remained central to Salinas's plan, as, in his eyes, not taking part in the rising global economy meant stagnation and

¹⁴ Weintraub, 71.

¹⁵ Camp, 278.

¹⁶ Ibid., 276.

¹⁷ Hernández Chávez, 301.

¹⁸ Salinas-León, 14.

weakness, effectively a loss of sovereignty.¹⁹ By couching his project in the language of national interest, Salinas managed to gain Mexican popular support behind NAFTA and also to render free trade as a plank of the PRI platform.

The approval of NAFTA sought to nourish the progress of trade agreements across Latin America. Chile, for example, expressed interest in joining NAFTA as means to expand its own export market, thus expanding the geographic range of integration beyond simply North America.²⁰ President George H.W. Bush considered NAFTA the first step in the process of creating the Free Trade Area of the Americas. A decade later, George W. Bush, in championing free trade with CAFTA, also saw this agreement as another step in establishing the FTAA.

Opening up trade with the U.S. and Canada, however, certainly would expose Mexico to political changes. Although Salinas carefully considered that pushing NAFTA through would generate more popular support for the PRI government, outside analysts already made predictions that the days of the closed, authoritarian regime were numbered. Writing in 1993, Weintraub declared, “I am convinced that Mexico’s economic opening, including the establishment of free trade in North America, will stimulate political opening.”²¹ Even though Salinas had overcome the anti-PRI sentiment that arose after his fraudulent election and regained public confidence through his NAFTA campaign, Weintraub says that the external pressure for democracy would compel greater political openness.

¹⁹ Grayson, 46.

²⁰ *Ibid.*, 236.

²¹ Weintraub, 77.

Of course, not everyone was so sure of this outcome; at the same time, Poitras and Robinson affirmed that Mexico achieved liberalizing trade “...without allowing that degree of political change and become so fluid that the state would be unable to use its impressive levers for managing the economic transition.”²² These authors still regarded the NAFTA negotiations as a turning point in the PRI system by creating a new coalition to maintain presidential power – sidelining the more populist trade unions in favor of neoliberal elite business interests.²³ In the long run, though, they do suggest that “economic liberalization could create independent centers of power that a weakened, fragmented (and not just smaller) state would find harder to control,” although they remain skeptical that the PRI would relinquish any of its authoritarian control.

In the end though, Weintraub was proven correct; as I shall explain, economic liberalization rendered many unintended consequences for the PRI government that eventually opened the system up to new criticism, both domestic and foreign. The U.S. media and the Zapatista uprising, both compelled by the NAFTA debate, played a special role in influencing the Mexican system. Confidence in Salinas did not translate into renewed popular support for his political party, even after his successor, Ernesto Zedillo, won the 1994 election, and the PRI was forced to adopt new political rules. In the Mexican system, increased economic competition gave rise to political pluralism.

²² Guy Poitras and Raymond Robinson, “The Politics of NAFTA in Mexico,” *Journal of Interamerican Studies and World Affairs* 36, no. 1 (1994), 4.

²³ *Ibid.*, 5. Camp also notes that, to coordinate his decentralizing economic agenda, Salinas ironically streamlined the presidential cabinet and concentrated the decision-making in his executive office (288).

The Effects of NAFTA on Mexican Democratization

Almost immediately, NAFTA had an impact on the Mexican political process. The Salinas government had to establish certain institutional reforms as a condition of the trade agreement and in response to the criticism to which Mexico was subjected by attaining greater integration with the U.S. In this way it reacted both to NAFTA's language and to its nature itself as a transformational policy. Concerns over NAFTA's economic and social consequences strengthened Mexican civil society, shown above all in the uprising of the Zapatista movement in Chiapas. Government responses in particular to Zapatista demands had a pluralizing effect on democracy. This highlights the indirect role that NAFTA as a phenomenon, by triggering the EZLN revolt, had on Mexican politics. Such unexpected civil society consequences will furthermore become a variable considered in the Central American cases after CAFTA. The evidence of all these factors' effect on CAFTA can be evaluated through the lens of the Democratic Audit.

Grayson has enumerated six distinct ways that NAFTA has contributed to political openness in Mexico. NAFTA has: 1) increased the size of the middle class, 2) increased demand for electoral competition, 3) decreased political authoritarianism, 4) decentralized the economy from state control, 5) weakened the power of corporatist trade unions, and 6) eroded the culture of bribery and corruption.²⁴ His observations fit within the categories laid out by the Democratic Audit as well –specifically, the dimensions of electoral processes (number 2), open and accountable institutions (numbers 4 and 6),

²⁴ Adapted from Grayson, 239-40.

political and civil liberties (number 3), and civil society (number 5). This characterization helps frame the use of the Democratic Audit as a tool. In a number of ways, often indirectly, NAFTA shaped the political process in Mexico and helped in some part contribute to that country's democratization.

Economic Performance

In order to analyze the political effects of trade, by definition an indirect consequence of economic liberalization, one must first consider its actual economic effects. In the later studies of CAFTA and Central American countries, the economic performance will also be considered for contextual purposes. The effects of trade on output, wages, standards of living and income distribution are significant as these variables result in real benefits or challenges to a population. How a country's people responds to economic changes is key in determining how they will react in the political process.

The economic growth promised by NAFTA proponents took a few years to begin on account of two major factors that coincided with the accord's implementation.²⁵ Immediately after NAFTA came into effect on January 1, 1994, the Zapatista guerrilla movement took up arms against the government, leading to fears that political instability would stymie foreign investment. The peso's crash later that year also triggered a severe banking crisis and recession, which, due to the strengthened relationship between Mexico and the U.S. resulting from NAFTA, prompted Washington to authorize a rescue loan

²⁵ Lederman, Maloney and Servén, 30.

package to its trade partner. By 1996, however, the Mexican economy was in recovery. Using econometric analysis, Lederman et al. determined that, excepting 1995, NAFTA significantly increased Mexico's economic growth. Furthermore, Mexico's GDP per capita in 2002 would have been 4 percent lower without the agreement.²⁶

Since NAFTA, trade as a proportion of Mexican GDP has skyrocketed from an average of 37.0 percent in the period from 1986-1993 to 75.7 percent from 1994-2001. Foreign direct investment as a percentage of GDP has also tripled over the two periods.²⁷ Lederman et al. also compare two different estimations of the Gini coefficient (a measure of income inequality) for Mexico and conclude that overall levels of inequality have decreased since NAFTA has been in effect.²⁸ While the authors do not attribute any portion of this change to the trade agreement itself, the case can be made that the larger economic and social conditions in Mexico under which NAFTA operates has redistributed wealth.

After the peso crash, employment and real wages in Mexico dropped significantly, but these numbers recovered quickly thereafter. Between 1993 and 2003, the percentage of working-age Mexicans employed increased from 84 to almost 98 percent.²⁹ Many of these jobs were created out of the trade and investment induced by NAFTA. Mexican firms also that have received foreign investment or export products to the U.S. also tend to pay their workers higher wages than their counterparts that have not taken advantage of the trade agreement. Real wages for the maquiladora and non-maquiladora

²⁶ Ibid., 31.

²⁷ Ibid.

²⁸ Ibid., 222.

²⁹ Gary Clyde Hufbauer, Jeffrey J. Schott, and Diana Orejas, *NAFTA Revisited: Achievements and Challenges* (Washington, D.C.: Peterson Institute for International Economics, 2005), 98.

manufacturing sectors fell initially because of the “tequila crisis,” but they have returned to nearly their 1994 levels.³⁰ Because of the crisis, one cannot implicate NAFTA in the decline in wages; actually, one could argue that the rebound took place faster because of investment and trade stimulated by NAFTA helped revive businesses. Nonetheless, the fact that real wages have failed to actually improve since NAFTA calls into question if Mexico has experienced increases in standards of living.³¹

Disparities in trade that NAFTA did not fix, however, have manifested themselves in some ways to the detriment of Mexican workers. U.S. agricultural subsidies, for example, kept prices of sensitive commodities such as corn artificially lower than domestic Mexican corn, a staple product in that country’s diet. Influxes of cheaper American corn to Mexico may have benefited consumers in that country, but it impaired the livelihoods of farmers who could not sell their corn on the market. Between 1993 and 2003, the percentage of Mexican laborers employed in the agricultural sector fell from 26 to 16 percent, but not all of those workers who left their original occupation managed to find another one.³² Dumping corn exports cost Mexican farmers US\$6.6 billion alone, or US\$38 a ton.³³ This has forced more than a million farmers off of their land in Mexico in search of a more lucrative job, sometimes in the U.S. In this way, NAFTA has contributed to illegal immigration from Mexico in the U.S.

³⁰ Ibid., 100.

³¹ Lederman, Maloney and Servén, 5.

³² Hufbauer, Schott and Orejas 99.

³³ Timothy A. Wise, *Agricultural Dumping Under NAFTA: Estimating the Costs of U.S. Agricultural Policies to Mexican Producers*. Working Paper No. 09-08 (Medford, MA: Global Development and Environment Institute, 2009).

These economic changes construct the milieu in which further discussion of NAFTA will be made. Mexico has significantly opened itself up to international influence because of the amount of commercial interests involved in the country. Any change in income and wages regardless of the direction of its shift – has had an effect on Mexican voters’ pocketbooks and livelihoods. Given that income levels are a factor in voter preferences,³⁴ it then seems reasonable to suggest that NAFTA would have an impact on one’s political attitudes and decisions.

Electoral Processes: the 1994 Zedillo Election

The first dimension considered in the Democratic Audit is Electoral Processes. In the Mexican case, the first presidential contest held after implementation of NAFTA demonstrates a crucial example in which the trade agreement influenced the democratic institution of elections. A movement toward democracy had already started after Salinas’s election in 1988, but reforms made after NAFTA accelerated this process. That year, when the opposition candidate Cuauhtémoc Cárdenas may have either actually won a majority of the vote or lost to Salinas by a much narrower margin than officially declared, showcased a “new democratic culture based on the popular vote.”³⁵ Constitutional changes in 1990 and 1994 created the Federal Electoral Institute and the Federal Electoral Tribunal to organize, monitor and adjudicate elections. These institutions helped improve citizen confidence in the electoral system.³⁶

³⁴ Camp, 82.

³⁵ Hernández Chávez, 326.

³⁶ Ibid., 313.

U.S. criticism of the Mexican government also motivated Salinas to enact his constitutional changes. Sensitive to business groups concerned about investing in a potentially unstable state and to other lobbies alarmed that the U.S. would deepen trade relations with an authoritarian regime, the U.S. Congress paid close attention to the political process in Mexico during and after the NAFTA debate. In particular, Salinas responded out of pressure from the Senate Foreign Relations Committee to push his electoral agenda.³⁷

An array of external circumstances rendered 1994 election one of the most noteworthy in Mexican history. Of these explanations, two of them can be directly ascribed to NAFTA. The January 1st Zapatista uprising, induced by the implementation of NAFTA, sparked widespread fear among the population about political instability, even as many Mexicans sympathized with the Zapatista calls for political accountability.³⁸ Meanwhile, the assassination of the original PRI candidate, Luis Donaldo Colosio, pushed the Mexican electorate further toward supporting stability, represented by the ruling party. Finally, expectations of economic development borne out through NAFTA, a fundamental rationale when Salinas has promoted the agreement, meant that many voters were afraid that a president from an opposition party would undermine reform.³⁹

After hastily scrambling to select a candidate, Salinas chose Ernesto Zedillo, a minister in Salinas's cabinet. Zedillo promised a program to build on the achievements of economic liberalization while ensuring that its benefits trickled down throughout

³⁷ Camp, interview by author, Claremont, CA, November 18, 2009.

³⁸ Denise Dresser, "Mexico: The Decline of Dominant-Party Rule," in *Constructing Democratic Governance: Mexico, Central America and the Caribbean in the 1990s*, ed. Jorge I. Domínguez and Abraham E. Lowenthal (Baltimore: Johns Hopkins University Press, 1996), 161.

³⁹ *Ibid.*

society.⁴⁰ In his eventual victory, he captured 50 percent of the vote, a noticeably tiny margin for a PRI candidate but one achieved through credible means. The August election highlighted the ability of the PRI to reinvent itself under extraordinary circumstances as a legitimate party that would ensure stability and continuity.⁴¹ The first presidential election after Salinas's electoral reforms, it was considered the cleanest and fairest in decades because of the presence of observers at polling booths, the monitoring by the Federal Election Institute, and the quick vote count. "These innovations contributed to imbue the electoral process with an unprecedented degree of credibility."⁴² Certain systemic circumstances did favor the PRI's victory: the party spent an exorbitant amount of money on its campaign and commanded significantly greater domestic media attention than did the opposition parties.⁴³ Yet the incredibly high turnout, especially among rural and first-time voters, meant that more Mexicans were exposed to democracy. Even if they voted for the PRI, their introduction to the political process "...provided a base for future opposition growth."⁴⁴

However, as Dresser points out, "clean elections are a necessary condition for democracy but they are not sufficient. Mexico must confront other structural issues."⁴⁵ For this reason, the electoral process is only one dimension among all the political indicators considered in this Democratic Audit. Nonetheless, it is clear that NAFTA as a policy itself contributed to a cleaner election by attracting external attention. The

⁴⁰ Camp, *Politics in Mexico*, 280.

⁴¹ Dresser, 161.

⁴² *Ibid.*, 163.

⁴³ Roderic Ai Camp, "Battling for the Voter: Mexico's Path to Democracy," *Mexican Studies* 11, no. 1 (1995): 133.

⁴⁴ *Ibid.*, *Politics in Mexico*, 289.

⁴⁵ Dresser, 163.

criticism of the PRI's reign in U.S. media during the NAFTA debate led to its intense scrutiny of the 1994 vote, and the U.S. also dispatched official observers to examine the procedures at the ballot box on Election Day. These factors helped grant credibility to Zedillo's narrow victory. In both instances, it is highly unlikely that the U.S. would have paid such close attention to the election had the trade agreement not been in place. Camp alleges that this active interest is connected in part to the NAFTA proceedings.⁴⁶ By emphasizing electoral authenticity and a more legitimate democratic process, the U.S. did risk involving itself more in Mexico's political arena.⁴⁷ Economic integration through NAFTA thus tied the countries together politically as well. Because it entailed greater legitimacy in the election effort, NAFTA had a *positive effect* on the electoral processes in Mexico. It is important to remember that the policy issue, not its stipulations per se, rendered this effect; this same phenomenon will be shown in the Salvadoran and Costa Rican cases.

Open and Accountable Institutions

The Democratic Audit also includes changes in the institutions and rule of law in a country after implementing the trade agreement. Liberalization of the economy through NAFTA generated greater liberalization in the authoritarian PRI regime. Many of the reforms to institutions established by Zedillo after he entered office came as a result of the language of NAFTA or promises he made in the election. PRI dominance in government institutions meant that no separate actor, either an opposition party or

⁴⁶ Camp, interview by author.

⁴⁷ Ibid., "Battling for the Voter," 136.

external organization, could moderate its influence. New commercial regulations could conceivably enforce the rule of law, decreasing corruption and improving government transparency.

Prior to NAFTA, significant and comprehensive private property ownership rights were absent from the Mexican constitution, specifically articles 25-28. The trade agreement includes concrete reforms in the state regulatory system by forming a more formal legal structure for trade, including mechanisms for dispute settlement. In addition, intellectual property provisions were added to mitigate issues of piracy in the services markets.⁴⁸ Similar legal conditions are also present in the CAFTA language.

In his presidential campaign, Zedillo placed an emphasis on developing a culture of laws to sustain economic activities, probably a result of NAFTA-related investment. After his election, Zedillo kept many of his promises, and he made government accountability a central precept of his administration by pledging to reform the judiciary and to reign in corruption.⁴⁹ Within the context of a public longing for peace and stability, he managed to unite all political actors behind his democratic project.⁵⁰ His intent to decentralize authority seemed to reflect the larger economic decentralization experienced because of NAFTA. Zedillo introduced a significant shift to the Mexican political process that advanced democracy. According to Camp, Zedillo's decentralization program consisted of the following: implementing a PRI primary instead of handpicking political successors, granting state governors greater autonomy, splitting the party apparatus from the state,

⁴⁸ Salinas-León, 18.

⁴⁹ Dresser, 159.

⁵⁰ Hernández Chávez, 331.

and strengthening institutional checks and balances.⁵¹ These projects decimated the structural advantages that the PRI had enjoyed for decades. Camp argues, “there is no question that he paved the way for Fox’s electoral victory [which ended the 71-year PRI hegemony in 2000] by changing the Mexican presidency’s substance and tone.”⁵²

How much of Zedillo’s reforms can be attributed to NAFTA? As will be discussed next, the trade agreement mandated certain institutional reforms both explicitly in the text and implicitly by opening up Mexico to foreign investors and their concerns. Above all, NAFTA provided a context within which Zedillo managed to stimulate democratic reform. Freer trade meant a freer exchange of ideas, and Zedillo had to respond to the pressure already felt by his predecessor to alter the governmental structure. The state had already lost much of its authority through privatization and liberalization, and political decentralization naturally followed economic decentralization.

The new tools instituted through the agreement notwithstanding, NAFTA may not have actually had a significant impact on institutional performance in Mexico. Lederman et al. used a factor-analysis comparing levels of corruption, law and order, and bureaucratic quality in Mexico to those in similar Latin American countries. They found that although these variables did improve in Mexico after 1994, the institutional improvement was not statistically significant, as other countries not party to NAFTA saw similar levels of improvement. “Thus NAFTA alone is unlikely to contribute to the

⁵¹ Camp, *Politics in Mexico*, 289-90.

⁵² *Ibid.*, 289.

institutional development of Mexico outside the specific areas covered by the agreement.”⁵³

While these data are striking, as they challenge the hypothesis that NAFTA would improve political institutions, they also show the limitations of quantitative analysis to judge a particularly qualitative problem – effects on the political process. Although statistics on corruption and rule of law will be used in the CAFTA analyses, their correlation to the trade agreement will not be considered because of the inherent difficulty in determining causation. Instead, they will be used as the measures of economic and financial climate within which political changes, perhaps compelled by CAFTA, operated.⁵⁴ This problem recalls the challenge of measuring indirect versus direct consequences of free trade. While NAFTA may not have directly caused institutional reform (a measurable quantity), its content or – more importantly – the politics in approving it and maintaining U.S. investment after integration has occurred is something that must be considered qualitatively, through analysis of events rather than figures. Lederman, Maloney and Servén recommend that the Mexican government pursue policies to combat corruption and improve institutions.⁵⁵ In actuality, NAFTA has indirectly contributed to these phenomena. For example, the increase foreign direct investment and foreign commercial operations led to demands within the U.S. business community for greater transparency in Mexico. While no measurable decreases in

⁵³ Lederman, Maloney and Servén, 49.

⁵⁴ In discussing trade agreements and foreign investment, Lederman, Maloney and Servén make a similar point; while free trade is not *ipso facto* a necessary condition for greater financial inflows, “it is a complement to, rather than a substitute for, an investment-friendly policy and institutional environment” (349).

⁵⁵ Lederman, Maloney and Servén, 49.

corruption can be attributed to these demands, they did set a tone within the private sector to improve contract enforcement.⁵⁶ In fact, pursuant to the trade agreement, Mexico had to amend and strengthen 21 economic and financial laws.⁵⁷

Foreign complaints about obstacles to economic information led President Fox to pass the 2003 Transparency Law; these objections from business-owners can be traced all the way back to NAFTA's implementation and peso devaluation later that year.⁵⁸ These events highlight the role that NAFTA played in creating demand for a better regulatory state. The investment climate stimulated by NAFTA did contribute in part to improving institutions and the rule of law.

This brief analysis of Mexican institutions demonstrates that NAFTA had a *positive effect* on government institutions as both a policy and as a document that mandated institutional reform. As Zedillo may have initiated many reforms in reaction to provisions of the agreement or to external factors, it is unclear that the extent to which NAFTA affected their process of transformation. Still, a creation of a better regulatory framework has allowed commerce and, likewise, pluralism to flourish.

Civil and Political Liberties

As noted in the previous chapter, the Democratic Audit dimension of Civil and Political Liberties has been adapted to focus specifically on labor rights, due to the constraints inherent in selecting a free trade agreement as a catalyst for democratization.

⁵⁶ Camp, interview with author.

⁵⁷ Grayson, 242.

⁵⁸ Camp, interview with author.

The issue of labor standards in Mexico after NAFTA could be the subject of an exhaustive investigation; what follows is only a cursory review through which we can still glean fundamental points about the implementation of the agreement's labor language. In both NAFTA and CAFTA, the issue of labor rights protracted the treaty negotiation, and certain provisions were drawn up to help protect workers possibly displaced or taken advantage of as a consequence of trade liberalization. The effectiveness of this language will be the core of this section and its counterparts to follow.

NAFTA's text itself only made general references to labor rights. During negotiations, though, the parties decided to open an ancillary consultative session to discuss a side deal on labor rights to pacify trade unions and non-governmental organizations. Once signed, the North American Agreement on Labor Cooperation (NAALC) would be administered by the standing Commission for Labor Cooperation. Unlike the regulations set up by CAFTA, the labor side agreement did not develop any punitive measures for labor violations, such as the imposition of fines or trade sanctions. The NAALC does not enforce the labor laws; rather, it provides a forum for discussion and international evaluation of adherence to domestic labor laws.⁵⁹

In the years since NAFTA's implementation, Mexican performance on labor laws and standards has not improved as much as was hoped. In terms of the employment data discussed in the section on economic results, Hufbauer, Schott and Orejas have alleged

⁵⁹ Gary Clyde Hufbauer, Jeffrey J. Schott, and Diana Orejas, *NAFTA Revisited: Achievements and Challenges* (Washington, D.C.: Peterson Institute for International Economics, 2005), 128.

that “NAFTA has had mainly a positive effect on the Mexican labor ledger.”⁶⁰ Yet actual labor laws and standards have not experienced the same heartening successes as the socio-economic indicators. While Mexico’s constitutional and criminal code tends to have strong labor standards, enforcement of these laws is incredibly lax. Since NAFTA did not help support any programs to monitor labor laws, the agreement could not possibly serve to amend this structural challenge. Child labor has not significantly dropped, and the budget for the Secretary of Labor and Welfare has not substantially increased.⁶¹ Employment in the maquiladoras, whose dangerous labor conditions are notorious, has certainly increased, and while they may pay slightly increased wages, there is little evidence that their conditions have improved.

An assessment of the NAALC in 1997 demonstrated that although the institution seemed strong, it was relatively untested, as few cases had been brought before it. Because of its limited scope and tools at its disposal, the NAALC has demonstrated little impact on the labor situation in Mexico.⁶² In addition, arbitrating alleged violations to the side agreement through NAFTA’s dispute mechanism is futile as, “there are no common standards, administrative barriers create serious difficulties, and potential remedies are weak.”⁶³ Without a strong framework or independent oversight body, the NAALC lacks the authority to police labor abuses, and so far parties to the agreement

⁶⁰ Ibid., 98.

⁶¹ Ibid., 100-2.

⁶² Ibid., 128.

⁶³ Gary Clyde Hufbauer and Ben Goodrich, “Lessons from NAFTA,” in *Free Trade Agreements: U.S. Strategies and Priorities* (Washington, D.C.: Peterson Institute for International Economics, 2004), 47. See also Joel Solomon, *Trading Away Rights: The Unfulfilled Promise of NAFTA’s Labor Side Agreement*, Human Rights Watch 13, no. 2 (April 2001). Available at <http://www.hrw.org/legacy/reports/2001/nafta/>.

have been reluctant to use it. A study by Human Rights Watch showed that by 2001 the NAALC had handled twenty-three petitions that either the Canadian, American or Mexican governments had violated some aspect of the NAFTA side agreement. Without any oversight though, the offending governments have rarely addressed these challenges through mediation or actual policy procedures.⁶⁴

In terms of organized labor, the power to unionize has expanded since NAFTA, but not necessarily because of the trade agreement's provisions. Instead, incidents relating to the fragmentation of the PRI's consolidation on power had more to do with the ability of independent unions to develop, while the "official" corporatist union lost members – one of Grayson's conclusions about NAFTA's political effects. A 2001 Supreme Court ruling, though declaring mandatory union membership unconstitutional surely accelerated the decline in membership.⁶⁵ NAFTA, though, has forged some cross-national ties that have helped strengthen workers organizations. Under NAFTA, American unions can file complaints against Mexican enterprises for violating labor contracts, and vice versa.⁶⁶ This gives a formal, legal means for foreign non-governmental organizations to get involved in the political process in Mexico and thus has exposed the country to greater criticism – much like the informal but still influential U.S. media had done during Zedillo's election.

The underwhelming performance of labor standards obligates me to declare that NAFTA has had a *neutral effect* on Civil and Political Liberties in Mexico. It is

⁶⁴ Solomon.

⁶⁵ Hufbauer, Schott and Orejas, 107-8.

⁶⁶ Camp, 262.

important to recall that the labor language composed during the NAFTA negotiations was executed through a side agreement, which did not have the same force of law as the trade agreement itself. In this way, NAFTA's labor provisions are far weaker than those in CAFTA, which are embedded in the actual content. Future treaty negotiations to improve NAFTA could include additional content on labor rights. Gallagher and Wise recommend that such language would require signatories to consent to the International Labor Organization's core labor standards, set up greater enforcement mechanisms, and increase the funding of the NAALC.⁶⁷ Note that the first two recommendations actually form the basis of the labor provisions in the CAFTA accords.

Civil Society and the EZLN

An active civil society is a key condition to the success of a democracy. Because civil society groups give voice to popular attitudes and beliefs, their participation in politics serves to democratize the debate. In fact, one of the most significant consequences of NAFTA has been to ignite grassroots movements to shape the political process. While the civil society consequences of the trade agreement were not considered in its negotiation, they nonetheless mattered in the political process. By integrating Mexico with the United States and Canada, NAFTA became the first free trade accord that exposed a country without a well-developed civil society to two countries with such conditions.⁶⁸ This could have consequences ranging from inspiring

⁶⁷ Kevin P. Gallagher and Timothy A. Wise, *Reforming North American Trade Policy: Lessons from NAFTA* (Washington, D.C.: Americas Policy Program, December 2, 2009).

⁶⁸ John S. Robey, "Civil Society and NAFTA: Initial Results," *The Annals of the American Academy of Political and Social Science* 565 (1999): 116.

new social movements to even, as Robey suggests, changing the social family culture.⁶⁹ Ultimately, NAFTA contributed to the rise of a variety of non-governmental actors, which together managed to achieve a democratic opening within the government and greater political pluralism within society.

Above all, the uprising of the Zapatistas (EZLN, Zapatista National Liberation Army) in southern Mexico demonstrates the way that NAFTA has influenced civil society. On January 1, 1994, the day that NAFTA came into effect, a group of rebels suddenly seized control of three towns in Chiapas before retreating into the jungle. Taking advantage of the international press they received, the insurgents announced their resistance to the trade agreement, which they believed would unleash additional hardship and misery on the indigenous populations of Mexico.⁷⁰ The Zapatistas called for democracy beyond the procedural level, the status quo favoring the PRI that constrained full electoral participation by the Mexican population.⁷¹ They demanded rights for participation across all areas of social, economic and political life.

Salinas first responded to the Zapatista uprising by deploying the military, and within a week, over 145 people had been killed in skirmishes with the rebels. The popular outcry against state oppression forced Salinas to consider more pacific tactics, and after reorganizing his cabinet, he called a truce and initiated negotiations with the

⁶⁹ Ibid., 118.

⁷⁰ Peter Calvert, "Guerrilla Movements," in *Developments in Latin American Political Economy*, ed. Julia Buxton and Nicola Phillips (Manchester: Manchester University Press, 1999), 125.

⁷¹ Alicia C.S. Swords, "Neo-Zapatista Network Politics," in *Latin American Social Movements in the Twenty-First Century*, ed. Richard Stahler-Sholk, Harry E. Vanden and Glen David Kuecker (Lanham, MA: Rowman & Littlefield Publishers, Inc, 200), 295.

rebels.⁷² This response shows his obligations to responding to the popular will, a hallmark of a democracy. Accepting an EZLN demand, Salinas presented some electoral reforms, the first sign that the social movement had had an effect on politics in Mexico. His project consisted of prohibiting the use of government funds in campaigns and imposing spending limits, establishing an office to prosecute electoral fraud, guaranteeing equal attention to political parties by the Mexican media, and recognizing the role of foreign election observers in the upcoming vote.⁷³ These rules were intended to circumscribe techniques by which the PRI had historically managed to win elections. Salinas could also undercut popular sympathy for the Zapatistas by guaranteeing a more peaceful and credible election procedure.⁷⁴ By refusing to launch a military assault on the Zapatistas and by directing these democratic changes, Salinas sought to surmount accusations of authoritarianism that dogged the Mexican government during the NAFTA debate and to ingratiate himself further with the U.S.⁷⁵ In this way, the trade agreement indirectly affected the Mexican political process. As a policy it propelled the Zapatista insurrection that prompted this policy overhaul, and opened the door to U.S. criticism of the PRI regime, which then influenced the Mexican political landscape.

Peace negotiations disintegrated as the federal elections neared, but a military sting against EZLN leadership after Zedillo took office reactivated the mediation process, culminating in the 1996 San Andrés Accords. Although the armed forces agreed to limit

⁷² Calvert, 124.

⁷³ Grayson, 241.

⁷⁴ Hernández Chávez, 330.

⁷⁵ *Ibid.*

their presence in Chiapas, their offensive still sparked battles against the guerrillas.⁷⁶

Testimony later revealed widespread human rights abuses on the part of the military in its assault, and the manner in which Salinas and Zedillo handled the Chiapas crisis divided the Mexican citizenry. While many criticized the military's repression of the rebellion, others recognized the threat to the nascent democracy that an anti-democratic guerrilla movement could have,⁷⁷ especially one whose motto was "rule by obeying."

Interestingly, the EZLN movement triggered some level of pluralism within the government as well as throughout the Mexican society. Before the uprising, many analysts had warned the Mexican military that, in the case of a domestic political disturbance, its strategy could incite accusations of human rights violations. According to Camp, as a result of the Zapatista rebellion, the military began to invite members of the opposition party PAN to lecture at the War College, a first for an institution that had shunned alternate opinions and viewpoints. This new perspective gave legitimacy within the military for the PAN and shifted attitudes to become more accepting of pluralism and alternatives.⁷⁸

The EZLN may have contributed to expanded partisanship in Mexico. Although opposition parties like the PAN and the PRD had started to command greater legitimacy and authority after the 1988 election, the Zapatista rebellion forced them to cooperate

⁷⁶ Chris Gilbreth and Gerardo Otero, "Democratization in Mexico: The Zapatista Uprising and Civil Society," *Latin American Perspectives* 28, no. 4 (2001), 15.

⁷⁷ Hernández Chávez, 330.

⁷⁸ Camp, interview with author.

with the PRI. Unlike in the past, however, such cooperation meant actually contributing to the political debate, rather than being co-opted and shut out by the institutional party.⁷⁹

Most importantly, the Zapatistas inspired sympathetic political movements that sought to exert power through both violent and non-violent means. First, civil society groups mobilized immediately after the EZLN emerged in Chiapas to protest the military's repression of the guerrilla group and to answer the Zapatista call to advocate for human rights.⁸⁰ In 1996, the People's Revolutionary Army (EPR) emerged in a small village in Guerrero and proceeded to attack towns across the region of southern Mexico before President Zedillo deployed the Mexican military to defeat them. Although they announced a unilateral ceasefire and today pose little threat to the Mexican state, the EPR still represented a violent social movement in opposition to the economic priorities of the government.⁸¹ In addition, "neo-Zapatista" networks have sought to challenge the institutional authority of the state and compel democratization, even after Zedillo initiated his electoral reforms. Many grassroots organizations inspired by the EZLN have participated in the political process by monitoring local elections, and in 1999, they united to propose and promote a referendum on indigenous rights.⁸² The process by which they organized communities behind their referendum "...demonstrated the EZLN's capacity for political mobilization and embodied a networked popular education campaign."⁸³ After Vicente Fox won the 2000 election, these groups remained in the

⁷⁹ Gilbreth and Otero, 9

⁸⁰ Ibid., 11.

⁸¹ Calvert, 127-8.

⁸² Shields, 296.

⁸³ Ibid., 297.

political sphere by advocating for an additional extension of civil rights to underrepresented indigenous communities.⁸⁴

Solidarity with the Zapatistas spread throughout the world once the guerrillas began to disseminate their political communiqués through the media and the Internet. Several world leaders announced their support of the indigenous movement, and networks of human rights groups abroad protested in front of Mexican consulates or advocated for their governments to press Mexico to comply with the San Andrés Accords.⁸⁵ This attention from abroad further pressured the Zedillo administration.

This strong evidence allows us to call, perhaps ironically, the effects of NAFTA on the civil society dimension *positive*. All of these civil society groups in one way or another are responding to the social and economic changes instigated by neoliberalism and NAFTA. Their demands for justice go beyond a rejection of free trade; however, they reject the authoritarian structure of power that provided the PRI with its sustained rule and that shut out other opposition voices. These civil society organizations' emergence expresses the concept of democratization from below, complementing the institutional reforms made for the same ends.

The results of NAFTA for civil society are one of the strongest indicators that the trade agreement affected the Mexican political process. The treaty emblemized a political ideology that aroused marginalized voices. After CAFTA we will see similar reactions, perhaps less violent, but still formidable to oppose market capitalism. It may seem counter-intuitive that the rise of anti-NAFTA forces indicates how NAFTA helped

⁸⁴ Ibid., 299.

⁸⁵ Gilbreth and Otero, 19.

bring democracy to Mexico, but the civil society that opened up evolved to become a key actor in the process. Just as NAFTA provoked the Zapatistas, it led to the rise of more non-violent social movements that sought to promote greater political participation, a key element of democracy.⁸⁶ Gilbreth and Otero argue that “the social movement sent in motion by the Zapatista uprising has been a driving force in Mexico’s democratization, even more significant than opposition parties ... [it] has encouraged higher levels of political activity and inspired a deepening of the democratic debate.”⁸⁷ The Zapatistas mobilized groups of people to become active in Mexico politics and demand for democracy, but once they achieved reforms, they did not retreat. Instead, these civil society organizations continue to advocate on behalf of citizen rights, especially as globalization spawned by free trade erodes the structures of power and authority. In that way, they have helped foster and protect democracy in Mexico even more.

Caveats with the Mexico Case

NAFTA fostered more than just trade; it also cultivated a historic transformation in the Mexican political system. While many of these changes were not explicit directives of the accord, the context laid out in negotiating a free trade agreement forced the Mexican government to adopt new electoral rules, create stronger institutions and improve the rule of law. In addition, it activated a civil society base to press for change in the PRI regime. This satisfies the general democracy dimensions of the Democratic Audit. Based on my grades – positive for electoral processes, positive for open and

⁸⁶ Camp, interview with author.

⁸⁷ Gilbreth and Otero, 7.

accountable institutions, neutral for political and civil liberties, and positive for civil society – I can argue using this framework that NAFTA had a relatively positive effect on Mexican democracy. Because three out of four dimensions were positive and the fourth did not detract from any of the others, it seems reasonable to conclude that overall the effect was generally positive. I will similarly give an overall grade of CAFTA's performance in the subsequent chapters.

Mexico provides an interesting case study into how a trade agreement can affect the political process, but considering it as a standard warrants mentioning one significant caveat. During the implementation of NAFTA and during its successive six years, Mexico was under a *de facto* authoritarian regime. The PRI government employed undemocratic tactics, including electoral fraud and intimidation, to sustain its uninterrupted, institutionalized reign. Although NAFTA did have a significant effect on Mexico's democratization, the agreement helped propel the transition from an authoritarian pseudo-democracy to a more pluralistic, procedural democracy.

In contrast, the five Central American states already enjoyed pluralist, multi-party democracies when CAFTA was implemented. Although the democracies have suffered significant challenges, especially with regards to partisanship and representation, none of them possess a system comparable to the PRI regime in Mexico. This factor, nevertheless, does not detract from the use of Mexico as an example with which to apply the Democratic Audit.

In addition, because of the agreement's longer life span, it has spawned more scholarly research into its political effects, while CAFTA, as a relatively new event, has

not produced as much information. However, just as NAFTA itself served as a model for CAFTA, a study of NAFTA and the Mexican political system can serve as a model for CAFTA and the individual Central American political systems. The Mexican case can be perceived as the extreme of a spectrum of cases in which a trade agreement helped transform, both directly and indirectly, the actual political structure. Because NAFTA had such a pronounced effect, it can be used as a standard against which the Central American examples can be compared. Above all, this chapter has demonstrated the strength of the Democratic Audit as a methodological tool. Its dimensions help categorize and differentiate the different elements of a democracy that can, and are in fact, affected by international trade agreements.

CHAPTER 4

El Salvador

Now that the Democratic Audit has been established as an appropriate method to consider the effects of a trade agreement on democratic institutions, we can turn to the substantive case examples for this research. El Salvador is an ideal Central American country to study the effects of CAFTA, as the agreement has been in effect the longest there, and its historical and political context is similar to many of its neighbors. CAFTA became a major force in strengthening Salvadoran democracy, but through several indirect, unexpected means.

It is impossible to study Salvadoran politics and economics without offering some context of its brutal past. After sustaining years of repressive governance, in 1980 a coalition of leftist insurgent groups united behind the Farabundo Martí National Liberation Front (FMLN) to resist the authoritarian right-wing military regime. The U.S. fueled the government and the National Renewal Alliance (ARENA), a violent paramilitary group aligned with state-sponsored death squads, in their attempts to suppress the resistance movement, which itself received financing from Cuba and the Soviet Union. A civil war between the government and the FMLN ravaged El Salvador for twelve years, as the armed forces directed a campaign ostensibly to root out rebels but one that committed massive human rights violations against the public. The protracted war left hundreds of thousands dead or missing. Ultimately, a belated global uproar over

the conflicts raging across Central America led to a peace process mediated by Costa Rican president Oscar Arias. During the Salvadoran peace accords of 1992, the ARENA and the FMLN were converted from armed factions to legitimate political parties, but a legacy of violent confrontation has continued throughout the country's fragile democratization. Both parties have had to relinquish some of their earlier goals: although the FMLN gained access to the political process, the ruling ARENA party has frustrated its substantive objectives. Likewise, the ARENA has had to accept a broadening of the political spectrum to accommodate its former arch-nemesis.¹ The enmity between these parties was evident even a decade later during the CAFTA debates.

After the first democratic elections in March 1994, the presidency remained under ARENA control until 2009, while the FMLN and other parties on the Left fared poorly in national elections. The ARENA presidents spearheaded a pro-market economic model in the style of the Washington Consensus with support from elites in the banking and maquila sectors, often sidelining non-business or "popular sector" non-governmental organizations as potentially subversive political rivals.² Their policies involved financial liberalization, privatization of state resources and cultivation of a special relationship with the United States.³ The substantive reduction in trade barriers and protections for foreign investment, for example, made El Salvador one of the most open economies in

¹ John Peeler, *Building Democracy in Latin America*, 3rd ed. (Boulder: Lynne Rienner Publishers, 2009), 71.

² Rose Spalding, "Civil Society Engagement in Trade Negotiations: CAFTA Opposition Movements in El Salvador," *Latin American Politics & Society* 49, no. 1 (2007): 89.

³ Diego Sánchez-Ancochea, "State and Society: The Political Economy of DR-CAFTA in Costa Rica, the Dominican Republic and El Salvador," in *Responding to Globalization: The Political Economy of Hemispheric Integration in the Americas*, ed. Diego Sánchez-Ancochea and Kenneth C. Shadlen (New York: Palgrave Macmillan, 2008): 180-1.

the region even before the negotiation of CAFTA. Cuts in agricultural tariffs from as high as 230 percent to 15 percent, accompanied by preferences granted through the Caribbean Basin Initiative, helped boost the Salvadoran export sector, which experienced the fastest annual growth in the hemisphere during that decade.⁴ Even before the signing of the trade agreement, the U.S. was by far the largest source of non-fuels imports to El Salvador, consisting of 47.5 percent in 2000.⁵ The U.S. is the recipient of 57 percent of Salvadoran exports and is El Salvador's largest trade partner.⁶ For its pro-market and pro-U.S. reforms, former U.S. President George W. Bush called El Salvador "one of the really bright lights in Latin America."⁷

In its political campaigns, ARENA tried to demonstrate how its economic approach had brought considerable growth to El Salvador. An FMLN victory, then, would immediately stymie any progress. The Right amassed popular support through such alarmist tactics; in the 2004 election, the presidential candidate and eventual winner, Antonio Saca, stoked popular fear that if his opponent won, the United States would cut off the trade preferences that El Salvador enjoyed and would suspend immigrant remittances to the country, a financial asset that comprised a significant portion of the economy.

⁴ Robert Z. Lawrence, *Capitalizing on CAFTA: Enhancing El Salvador's Integration into the Global Economy* (San Salvador: FUSADES, 2003), 3.

⁵ *Ibid.*, 11.

⁶ Salvadoran Ministry of the Economy, "El Salvador conmemora primer aniversario del TLC con Estados Unidos," (San Salvador: Ministerio de Economía de El Salvador, March 1, 2007). www.cafta.gob.sv/%5cdoc_interes%5Cpagina_2%5Ccomunicado_1_CAFTA.pdf (accessed December 15, 2009).

⁷ Elisabeth Bumiller, "In El Salvador, Bush Talks of Trade and Criticizes Democrats," *New York Times* March 25, 2002.

Negotiation of CAFTA was a central pillar of the ARENA doctrine. Under the leadership of President Francisco Flores and his successor, Saca, El Salvador became perhaps the most ardent supporters of the agreement in Central America. Flores, an American-trained politician, had allied El Salvador even further with the United States and had implemented dollarization in 2001. Polls also showed that during the initial negotiation and ratification stages, the Salvadoran public generally supported the agreement as well: a poll taken in 2003 revealed that 43 percent believed that free trade would help combat poverty, yet the campaign mounted thereafter by the opposition to the government's stance eroded the public's faith in trade.⁸

According to Flores and other proponents of free trade, CAFTA would manifest significant benefits for El Salvador. Because of the major liberalization executed in the 1990's, CAFTA did not represent a directional shift in tariff policy in El Salvador. However, advocates took care in noting that protection for sensitive agricultural products would not be affected in the short term, responding to one major criticism of the pact.⁹ The overall impact, though, extended beyond mere tariff-level changes because of the almost transformational economic impact of the treaty. Beyond the general economic arguments for the entire region that were discussed in Chapter 1, advocates posed certain El Salvador-specific claims. Additional trade liberalization would boost annual economic growth above prevailing rates. In particular, foreign direct investment (FDI) as a share of the Salvadoran economy would increase substantially, following the regulatory

⁸ Spalding, 104.

⁹ Samuel Morley, Eduardo Nakasone and Valeria Piñeiro, *The Impact of CAFTA on Poverty, Distribution and Growth in El Salvador* Discussion Paper 743 (Washington, D.C.: International Food Policy Research Institute, December 2004), 2.

reforms.¹⁰ CAFTA would also secure duty-free access for the Salvadoran clothing and textile market, by far the country's largest export commodity to the United States.¹¹ Employment would increase due to greater demand for unskilled labor, which would create an overall reduction in poverty.¹² Although one study suggested that relative wages for unskilled workers would actually decrease, it predicted that CAFTA would not be at fault; in fact, the composition of the Salvadoran labor force was such that inequality would increase regardless of trade liberalization.¹³

The enthusiasm with which El Salvador embraced CAFTA also enabled it to emerge as the leader in ratifying the treaty. Notwithstanding some obstacles by anti-CAFTA civil society groups, which will be discussed later in this chapter, the pact was approved with relative ease. In December 2004, the ARENA party, now under the direction of President Saca, formally introduced the treaty in the Congress, which was ironically under majority control by the FMLN. However, a bloc of right-wing parties, composed of ARENA, the Party of National Conciliation (PCN) and the Christian Democratic Union, united to pass the bill over the objections of the FMLN, which opposed the bill. The final vote tallied 45 to 32.¹⁴ On March 1, 2006 – a few months after the initial deadline – El Salvador became the first Central American country to implement CAFTA.

¹⁰ Morley, Nakasone and Piñeiro, 18, 24.

¹¹ Lawrence, 26.

¹² *Ibid.*, 33.

¹³ Morley, Nakasone and Piñeiro, 25.

¹⁴ Marvin Barahona, Ludwing Duarte and Suyapa Castro, *Impacto político del CAFTA en los países centroamericanos* (Tegucigalpa: Centro de Estudios Históricos y Sociales para el Desarrollo, October 2004), 21.

Initial Economic Effects

Because CAFTA has been in force for only four years in El Salvador, it is difficult to assess its long-term impact on the national economy, unlike the case of NAFTA in Mexico. However, El Salvador offers perhaps the best example among the five Central American participants in CAFTA because it ratified the agreement the earliest relative to its neighbors. In addition, studies have already demonstrated a notable impact partly because of the immediate changes implemented.

In the past four years, the initial effects have been mixed, as table 4.1 (available at the end of the chapter) demonstrates. The Salvadoran economic secretary under president Saca, Yolanda Mayora, declared in an interview with the Associated Press: “El Salvador is the (member) country that has benefited the most from this accord, and the country whose exports to the U.S. have had the greatest growth.”¹⁵ In 2006, the first year that the agreement was in force El Salvador experienced its highest growth rate since 1993.¹⁶ In that year, its non-traditional exports, which consist of the entire export sector minus textiles and coffee and comprise half of all exports, increased by 68 percent from \$240 million to \$404 million.¹⁷ Agricultural exports in the first year increased 85 percent to a sum of \$297 million.¹⁸ In the first year, 29 new international businesses have opened in the country and nine had expanded their operations.¹⁹ Furthermore, more than 350

¹⁵ “U.S., Salvadoran officials say CAFTA is boosting economic growth in El Salvador,” *Associated Press*, November, 29 2007.

¹⁶ John Murphy, “DR-CAFTA: The Record So Far.” (Washington, D.C.: U.S. Chamber of Commerce and the Association of American Chambers of Commerce in Latin America, November 2007), 1.

¹⁷ *Ibid.* Also see “El Salvador conmemora primer aniversario del TLC con Estados Unidos.”

¹⁸ Murphy, 4.

¹⁹ “El Salvador, U.S. mark CAFTA anniversary,” *Associated Press*, March 1, 2007.

Salvadoran businesses were exporting products to the U.S., including 60 new companies.²⁰ Some of the trade capacity programs through USAID have helped train 1,500 Salvadoran businesses in export facilitation.²¹

Proponents billed free trade as a means for El Salvador to diversify its agricultural sector and expand its nontraditional industries, but in the few years of implementation, traditional exports like coffee and sugar increased, while nontraditional products like fruit has made little change to the export market. These sectoral shifts are noticeably different than one might expect, as manufacturing has remained relatively stagnant while agriculture has grown as a percent of the whole economy. This fact undermines the notion that trade will actually help industrialize the country; instead, free trade may have made El Salvador more reliant on an industry that will not in the long run promote development.

In most respects, it seems that CAFTA has boosted employment in certain sectors: since 2002 the unemployment rate dropped from 7.2 percent to 5.9 percent.²² The U.S. embassy in El Salvador asserts that since CAFTA's implementation, investment from the United States has generated more than 18,000 jobs in El Salvador directly and almost 35,000 indirectly.²³ However, much like the study cited earlier predicted, real wages, measured on an index, in El Salvador have dropped significantly, from 100.9 in 2005 to 93.3 in 2008. While neither total unemployment nor real wages across the economy are

²⁰ "El Salvador conmemora primer aniversario del TLC con Estados Unidos."

²¹ Claudia Contreras, "CAFTA-RD, un cambio de mente y cultura de negocios," *Revista Summa*, March 1, 2010.

²² César Augusto Sanción, "Promises and failures of DR-CAFTA in El Salvador," in *DR-CAFTA: Effects and Alternatives* (Washington, D.C.: Stop CAFTA Coalition, 2009).

²³ Contreras.

directly related to the trade agreement, they provide an interesting context, as together they suggest that overall Salvadoran labor force has risen but to the detriment of worker wages.

As an economy already closely linked to the United States, El Salvador was exposed to greater repercussions from the 2008 U.S. financial crash because of CAFTA. The global recession has hit El Salvador particularly hard; its economy contracted by 2.9 percent in 2009.²⁴ A decline in immigrant remittances, which previously accounted for some 10 percent of the Salvadoran economy, and in investment from U.S. business community was in large part responsible for the contraction. Although growth is expected to revive slightly in 2010 spurred by a recovery in the U.S., forecasters have still predicted investment below 2006-'08 levels. Had El Salvador not signed a trade agreement with the U.S. that exposed it further to such negative economic consequences, one can speculate to what degree the Central American nation would have been insulated from the global recession, given that prior to 2006 it still possessed a relatively open economy. Nonetheless, it is safe to conclude that CAFTA facilitated even more financial linkages with the U.S. that additionally exposed El Salvador to the economic situation there. As we will consider in the next section, the voting behavior by the Salvadoran public in the 2009 presidential elections revealed that they arrived at this conclusion as well.

Above all, as some commentators have pointed out, CAFTA has in a sense revamped the entire business culture in El Salvador. The trade agreement opened new

²⁴ Economist Intelligence Unit, "El Salvador Country Outlook." January 1, 2010.

niches in the market for small and medium sized businesses in El Salvador and in the United States to develop cross-national linkages. A more diversified economy helps provide stability and strength to El Salvador; as one U.S. official has claimed, “[business owners there] have diversified themselves, they have not stayed with the same old thing, sugar or coffee; rather they have changed, more than anything, their mind.”²⁵ The improved legal protections for entrepreneurs and investors have also placed a new focus on the judicial process. How successful these institutional changes, however, are the topic of the coming sections. Organized by the four dimensions of the Democratic Audit, the analysis will allege that CAFTA has had a *weakly positive* impact on the politics and institutions of El Salvador.

Electoral Processes Dimension: The 2009 Funes Election

The March 2009 national elections in El Salvador will be remembered for the historic victory of Mauricio Funes as the first president elected from the FMLN. That a moderate left-wing candidate could defeat the long-standing ARENA regime, the purported patrons of a stable Salvadoran state, and without any bloodshed represents a momentous step forward for democracy in that country. In retrospect, many political analysts attribute the outcome to a nationwide rejection of ARENA, but the actual narrative is more complicated, involving the more centrist character of Funes and his message of change. The role that CAFTA, as a symbol of the economic liberalism adduced by ARENA, played the election is peculiar, as in reality neither major candidate

²⁵ Contreras.

called for its renegotiation. Nevertheless, as a policy approach, it had an impact on the questions also posed in the indices of the Electoral Processes dimension of the Democratic Audit. This justifies the application of the 2009 elections to this thesis. CAFTA always served a political role for ARENA, so it is not far-fetched to suggest that these elections would incorporate trade and its implications as a subject of debate. Ratification of such a transformational agreement as CAFTA would cement the ARENA's position as the party of pro-market growth and could serve to thwart any future attempts by a leftist FMLN administration to nationalize industries or implement land reform, given the property and investment rights and dispute negotiation dictated by the accord.²⁶ The rhetoric espoused by the Marxist establishment at the top of the FMLN underscored the right's fears of this from occurring.

The March 2009 vote was the first presidential election since the ratification of CAFTA and potentially could have been an unofficial popular referendum on the free trade agreement. Indeed, the outcome of the election generated a dramatic shift in the Salvadoran democracy: for the first time since the 1992 peace accords established a democracy (and, in reality, ever – given the dominance of conservative elites in Salvadoran politics even before then), the FMLN candidate won the presidency. Yet the candidate, Mauricio Funes, broke the tradition of FMLN candidates or leaders who were leftist ex-guerrillas from the civil war. Instead, Funes was a center-left political neophyte – he was originally a television journalist – who until 2008 was not even a member of the

²⁶ Cori Madrid, “El Salvador and the Central American Free Trade Agreement: Consolidation of a Transnational Capitalist Class” *Perspectives on Global Development and Technology* 8 (2009): 206.

FMLN. His unusual background and pro-business vision distinguished him from his party, a fact that made him attractive to the public. That the party leadership had chosen an outsider demonstrates that the FMLN understood that its Marxist, leftist bent exemplified by its 2004 candidate Schafik Handal – the former leader of the Salvadoran Communist Party – was politically unpalatable to the Salvadoran public.²⁷ Catering to a more moderate electorate required a candidate hailing from the center-left.

Popular discontent with the direction of the country under the ARENA regime drove the historic election. The FMLN had already displaced ARENA as the majority party in Congress after the legislative elections the January preceding the election.²⁸ President Saca's close relationship with the United States and his enthusiasm for passing CAFTA put him at odds with much of the Salvadoran public, whose opinions toward the trade agreement had diminished since it was first initiated. ARENA and its candidate, Rodrigo Ávila, were seen as responsible for the failing economy and for not achieving much success against the widespread crime in the country.²⁹ In a nationwide poll taken by the *Instituto Universitario de Opinión Pública* (IUDOP) in May 2009, 55.2 percent noted a negative change in the country since Saca was elected in 2004, and in particular 66.0 percent said that the economy had worsened.³⁰

²⁷ International Country Risk Guide, *El Salvador* (May 2009), 14.

²⁸ "A nation divided: Will a country still haunted by the cold war dare at last to embrace the left?" *The Economist*, March 14 2009, 39.

²⁹ The Center for Democracy in the Americas, *Report on El Salvador's Presidential Election* (Washington, D.C.: The Center for Democracy in the Americas, March 15, 2009), 6. Available at: http://www.democracyinamericas.org/pdfs/El_Salvador_Election_Trip_Report09.pdf.

³⁰ Instituto Universitario de Opinión Pública, "Encuesta de evaluación del gobierno de Antonio Saca, Asamblea Legislativa y Alcaldías y expectativas hacia el nuevo gobierno." Serie de informes 120. (San Salvador: Universidad Centroamericana "José Simeón Cañas," May 2009), 21.

The economy was a primary issue in the campaign. A full 83.1 percent of respondents in the poll said that the new president should change the economic policies of his predecessor, which reveals an overwhelming rebuff of the ARENA neoliberal reforms whose centerpiece included DR-CAFTA.³¹ Regardless of this lack of popular support for the agreement, ARENA and independent rightwing groups alleged that, if elected, Funes would annul El Salvador's participation in DR-CAFTA.³² They also said he would renounce monetary dollarization and align the country with Hugo Chávez and radical leftism. These contentions were reinforced by the warnings of some Congressional Republicans in the U.S. that an FMLN victory would jeopardize Salvadoran immigration and could force the Congress to block remittance flows, a significant revenue source in the Salvadoran economy.³³ ARENA also had a significant financial and organizational advantage over the FMLN; indeed, many analysts consider it the best-organized party in Latin America.³⁴

The Mauricio Funes depicted by the ARENA differed greatly from the man himself. Funes was not even a member of the FMLN when he secured the presidential nomination, and he promised to govern more along the lines of center-left Brazilian President Luiz Inácio Lula de Silva, rather than Chávez. He publicly consulted business groups to highlight his commitment to pro-market policies. During the election, he pledged to seek a close relationship with the United States and to maintain CAFTA,

³¹ Ibid., 123.

³² The Center for Democracy in the Americas, 5.

³³ Ibid.

³⁴ "A nation divided."

saying that abandonment of the treaty would be traumatic to the economy.³⁵ In an interview just after his election, he declared that “we can’t get mixed up in repealing CAFTA, nor can we reverse dollarization because that would send a negative message to foreign investors,” despite the fact that “large majorities of [El Salvador’s] citizens reject key policies that define, in many ways, the relationship between El Salvador and the United States, specifically CAFTA...”³⁶ The Salvadoran people still saw him as an agent of change. Out of ten reasons for why the FMLN won the election, 50.0 percent of respondents to the May 2009 IUDOP poll said for a change to improve the country or for its candidate.³⁷

International observers have declared the election transparent and fair. Representatives from the two main political parties and the Supreme Electoral Tribunal were stationed at every polling location, and the U.S. National Democratic Institute helped support the independent ballot counts by each party.³⁸ The peaceful transition of power, which allayed fears that violence between the once warring factions would erupt, showed a strengthening of the democracy.³⁹ Despite having run a harshly negative campaign, Ávila quickly conceded his defeat rather than protest the vote and call for a recount in the close election, which handed Funes a narrow 51.3 percent to 48.3 percent victory.⁴⁰ Importantly, the people themselves considered the election clean, by a margin of 77.3 to 19.3 percent in one poll. 58.1 percent said that the presence of national and

³⁵ “Leftist Salvadoran says won’t drop dollar, CAFTA,” *Associated Press*, September 26, 2008.

³⁶ Roberto Lovato, “El Salvador’s President-Elect Seeks Close Ties to U.S.,” *New American Media*, March 17, 2009.

³⁷ Instituto Universitario de Opinión Pública, 107.

³⁸ The Center for Democracy in the Americas.

³⁹ “Left turn: The voters opt for ‘safe change,’” *The Economist*, March 21, 2009, 40.

⁴⁰ *Ibid.*

international observers at the election had “a lot” of influence on the transparency of the election.⁴¹ Voter turnout was relatively high at nearly 62 percent of the population, slightly lower than in the 2004 election but significantly higher than during the 1990’s.⁴² The 2004 election, in which Saca defeated Schafik Handal, took place after negotiations for the free trade agreement had begun, but more analysis is needed to determine if this had had an impact on Saca’s victory.

As President, Funes has tried to forge a middle course to improve Salvadoran institutions. He has engaged conservative leaders and business representatives, including appointing an economic cabinet to honor his pro-market campaign promises. In addition, he has implemented fiscal policy recommendations to reduce the debt from the World Bank, the International Monetary Fund and the Inter-American Development Bank.⁴³ Recognizing the four years of CAFTA’s implementation in March 2010, he even urged Salvadoran businesses to take advantage of opportunities granted by CAFTA, which he called an “important instrument for commercial exchange.”⁴⁴ In fact, his centrist tactics toward the economy have earned him strident criticism from the left wing of his party, which is still largely dominated by Marxist ex-guerrillas.

The political considerations of DR-CAFTA presented a significant piece to the Funes election. There is no empirical indication that the free trade agenda primarily drove voters to the polls, but the economic situation was still a predominant theme voiced

⁴¹ Instituto Universitario de Opinión Pública, 109, 113.

⁴² International Institute for Democracy and Electoral Assistance., “Republic of El Salvador,” <http://www.idea.int/vt/countryview.cfm?CountryCode=SV>, December 11, 2009 (accessed February 26, 2010).

⁴³ Félix Ulloa, “Mauricio Funes: His Way,” *Americas Quarterly*, February 11, 2010.

⁴⁴ “El Salvador: Funes exhorta a aprovechar CAFTA,” *Associated Press*, March 4, 2010.

by voters. They rejected the ARENA-led economic liberalization and privatization for two decades that had not produced the growth and poverty reduction promised. On the other hand, they still supported a candidate who respected free trade, property rights and economic stability. Perhaps most noteworthy with regards to CAFTA and its effect on electoral politics was the very absence of it as a point of contention between the two major candidates, even while the general public expressed dissatisfaction with the agreement. Despite this, ARENA lost its control over the Salvadoran executive partly because it had presented itself as the party of market capitalism and alliance with the United States.

The 2009 presidential election provides the test for the Democratic Audit's Electoral Processes dimension. A peaceful transition of power between competing parties is a hallmark of democracy, and the transition to an FMLN regime helped strengthen Salvadoran democracy in that way. As an issue, CAFTA participated in the election insofar as support or rejection of it as an element of the ARENA economic policy helped compel voters to the polls. The evidence that the agreement itself improved Salvadoran democracy is tenuous, but the case can be made that it in part inspired a significant electoral result. Therefore, I allege that CAFTA has had a *positive* effect on the electoral processes in El Salvador.

Still, a vote for Funes did not equal a vote against DR-CAFTA, since he supports the agreement. What explains the contradiction between the popular discontent with free trade and the vote for a free trader? One could argue that the Salvadoran people valued stability above all else, and that renouncing CAFTA now would have more detrimental

effects to the economy. Furthermore, more obviously, there simply was no alternative candidate on the ballot who was more wary of market economics. However, these suggestions are mere speculation and would require empirical exit poll research to determine their validity.

Open and Accountable Institutions

A functioning market democracy cannot operate without strong state institutions in place to govern and regulate the system, and as a treaty with political and economic implications, CAFTA has proposed several initiatives to enhance the institutions in El Salvador. Fortunately for this assessment, more quantifiable data exists to study the strengthening of laws and agencies, but actual results are more challenging to determine in this case. In this section, we will consider statutory changes mandated by the CAFTA content, trade capacity projects and the overall developments in business regulation across the economy since implementation.

Data by the World Bank can help first offer a perspective to Salvadoran institutional quality since CAFTA has gone into force. The *Worldwide Governance Indicators* consider many of the political variables, such as accountability and stability, needed for successful economic development. While these statistics are less related to trade, they still offer a look at the state of Salvadoran democracy. The conclusions drawn from the *Governance Indicators* are mixed. In the period between 2003 and 2008, percentile measures of accountability, government effectiveness, and rule of law have

decreased.⁴⁵ The latter may have more to do with the sharp rise in gang-related violence; while this is a transnational phenomenon, it has little correlation to free trade. On the other hand, regulatory quality – the ability of the government to implement sound policies to sustain commercial development – has increased ten percentile points from 50.7 to 60.9, the sharpest change of all the measures.⁴⁶ This improvement inspires some confidence, as administrative regulations are most related to reforms mandated by the trade agreement. Overall, while it is difficult to tie CAFTA to El Salvador's performance on the *World Governance Indicators*, they still provide some context to the environment in which more liberalized trade operates. They demonstrate that in many ways El Salvador has not experienced immediate institutional strengthening except in terms of its regulatory quality. These regulations, however, form the crux of the forthcoming analysis of CAFTA's role in creating open and accountable institutions.

In order to prepare the institutions for CAFTA, El Salvador had to pass certain initiatives to increase their accountability. These initiatives in the text immediately increased the accountability of the Central American governments, and El Salvador is no exception. By the end of December 2005, the Legislative Assembly had passed the twelve laws required before the agreement could be implemented. The bundle of laws, passed by a coalition of right-wing parties led by ARENA over the objections of the FMLN, consisted of regulations dealing with subjects ranging from government

⁴⁵ On a scale of 1-100 percentile ranks, accountability decreased from 52.4 to 50.0; government effectiveness, from 51.7 to 49.8, and rule of law, from 41.4 to 30.6. Source: The World Bank, *World Governance Indicators*. Available at <http://info.worldbank.org/governance/wgi/index.asp>.

⁴⁶ Ibid.

procurement, intellectual property, telecommunications, sanitation regulations, and the penal code.⁴⁷

The statutory changes to state institutions executed as part of the CAFTA content accompanied programs sponsored by the United States to improve the labor standards in El Salvador. The trade capacity programs negotiated alongside the trade pact included several initiatives that dealt with the ability of the state to protect the rights of workers. Since these are some of the most pertinent liberties in a country like El Salvador, the strength of state institutions to uphold labor rights will comprise the bulk of this subsequent section.

While labor laws themselves will be appraised in the dimension of Political and Civil Liberties, one aspect of CAFTA's capacity building projects served to improve the accountability of the government. In fiscal year 2006, the Bush Administration committed \$8.24 million to Labor Justice System Modernization, a program spearheaded by the U.S. Department of Labor to train judicial personnel in all CAFTA countries on national labor laws and the application of labor standards through workshops. After the initial training sessions, the program developed in consultation with the countries' Supreme Courts a strategy to improve the adjudication of labor rights cases.⁴⁸ Trade capacity appropriations have also funded offices in the Salvadoran Ministry of Labor to

⁴⁷Jorge Coronado Marroquín, Ariane Grau Crespo and Manuel Pérez Rocha, *Impacto del TLC: Síntesis del informe preliminar* (San Salvador: Red Regional de Monitoreo DR-CAFTA, September 2007).

⁴⁸ *Ibid.*, *CAFTA-DR – Labor Capacity Building* (Washington, D.C.: Office of the U.S. Trade Representative, July 2007).

educate the public on their rights as workers.⁴⁹ Strengthening the Ministry in these ways has allowed for greater accountability in terms of labor rights, because mere unawareness of protections granted impunity to more corrupt employers.

The White Paper, introduced in Chapter 1 as the informal term for the Trade and Labor Vice Ministers' report on *The Labor Dimension in Central America and the Dominican Republic*, made several country-specific recommendations to improve labor rights. One trade capacity project in El Salvador supported by White Paper proposals includes a program to improve compliance with paying into the national pension fund. This sought to address a long-standing corruption issue in which management deducted money from laborers' paycheck to pay into the social security system but then failed to actually transfer the money. Then, the employee would be unable to request health care services covered by social security even though the money had been deducted.⁵⁰ The pilot program helps workers to verify the proper transfer of the salary deductions to the correct agency and guarantee that their health benefits are properly distributed.⁵¹ Attempts to fix this corrupt practice have received high reviews, and it serves as an anecdotal example of a means to improve transparency with a government institution. One detrimental consequence of market capitalism to democracy noted in Chapter 2 was its tendency to concentrate economic power in the hands of a few investors or corporations, which often skews the balance of domestic power in their interests away from the majority of the population. Furthermore CAFTA has minimized the role of the

⁴⁹ Vicki Gass, *DR-CAFTA and Workers' Rights: Moving from Paper to Practice* (Washington, D.C.: Washington Office on Latin America, May 2009), 5

⁵⁰ Gass, 11.

⁵¹ *Ibid.*, 7.

state in economic affairs. While it is difficult to find data on CAFTA's effects to income distribution, one can consider the size of the largest multinational firms in Central America and their influence on the state. Ten of the largest twenty-eight corporations in Central America come from El Salvador, and many of these groups have established domestic lobbying groups to protect their interests. Furthermore, they have created joint ventures with foreign companies, which grants these Central American enterprises more leverage in the business community. Meanwhile, the state's ability to regulate their international ties has decreased because of reductions in tariffs and subsidies as specified by the agreement. This dynamic has served to weaken the state while strengthening the standing of large agro-businesses and maquilas.⁵²

In terms of intellectual property enforcement, the "*Ley Fomento y Protección de la Propiedad Intelectual*" stipulated 108 reforms to Salvadoran law, including 32 new provisions that have granted special protections to foreign patent owners, ignoring certain regional conventions on intellectual property to which El Salvador is party. These include granting multinational corporations greater access to Salvadoran biodiversity.⁵³ The law also increases punitive measures against pirated media, a significant business in the informal sector, which weakening patent protections for domestic companies.⁵⁴ In sum, these regulations tie the hands of the state and give special privileges to foreign companies.

⁵² Sánchez-Ancochea, 180-1.

⁵³ Center for International Studies, "Intellectual Property under DR-CAFTA," in Stop CAFTA Coalition: 7.

⁵⁴ Marroquín, Grau Crespo and Pérez Rocha, 11-12.

As discussed at length in Chapter 2, one crucial function of a government in a market economy is to protect and regulate the economic framework to let capitalism flourish and inhibit undue commercial preferences. The parts of CAFTA that dealt with such regulations therefore affected the power of state institutions to supervise the economy. Three indicators in the World Bank's *Doing Business 2010* survey serve to consider this relationship between political institutions and the economy: "registering property," "protecting investors," and "contract enforcement." El Salvador has seen some improvement in terms of its institutional capacity to oversee its economy. Registering property titles helps people defend their property from illegal seizures and corruption and helps bring poorer entrepreneurs into the formal economy.⁵⁵ Yet in the years since CAFTA has been in force in El Salvador, property registration has not simplified. The time to register property did drop significantly between 2005 and 2006, from 52 days to 33 days, then to 31 days in the subsequent years. The expedited process is almost certainly attributable to CAFTA, which went into effect in 2006. However the cost as a percentage of property value to register property has increased slightly, which has caused El Salvador to slip relative to other countries on a ranking of the ease and strength of property registration rights.⁵⁶

The investment rights clauses of CAFTA have promoted financial integration, as the provisions remove barriers to capital mobility and mandate minimal regulation of foreign capital while they erect protections for investors. "The presence of legal and

⁵⁵ World Bank, *Doing Business 2010: El Salvador* (Washington, D.C.: International Fund for Reconstruction and Development, 2009), 20.

⁵⁶ *Ibid.*, *Doing Business 2010*. Historical data available online at www.doingbusiness.org.

regulatory protections for investors explains up to 73 percent of the decision to invest.”⁵⁷ Unfortunately, data before 2006 is unavailable, so it is impossible to gauge any changes generated by the agreement. Interestingly though, the strength of investor protections in El Salvador have remained the same in the five years that the survey has collected data for this indicator.

The *Doing Business* survey also measures the effectiveness of judicial institutions to resolve commercial disputes and enforce contracts. Contract enforcement is a cornerstone to the functions of a solid capitalist economy, for economies with weak regulations will often foster corruption and unaccountability. Notably, since the 2004 iteration, the survey has measured no difference in the Salvadoran state’s ability to enforce contracts: the time to adjudicate a dispute is lengthy (786 days, ranking it thirtieth in the world), and neither dispute cost nor the number of procedures has shown any change (19.2 percent of the cost of the claim and fifty, respectively).⁵⁸ These data suggest that DR-CAFTA has had no impact on El Salvador’s institutional capacity to monitor contract enforcement.

Despite the attention placed on institutional reform, CAFTA has not delivered many of its promises. It appears that the new laws may not have substantively improved the quality of Salvadoran institutions, as demonstrated in the relatively unaffected business climate figures just reviewed. The goals also contradict themselves to some extent: while seeking to enhance the power of the state to regulate the economy in one regard, CAFTA has also reduced its ability to oversee international investment and

⁵⁷ Ibid., *Doing Business 2010: El Salvador*, 21.

⁵⁸ Ibid., *Doing Business 2010*.

entrepreneurial rights. Still, critics should not place full blame on CAFTA and its negotiators for not generating such a nationwide shift in only four years. The efforts to improve the legal and institutional framework in El Salvador will take an entire shift in the culture of laws and business. A country with such a violent history and recent democratization can only be expected to take time in creating a state that will secure the market without encumbering it. Exogenous political factors such as the significant crime problem may also play a role in the somewhat uninspiring changes. Given this context, I will conclude that CAFTA has had a *neutral effect* on El Salvador's Open and Accountable Institutions dimension, the second condition in the Audit.

Political and Civil Liberties

This particular dimension in the Democratic Audit entails the greatest number of specific indices deemed relevant to the relationship between DR-CAFTA and democracy in Central America. El Salvador's experience in the past four years with personal liberties has been quite controversial, especially as state security measures have intensified due to the crime problem. However, the transformative trade agreement has also presented serious challenges to Salvadoran society. Because of these mixed results, I will suggest that CAFTA has had a *neutral effect* on civil and political liberties in El Salvador.

Before ratification of CAFTA, El Salvador maintained remarkably tough labor standards relative to its position as a poor, developing country without consolidated democratic institutions. At the behest of the five Central American Ministries of Labor

before signing the accord, the International Labor Organization (ILO) compiled a report of the employment regulations in their countries. The ILO found that the Salvadoran constitution recognizes the rights of private employers and workers to establish, join, and leave unions, but it does limit the formation of public sector unions. Certain laws in the legal code also prohibit unfair labor practices that restrict this freedom of association, including an employer withholding wages from or dismissing unionized employees. The law also forbids discrimination, notably against pregnant women, and effectively abolishes child and forced labor.⁵⁹ In addition, the White Paper notes that El Salvador has ratified six out of eight of the ILO conventions considered fundamental legal rights. The fact that the country has not ratified the conventions on the “Freedom of Association and Right to Organize” and on “Right to Organize and Collective Bargaining” distinguishes it from its neighbors, which have otherwise ratified all the conventions named.⁶⁰ Overall, the ILO notes that since the 1994 Peace Accords, El Salvador has made major strides in improving its labor standards, but it does express some concern about the difficulty faced by government employees to form unions.⁶¹ Furthermore, the ILO called for El Salvador to address its concerns regarding illegal worker dismissals and anti-union hiring practices.⁶²

⁵⁹ International Labor Office, *Fundamental Principles and Rights at Work: A Labour Law Study* (Geneva: International Labor Organization, 2003), 13-7.

⁶⁰ DR-CAFTA Ministers of Trade and Economy, *The Labor Dimension in Central America and the Dominican Republic – Building on Progress: Strengthening Compliance and Enhancing Capacity*. Submitted to the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic (April 2005), 8.

⁶¹ *Ibid.*, 30.

⁶² Gass, 4.

One of the most heralded chapters of CAFTA was its inclusion of labor rights as a key feature. While this section was largely discussed in Chapter 1, it is necessary to briefly review certain strictures in the text that applied in particular to El Salvador. Because the agreement obligates all signatories to enforce current law and bans relaxing any regulations in order to promote international trade, proponents argued that El Salvador would not backtrack on its commitments to labor rights.⁶³ In addition, rather than instituting new regulations, the state would need to upgrade its monitoring and enforcement mechanisms in order to meet the standards set by CAFTA. Rather than calling on signatories to impose sanctions on violators of labor laws, the accord requires that they assess fines determined by dispute settlement panels. Advocates asserted that monetary remuneration served to punish offenders while not damaging the entire country, the presumed consequence of trade sanctions.⁶⁴ During ratification in El Salvador, the *Consejo Superior del Trabajo* joined with eight union federations and 73 individual unions to declare that, “the mechanisms established in the FTA’s labor chapter will strengthen the rule of law and promote enforcement of labor laws now in force.”⁶⁵ The apparent backing of labor organizations contrasted with the large fears by groups in El Salvador and the United States that CAFTA would undermine labor rights.

The existence of labor protections in Salvadoran law, however, does not automatically mean that labor standards are upheld. In order to improve enforcement, the

⁶³ Carlos Felipe Jaramillo and Daniel Lederman, *Challenges of CAFTA: Maximizing the Benefits for Central America* (Washington, D.C.: World Bank, 2006), 60.

⁶⁴ U.S. Chamber of Commerce, *Myths and Realities: Labor Rights Provisions in the U.S.-Dominican Republic-Central America Free Trade Agreement (DR-CAFTA)* (Washington, D.C.: U.S. Chamber of Commerce and the Association of American Chambers of Commerce in Latin America, 2004), 2.

⁶⁵ *Ibid.*, 3.

United States initiated trade capacity projects that assisted the Labor Ministries in Central America. In one project, the U.S. Department of Labor distributed \$14.94 million in fiscal years 2006 to 2009 to the *Cumple y Gana* programs in the Ministries that target discrimination in the maquila sector. The Labor Ministries used these resources to sponsor trainings for labor inspectors and for employers and to create informational websites and materials for the public. Additionally, the project strengthened local Worker Rights Centers to advise labors on national labor standards and provide legal services.⁶⁶ One such organization in El Salvador that has received these funds includes the University of Central America's Human Rights Institute.⁶⁷ An additional \$3.98 million was earmarked for Labor Ministries to enforce laws against discrimination and harassment of women in the manufacturing sector. Out of a \$27 million appropriation to combat child labor, the Salvadoran government specifically received funds to eliminate this abuse within a specified timeframe. The Department of State's Bureau of Democracy, Human Rights and Labor has been authorized to award funding to non-governmental organizations that will train selected industries throughout Central America to promote responsible labor practices.⁶⁸ Finally, the Department of Labor provided \$2.98 million for monitoring programs related to ILO recommendations.⁶⁹ Although these funding numbers include projects sponsored throughout Central America, it is the programs themselves, rather than the relative appropriations, that are important for this analysis.

⁶⁶ Office of the U.S. Trade Representative, "CAFTA-DR – Labor Capacity Building."

⁶⁷ Gass, 5.

⁶⁸ *Ibid.*, 6-7.

⁶⁹ Office of the U.S. Trade Representative, "CAFTA-DR – Labor Capacity Building."

During preparation for ratification, El Salvador made some committed efforts to achieve results on its labor rights. Backed by the trade capacity projects, the government has increased its employment of labor inspectors and improved the process to file complaints. The Labor Ministry also provides free legal assistance for workers to file a union registration form and has opened field offices in free trade zones to monitor labor standards in maquilas.⁷⁰ However, the capacity of these initiatives to protect labor rights is unknown, and one always must be cautious that such changes pay only lip service to actual systemic reform.

The trade capacity projects have sought to improve labor rights in El Salvador and its regional partners by boosting enforcement. Through programs to provide better monitoring infrastructure and to initiate public awareness campaign, these corollary agreements to DR-CAFTA try to institute systemic labor improvements. In theory, these actions should fit within the Democratic Audit's indices dealing with the public awareness of their rights and the government's ability to protect them. As demonstrated, these projects meant to improve just those two factors.

The success of these programs however is still up in the air. Unfortunately for this thesis, it is still too early to make resounding conclusions on the labor rights aspect of the trade agreement beyond the immediate changes implemented. Few formal studies have been published on the actual effects of CAFTA to labor rather than only the perceived effects. One concern raised has been that those members of the informal economy, a significant portion of the population, still persist without the protection of

⁷⁰ Ibid., "Real Results on Labor Rights: Improvements as a Result of CAFTA" (Washington D.C., Office of the U.S. Trade Representative, February 2005).

formal labor laws. Any laborer displaced because of trade liberalization that has had to find employment in the informal sector thus has been thrust into this extralegal realm.⁷¹

The Washington Office on Latin America (WOLA), a prominent think tank and non-profit political organization, recently disseminated a comprehensive analysis of the labor situation in Central America after the implementation of CAFTA. The paper asserts that despite the efforts made by the text itself and by the accompanying trade capacity projects in improving labor standards, there has been relatively insignificant progress. The Salvadoran government has boosted the budget of the Ministry of Labor over the past three years, earmarking money in particular for increased labor inspections. The government has also disseminated information about labor rights, but the ILO has advised that the state drastically accelerate this process and to conduct investigations on labor violations, which still occur with relatively high frequency.⁷² Although the White Paper was drafted jointly by the Central American ministries, WOLA is concerned that the governments' enforcement has not improved, partly because the workers and employers still do not know the extent of their rights. Personal interviews have consistently revealed that labor rights have remained under-administered.⁷³ In fact, intimidation and even violence against labor organizers in Central America have persisted.

The judicial system has not fared as well as hoped either. In terms of the adjudication, governments have relied more on mediation outside the courtroom rather

⁷¹ Marroquín, Grau Crespo and Pérez Rocha, 13.

⁷² Gass, 8.

⁷³ *Ibid.*, 10.

than criminal prosecution, which labor rights advocates say undermines their ability to obtain fair and legal decisions.⁷⁴ An initial reason for optimism arose when El Salvador ratified the pending ILO Conventions, one of the recommendations issued before the government signed CAFTA. Nonetheless, in October 2007 the Constitutional Chamber of the Salvadoran Supreme Court declared unconstitutional an article in one of the conventions recognizing the right of public sector employees to unionize – which was one of the major apprehensions of the ILO in the first place. The decision thus abrogated the process already instigated by six public sector associations to receive formal state recognition.⁷⁵

As the WOLA report proposes, earnest attempts to use CAFTA as a means to advance labor rights in Central America may not have rendered the positive effects intended. The organization blames paltry appropriations by the U.S. government for the failure: “the U.S. tax dollars funding the projects to implement the White Paper recommendations, which supporting some novel and commendable organizations and projects, are insufficient to resolve the long-standing labor problems and impunity that plague the region.” Unfortunately for this analysis, WOLA did not provide a detailed account of the state of labor rights in El Salvador specifically, but it is presumed that the situation in that country resembles those in its neighbors. Also, this report serves as the only investigation of CAFTA’s actual impact on labor rights in Central America, so any substantive conclusions about this part of civil and political liberties are dubious. Clearly more impartial assessments are needed, especially over a longer time span.

⁷⁴ Ibid., 17.

⁷⁵ Ibid., 18.

Given the inadequacy of primary documentation on the effects since CAFTA came into force in El Salvador, it is challenging to offer substantive conclusions in the Political and Civil Liberties dimension. The mixed evidence presented allows me to argue that the effect of CAFTA in this dimension has been *neutral*. The trade capacity projects have enacted several positive plans to improve the institutions and protections of workers, which gives some credence to the belief that side negotiations to trade agreements may contribute benefits to developing countries. However, the WOLA report on the actual effects is cause for some apprehension. The report recommended a substantial increase in U.S. funding for labor rights to offset any damages incurred by CAFTA-related business ventures. Short of this rather lofty goal, a larger systemic shift must occur to create a culture that values workers rights. Similar to the situation for government institutions, well-intentioned laws and initiatives cannot transform an entire culture that has historically been antithetical to labor standards. Nonetheless, they form a necessary first step in the right direction, and nothing from this assessment should be construed as a rejection of labor rights language as a component of trade agreements.

Civil Society: The Negotiations and Pacific Rim Mining Debates

The final Dimension presents a different challenge to the use of the Democratic Audit. As unlike in the previous two sections, this question cannot consider the content of CAFTA. Instead, the trade agreement must be considered more as a force or entity itself to which civil society reacts. In this case, the specific provisions are less important than the entire issue, similar to the public's reaction detailed in the Electoral Processes

Dimension. Much like NAFTA and the rise of the Zapatista movement in resistance, in El Salvador civil society has developed and solidified in a democratizing process to oppose CAFTA. An impressive coalition of voices has coalesced and transcended national boundaries to confront this entrenchment of market capitalism. Religious groups, academic associations, women's and rural workers' organizations, labor unions and many others have demonstrated with varying degrees of success.⁷⁶ The civil society dimension in El Salvador will be considered through two different topics: the negotiation of the agreement and the recent challenge posed by the Pacific Rim Mining Corporation.

The CAFTA negotiations themselves were relatively closed to outside voices, which provoked widespread suspicion and rejection of the agreement itself by civil society groups. These organizations perceived free trade as a force that jeopardized the already scant political rights to the rural and indigenous communities in the region. Furthermore, it would undermine the gains of the 1992 Salvadoran Peace Accords that guaranteed the supremacy of the state and the national constitution to govern over the territory.⁷⁷ During negotiations, the Salvadoran government under President Francisco Flores consulted the business sector, whose leaders created an ad hoc working group to promote the trade agreement. Domestic interests also collaborated with the American Chamber of Commerce of El Salvador, an affiliate of the U.S. Chamber of Commerce.⁷⁸

⁷⁶ Carolina Quinteros, Maria Eugenia Ochoa and Diego Salcedo, "Impacto del Tratado de Libre Comercio entre EEUU y Centroamérica en los movimientos sociales centroamericanos," *Revista Centroamérica en la Economía Mundial del Siglo XXI* (San Salvador: Universidad Centroamericana "José Simeón Cañas," 2004), 2.

⁷⁷ Barahona, Duarte and Castro, *Impacto político del CAFTA en los países centroamericanos*, 19, 23.

⁷⁸ Spalding, "Civil Society Engagement in Trade Negotiations: CAFTA Opposition Movements in El Salvador," 89.

On the other side, two major coalitions emerged to criticize CAFTA. Although they employed different strategies, the relative successes and failures of these civil society groups taught them important lessons to strengthen this dimension of Salvadoran democracy. These groups are the Iniciativa CID and the Foro Mesoamericano.

The Iniciativa CID fused a number of non-governmental organizations, including foundations and even small business lobbyists, into a political faction that engaged the CAFTA negotiators. The FUNDE, a development foundation and member of CID, produced analyses and reports on the agreement's implications to development in order to influence its content and to minimize any damaging impact to the vulnerable sectors of the Salvadoran population.⁷⁹ FUNDE then mobilized other allied non-governmental organizations. CID members participated in side room consultations during the different rounds of negotiation. Their presence lent greater credibility to civil society organizations as groups with a broad base of support and with a stake in the national dialogue. They had to combat a stigma across Central America that non-governmental organizations represented narrow social sectors and had little to offer in an international debate of this magnitude.⁸⁰ Responding to the CID, the Salvadoran Ministry of Economy developed a Citizen Participation Program to arrange sessions with negotiators, business leaders, and civil society members.

Yet despite the ostensible inclusiveness of the Salvadoran ratification debate, the CID was in some ways marginalized in the final debate. Their call for a moratorium on the agreement, whose negotiation they argued was being unfairly expedited, was widely

⁷⁹ Barahona, Duarte and Castro, 6.

⁸⁰ Spalding, 92.

ignored as the government pushed ahead.⁸¹ In the end, they were unable to halt CAFTA, but their larger impact on the democratic process should not be discounted. By occupying a legitimate space at the negotiating table, the Iniciativa CID proved to the Salvadoran government and the business community that civil society could be a responsible partner. Their emphasis on policy analysis and forging a coalition gave them legitimacy. In turn, the CID members themselves, while dismayed at this outcome in particular, learned valuable skills in working across disciplines.⁸² This lesson is significant for any democratic society in which non-governmental organizations want to express a popular sentiment and influence policy-making.

In the CAFTA debate, the Foro Mesoamericano took the more grassroots approach. The Foro, also known as the Bloque Centroamericano, used direct action and protests to both generate street-level confrontation with the government and to effect more systemic change and persuade the population about the dangers of CAFTA. The Foro itself arose out of popular discontent with the Plan Puebla-Panama, a program proposed by the governments of Mexico and Central America to construct infrastructure and promote regional trade. The Foro held meetings across the region of grassroots activists with increasingly high numbers of participants, many of them hailing from El Salvador. The Salvadoran Movimiento Popular de Resistencia-12 (MPR12) and the Red Sinti Techán were networks of small rural organizations and reform cooperatives on the one hand and of more professional non-governmental organizations with focuses on

⁸¹ Ibid., 94.

⁸² Ibid.

women's issues, the environment and consumer protection.⁸³ These two groups adopted the voice of the Foro in El Salvador. As the CAFTA debate began to take hold, the Foro Mesoamericano expanded its advocacy to a denunciation of free trade in general, and it mobilized resistance to the negotiations.

In El Salvador, the MPR12, the Sinti Techán, and their affiliated groups declared that CAFTA represented the investment and business interests exclusively. As a coalition, these groups represented a novelty in Salvadoran civil society – they united small mass membership organizations into a “network of networks,” which gave a more potent voice to local popular groups that could take advantage of strength through numbers. In October 2002, the local groups staged a number of simultaneous roadblocks on large, cross-country thoroughfares in the first anti-CAFTA mobilization in El Salvador.⁸⁴ Members of the Foro Mesoamericano did not resort to the same tactics as the Iniciativa CID, as they scorned any action “inside” the debate and instead resorted to public confrontation through marches.

After President George W. Bush's reelection, President Antonio Saca, himself only recently elected but endorsing an economic policy consistent with his predecessor's, formally introduced the treaty in Congress and urged a speedy ratification. The MPR12 in turn prepared for its final battle, and on the morning of ratification, protestors occupied the legislative chamber until security forcibly removed them. In the same day as debate

⁸³ Rose J. Spalding, “Neoliberal Regionalism and Resistance in Mesoamerica,” in *Latin American Social Movements in the Twenty-First Century*, ed. Richard Stahler-Sholk, Harry E. Vanden and Glen David Kuecker (Lanham, MA: Rowman & Littlefield Publishers, Inc., 2008), 329-30.

⁸⁴ Spalding, “CAFTA Opposition in El Salvador,” 97.

opened, the leadership forced a midnight vote on the treaty in order to stave off any anti-CAFTA mass mobilizations.⁸⁵

After El Salvador's Congress ratified the agreement, the coalition of activists did not surrender; rather, they directed their energies toward Costa Rica, the last pending signatory and the setting for major civil society resistance to CAFTA.⁸⁶ Although the eventual outcome was not in the Foro's favor, much like with the CID the long term impact for civil society development is important. In fact, some analyses of the negotiation debate have revealed that the officials may have extended more opportunities for the CID "...in order to tamp down charges of exclusivity and enhance international legitimacy" out of response to the more rowdy tactics of the MPR12.⁸⁷ Furthermore, the Foro Mesoamericano has fostered relationships within El Salvador and across Central America that could conceivably produce a significant voice to confront the ruling business elites. Because international trade has to some extent subverted the sovereignty of the national state, transnational networks can give activists who cannot influence their own state better tools for pressure. While the movements did not win this battle, it is arguable that their coordination instituted a better mechanism to express discontent in the future.⁸⁸

Even the political parties adopted unique methods to try and forestall the passage of the agreement. When CAFTA formally came into effect, the FMLN and its subsidiary groups for Salvadoran immigrants in the United States organized an email campaign to

⁸⁵ Spalding, "Neoliberal Regionalism and Resistance in Mesoamerica," 332.

⁸⁶ *Ibid.*, 333.

⁸⁷ *Ibid.*, "CAFTA Opposition in El Salvador," 103.

⁸⁸ *Ibid.*, "Neoliberal Regionalism and Resistance in Mesoamerica," 335.

its supporters to call their local representatives or consuls and express their opposition to the agreement. The message employed language familiar to grassroots organizations in the United States, providing a prepared statement and list of telephone numbers for participants to use in their call.⁸⁹

Given the political context, it is doubtful that CAFTA could have been defeated in El Salvador. After years of continuous ARENA leadership, pro-market economic policies, and a close alignment with the United States, the chance for El Salvador suddenly to change direction and abandon liberal market policy seems slim. What is remarkable, then, is that the civil society organizations actually managed to insert itself in the debate as much as they did. While the networks of activists did not stop the passage of CAFTA, they may have achieved a larger goal – shaping popular opinion. The Salvadoran citizenry, once largely in favor of free trade, shifted overwhelmingly during the ratification process; since 2006 a majority has expressed disapproval to it. In that year, half of respondents concluded that CAFTA would exacerbate poverty, up from 28 percent who answered a similar question in 2003.⁹⁰

The CAFTA debate in El Salvador is notable in that it did not spawn new civil society groups as much as mobilize existing groups to foster working relationships with one another. These social movements, such as the MPR12 and the Red Sinti Techán, united from diverse backgrounds to campaign against a collective force they perceived as

⁸⁹ “FMLN utiliza forma de protesta de EEUU para oponerse a CAFTA,” *Deutsche Presse-Agentur*, March 1, 2006.

⁹⁰ Rose J. Spalding, “Neoliberal Regionalism and Resistance in Mesoamerica,” 338.

a threat to their individual missions. In addition, the transnational nature of CAFTA encouraged similar cross-border civil society collaboration.

The most significant outcome of this experience for civil society may be the opportunities for the groups to learn better strategies to state their grievances in a democracy. El Salvador, like its other neighbors except Costa Rica, has a relatively young tradition of peaceful democratic expression. Until this debate, lobbying and use of political influence were relatively unheard of as tactics, as opposed to outright protests, sometimes accompanied by violence.⁹¹ This relatively new strategy on the part of civil society may signal a positive development in the democratic process. While the organizations in the Iniciativa CID were unable to avert CAFTA, they did learn new approaches to expressing their concerns in the public forum. This in itself is a reason for optimism, as in the future, civil society organizations can employ these peaceful means to influence the policy debate with greater success, much like their peers in consolidated democracies.

Turning back to the Democratic Audit, the experience of these non-governmental organizations in the Salvadoran ratification debate fits within certain indices of the Civil Society Dimension. As the groups joined into stronger unified networks, they managed to demonstrate that the civil society represented a variety of actors in the country, especially the smallest local groups that historically lacked a voice in Salvadoran politics. Therefore CAFTA as an existential phenomenon contributed to the extent of the civil society representation, one of the specified indices. The question of if the civil society

⁹¹ Quinteros, Ochoa and Salcedo, 12.

has consolidated its support of democratic principles is more debatable. Certain civil society groups also began to adopt tactics that are more common to basic democratic principles, such as participating at the negotiating table as a stakeholder. On the other hand, the Foro Mesoamericano took some rather populist means by sponsoring protests and even obstructing the legislative process, a markedly undemocratic activity. Nonetheless, popular demonstrations are part of a democratic society; the alternative is repression, a cornerstone of illiberal authoritarianism. Above all, the establishment of the cross-organizational and transnational relationships serves as the primary example that civil society in El Salvador developed in a positive direction after the CAFTA negotiation and ratification debate.

As CAFTA has gone into effect, civil society groups in El Salvador that oppose neoliberalism have maintained their activism, but they have redirected their energy to monitoring the implementation of the agreement. Many non-governmental organizations have published reports of the effects of the trade agreement on the economy and the society. Its environmental impact has promoted some outcry, as civil society groups fear that the intellectual property regulations would grant preference to foreign patent-holders and enable them to exploit endangered natural resources through deep-sea fishing, for instance.⁹² One of the most significant and well documented examples is the civil society response to a challenge to the sovereignty and power of the Salvadoran state. The dispute with Pacific Rim Mining Corporation, a Canadian firm, over its proposed El Dorado gold

⁹² Quinteros, Ochoa and Salcedo., 35.

mining operation has surfaced through provisions in CAFTA, and the case highlights a role that civil society participates now.

Pacific Rim Mining filed a lawsuit against the Salvadoran government after the state forced it to suspend its activity on environmental grounds. Beforehand, Pacific Rim had considered its project to mine for gold at El Dorado its primary asset. The El Dorado operation covers 144 square kilometers in the department of Cabañas, the second poorest province in the country with 55 percent of the population living under the poverty line.⁹³ El Salvador is not known for its mining industry; in fact, mining contributed less than 0.2 percent to the Salvadoran economy in 2006.⁹⁴ A few projects to extract gold were undertaken in the late 19th century and again in the 1940's, but because of technological deficiencies, extraction was abandoned. In 2002 Pacific Rim Mining Corporation acquired the El Dorado project after it merged with another firm that had explored the mining potential of the site.⁹⁵ While the firm claims the project would generate Salvadoran jobs, it would mostly require unskilled labor in risky conditions. As Pacific Rim began its initial construction in the site in 2004, the Saca government tacitly accepted its proposal for a permit. After its review, administration officials returned the application with comments but no formal decision. This delay did not stop Pacific Rim from continuing its projection until March 2008, when the Salvadoran state announced that it would "...revise the legal framework of mining exploration and extraction,"

⁹³ Raúl Gutiérrez, "'Life is Worth More than Gold' say Anti-Mining Activists," *Inter Press Service News Agency*, February 1, 2009.

⁹⁴ *Ibid.*

⁹⁵ Pacific Rim Mining Corporation, "El Dorado, El Salvador," Pacific Rim Mining Corporation, www.pacrim-mining.com/s/ES_Eldorado.asp (accessed March 1, 2009).

effectively halting the project.⁹⁶ This was a response to the public outcry boiling over the project and fueled by organized civil society complaints. As the dispute developed, Pacific Rim officially suspended its activities to prepare the El Dorado site for gold extraction, citing concerns over its investments there.⁹⁷

On April 30, 2009, Pacific Rim formally filed suit against El Salvador. The firm alleges that the Government has failed to fulfill its obligations to Pacific Rim, while the enterprise has abided by the domestic investment and environmental regulations and by investment rules in CAFTA. The Corporation has cited the “investor-state” dispute system in CAFTA, which grants foreign investors the right to take El Salvador for damages before the International Center for Settlement of Investment Disputes, an arbitration affiliate of the World Bank. The Salvadoran government, it argues, failed to respect the permit process commenced by the mining company nor did it respect its rights to invest in the project.⁹⁸ The state violated the principle of “national treatment,” which prohibits El Salvador from discriminating against foreign companies and by offering preferences to a domestic company.⁹⁹ In reaction, El Salvador cites its national laws dealing with investment, mining, and the environment to assert the primacy of the state over foreign investors. Pacific Rim seeks damages of \$100 million from El Salvador, a claim that is twice the amount of U.S. foreign aid to that country.¹⁰⁰ As a Canadian

⁹⁶ Rocío Barahona and Benjamín Ramos, *El legado del CAFTA DR: Millonaria demanda de Pacific Rim al Estado Salvadoreño* (San Salvador: Centro de Investigación sobre Inversión y Comercio, June 2009), 7.

⁹⁷ *Ibid.*

⁹⁸ Pacific Rim Mining Corporation.

⁹⁹ Madrid, “El Salvador and the Central American Free Trade Agreement: Consolidation of a Transnational Capitalist Class,” 194.

¹⁰⁰ Kevin Gallagher, “Stop private firms exploiting poor states,” *The Guardian*, February 5, 2010.

company, Pacific Rim itself does not have legal jurisdiction to file suit under the settlement clauses in CAFTA. However, its subsidiary Pacific Rim Cayman LLC is based in Las Vegas, Nevada, which the firm contends grants it standing under CAFTA's dispute clauses.

The Pacific Rim case reifies the question of transnational investment rights. On one hand, CAFTA has forged a greater relationship between states and private enterprise and provides a means to protect business interests from populist or nationalist whims. On the other, it could be perceived as empowering foreign investors with unwarranted privileges to subvert national sovereignty. The state may have little authority to regulate against a foreign private entity; thus by signing CAFTA, El Salvador has conceded this power to the international legal structure.

Beyond the legal question of sovereignty, civil society groups have denounced the environmental degradation that the El Dorado mine would impose. Mining is a notoriously harmful industry to the nearby area, and critics of the project pointed to the use of cyanide to extract gold. Runoff from the project could also pollute local rivers, which provides a major supply of potable water to the rural population. An American geologist who analyzed the Environmental Impact Assessment that Pacific Rim had submitted to the Salvadoran government contended that the company did not provide adequate information to state regulators or the general public on the impact of the project on water resources.¹⁰¹

¹⁰¹ Gutiérrez.

The civil society uproar against the Pacific Rim mining project has significantly framed the political debate. The well-organized popular associations tied to more professional non-governmental organizations have used this environmental challenge to reemphasize their claim that trade agreements endanger the Salvadoran public. With the state powerless to regulate foreign investors and with a supra-national court being the required mechanism to dispute the problem, they claim that CAFTA has undermined national sovereignty. The influence of the civil society has been evident in the earlier political decisions to reject the Pacific Rim petition to begin operations. Former President Saca had established an initial agreement with the mining company to let the firm begin exploratory operations in order to attract its investment, but fears of popular discontent led his administration to table the proposal formally in 2008.¹⁰² Pacific Rim claims that ARENA anxiety over the imminent 2009 election was a crucial reason by Saca reneged on the permit. In an interview, the firm's board chairwoman also accused the civil society organizations of prevarication: "the anti-mining lobby are telling people lies, that they're going to have two-headed babies and their cows are going to die. And meanwhile we have to lay off people who will go back to extreme poverty."¹⁰³ Civil society groups have been able to take advantage of popular suspicion of mining projects: in one poll, 85 percent of respondents believed that mining companies damaged the environment.¹⁰⁴ Since taking office, President Funes has repudiated the Pacific Rim

¹⁰² Barahona and Ramos, 34.

¹⁰³ Peter Koven, "El Salvador stalls PMU permit; Miner's shares drop 30% after drilling stops," *Financial Post*, July 4, 2008.

¹⁰⁴ Instituto Universitario de Opinión Pública, "Encuesta sobre conocimientos y percepciones hacia la minería en zonas afectadas por la incursión minera en El Salvador" Serie de informes EP. (San Salvador Universidad Centroamericana "José Simeón Cañas," November 2007).

initiative, having said, “it’s very simple: my government will not authorize any extractive mining project.”¹⁰⁵

The non-governmental organizations even declared that the mining operation could jeopardize the grant El Salvador receives from the United States Millennium Challenge Corporation.¹⁰⁶ A coalition of anti-mining groups delivered its first official rejection of mining in El Salvador in February 2008, and since then they have implemented additional strategies to block Pacific Rim. The Salvadoran Conference of Catholic Bishops has also joined the opposition, stating that “mining causes irreversible damage to the environment and the surrounding communities.”¹⁰⁷ Together, a number faith-based, environmental and community organizations have coalesced into the Mesa Nacional Frente a la Minería Metálica. La Mesa is currently lobbying for a national ban on mining in El Salvador and a general revision of CAFTA’s investment rules. While still an informal group, La Mesa now consists of self-acknowledged members and has begun to adopt many characteristics and tactics of non-governmental organizations, such as sponsoring protests and disseminating press releases. For their activities, the Institute for Policy Studies, a progressive American think tank, awarded the coalition its annual Letelier-Moffitt Human Rights Award in October 2009.¹⁰⁸

The Pacific Rim challenge has provoked more than political debates; recent violence against anti-mining activists has threatened the free expression and security of

¹⁰⁵ Edgardo Ayala, “El Salvador: Activists Link Mining Co. to Murders,” *Inter Press Service*, January 27, 2010.

¹⁰⁶ Koven.

¹⁰⁷ Gutiérrez.

¹⁰⁸ Gabriela Campos, “The Struggle Against Free Trade Continues,” *Foreign Policy in Focus*, October 27, 2009. Available at www.fpiif.org/fpiftext/6527/.

civil society in El Salvador. Broadcasters for an independent radio station that has been critical of the mining project received death threats. During the summer of 2009, a La Mesa leader, Marcelo Rivera, disappeared and was later found dead in a well and exhibiting signs of torture. Since then, two activists and members of the Cabañas Environmental Committee – a constituent organization of La Mesa – were gunned down. The link between these three murders and their anti-mining advocacy is unequivocal, and many activists have accused Pacific Rim of conspiracy.¹⁰⁹ The company denies the “wrongful” and “false” allegations, but fears of further intimidation continue to spiral.

It is premature to draw conclusions about Pacific Rim saga, as the controversy will continue until the World Bank reaches a decision in the lawsuit. However, an early assessment of the situation suggests that the civil society organizations have had some influence on the policy. Their public condemnation of the project led President Saca, an erstwhile support of the project, to retract his administration’s endorsement and to avert a potential electoral disaster. The power of networks, already observed in the ratification debate, provoked the formation of La Mesa, which, while still a loose affiliation of non-governmental organizations, has begun to establish a permanent voice. It remains to be seen if the civil society can mobilize greater political participation and action among the general public, an index question of the Democratic Audit. Nevertheless, we can suggest that through the Pacific Rim challenge, CAFTA has unleashed a civil society backlash to neoliberalism. The problem has provided a concrete example for CAFTA critics to cite in advocating their position. Two civil society groups – one being the Red Sinti Techán –

¹⁰⁹ Ayala.

that consolidated their voice and influence during the CAFTA ratification debates have recently managed to convince the Supreme Court to hear their case that the investment arbitration sections of the trade agreement are unconstitutional and undermine national sovereignty. A victory for them would generate a movement to have the Supreme Court declare the entire trade agreement unconstitutional in addition to automatically voiding any claims that Pacific Rim Mining has in the country.¹¹⁰

The irony of the civil society impact of CAFTA is that the trade agreement has fostered a greater democratic voice based on its opposition to trade. Surely the proponents of trade liberalization as a means to promote democracy did not intend for this outcome, but regardless, the issue has galvanized organizations representing marginalized voices to take a stand against the prevailing political interests. A democracy depends on the expression of all sectors of society, and a network of non-governmental organizations can achieve that. For this reason, I conclude that in the Civil Society Dimension, DR-CAFTA has had a *positive effect* to democracy in El Salvador.

Conclusions

Based on my analysis using the Democratic Audit, I maintain that DR-CAFTA has provided a *weakly positive* effect to democratic politics and institutions in El Salvador. This conclusion derives from my aforementioned examination of the four dimensions. Electoral Processes experienced a positive effect; Open and Accountable Institutions experienced a neutral effect; Civil and Political Liberties experienced a

¹¹⁰ “Minería y CSJ,” *Diario Co Latino*, February 10, 2010.

neutral effect, and Civil Society experienced a positive effect. Subdividing the Audit into the two classifications, based on the way CAFTA influenced the dimension, I can declare that as a policy phenomenon, it had a strong *positive effect*, whereas its content has had a *neutral effect*.

In El Salvador, perhaps the most interesting issues regarding the implementation of CAFTA concern the public's understanding and acceptance of the treaty. The 2009 elections and the rise in support for broad civil society organizations highlight a belief that the market capitalist model championed by the ARENA government has not accomplished all of its objectives to improve the economic well-being of the country. While the institutional changes rendered by treaty stipulations and side agreements, such as trade capacity projects, have undoubtedly improved the structure and business climate in El Salvador, the public may not interpret this outcome as so beneficial. The Pacific Rim Mining issue can symbolize the entire challenge – popular suspicions that a foreign company does not have interests in Salvadoran development may undercut all the actual economic benefits that foreign investment brings. Much like this pending case, one cannot offer substantive conclusions over the entire state of Salvadoran politics because of the relatively recent implementation of CAFTA. A whole transformation in the institutional and business culture must take place before the laws that the agreement has affected can truly achieve success. Nonetheless, the Democratic Audit employed here is a useful standard by which to examine these changes, even after only four years.

Table 4.1. El Salvador Economic Indicators, 2003-08

Year	GDP per capita growth (rate)	Trade	Exports	Imports	FDI ^a	Manufacturing	Agriculture	Real Wages (Index) ^a	Unemployment (Annual %) ^a
2003	1.94	70.04	27.07	42.97	0.80	24.32	8.98	103.80	6.90
2004	1.51	72.91	27.83	45.08	2.30	23.82	9.54	100.20	6.80
2005	2.72	71.71	26.52	45.19	2.30	22.87	10.50	100.90	7.20
2006	3.78	74.04	27.18	46.86	1.40	22.41	10.93	97.40	6.60
2007	4.22	76.20	26.13	50.07	6.90	22.40	12.13	98.00	6.30
2008	2.09	77.48	27.68	49.80	3.30	21.79	13.18	93.30	5.90

Source (unless otherwise noted): World Bank, World Development Indicators 2010.

^a*Source: Inter-American Development Bank, Latin America and Caribbean Macro Watch (2010).*

Note: All data given in percent (%) GDP unless otherwise noted.

CHAPTER 5

Costa Rica

The second case example we will study is Costa Rica. This country presents an interesting contrast to El Salvador due to its unique political environment and experience with CAFTA. Nonetheless, some notable parallels can be made in comparing the two, and we can draw larger conclusions about CAFTA's influence on democracy by considering them together.

Costa Rica always has been an anomaly among developing countries, especially by Latin American standards, and it has managed to sustain economic growth along with a formal democracy and social welfare system. The 1949 constitution enshrined a system of competitive, legitimate elections that preserved stability. The constitution also forbids the existence of a standing army, thus eliminating one institution that has destabilized political systems elsewhere in Latin America. Democracy in Costa Rica has further cemented itself through the high support of the Costa Rican people. Historically, the citizenry has participated in elections and civil society at a higher level than their peers in other developing countries.¹ Such high levels of political engagement have often resulted in painstakingly slow policy formulation, as lawmakers tend to respond to expressions of

¹ John A. Booth, "Costa Rica: The Roots of Democratic Stability," in *Democracy in Developing Countries: Latin America*, 2nd ed., ed. Larry Diamond et al. (Boulder: Lynne Rienner Publishers, 1999): 445

citizen sentiment. This egalitarian gradualism has become a hallmark of Costa Rican politics.

Costa Rica's successful state-driven development strategy based on import substitution faltered by the early 1980's and like much of Latin America, the country defaulted on its international debt. After it endured its worst economic crisis in modern history, Costa Rica began to enact market-based reforms, and this country suddenly developed into an icon of the neoliberal movement in Latin America. The early 1990's saw trade liberalization and currency stabilization, giving Costa Rica relatively high growth rates and low inflation.² At the same time, Presidents Arias and Calderón managed to expand the country's entitlement system, thus juxtaposing the free market approach onto the previous state-driven development model. Yet at the same time, political scientists noted a decline in support for the particular Costa Rican political system, a plunge in voter turnout at national elections, and increasing rejection of the two major parties, the PLN and the PUSC, at the ballot box.³ This democratic ebb is partly explained through citizen disenchantment with the politics behind the new economic system. Every major party between 1982 and 2002 endorsed neoliberal economic reforms, offering no alternative perspective to a public growing increasingly skeptical with the political process.⁴

² Lowell Gudmundson, "Costa Rica: News Issues and Alignments," in *Constructing Democratic Governance*, ed. Jorge I. Domínguez and Abraham F. Lowenthal (Baltimore: Johns Hopkins University Press, 1996).

³ Fabrice Lehoucq, "Costa Rica: Paradise in Doubt," *Journal of Democracy* 16, no. 3 (2005): 146.

⁴ *Ibid.*, "Policymaking, Parties and Institutions in Democratic Costa Rica," unpublished manuscript (Washington, D.C.: Inter-American Development Bank, 2006), 18.

By 2002, after a decade of gradual market liberalization with mixed results, the proposition of a free trade agreement with the United States was particularly controversial, as it might have threatened the very core of Costa Rican development. A stark reduction in regulation and government involvement in the economy conflicted with the strong state that protected economic and social rights.⁵ Costa Rica's strong protections of its biodiversity seemed particularly at risk, as the intellectual property and investment clauses could denigrate the power of the state to safeguard against multinational corporations' exploitation of the country's natural resources.⁶

Implementation of CAFTA in Costa Rica was far more prolonged than in the other Central American states. After initial negotiations took place in the rounds organized by each party's trade ministers, the political leadership in Costa Rica opted to withhold formal ratification of the agreement, unlike the ARENA-led government in El Salvador that expedited the process. This decision stemmed from the tradition of political gradualism and greater popular suspicion of the agreement.

General public disillusionment with the government after the 2002 election of President Abel Pacheco threatened to unravel one of his major legislative projects – a free trade agreement with the U.S. Pacheco proved inept in handling a number of corruption scandals, and when he pressed ahead with CAFTA negotiations, he engendered greater popular disapproval – as the first round of negotiations sparked demonstrations in early 2003.

⁵ Mercedes Alvarez Rudín and Helen Hintjens, *The 2007 "No-CAFTA" Movement in Costa Rica*. Working Paper no. 479 (The Hague: International Institute of Social Studies, 2009), 26.

⁶ Maria Eugenia Trejos, "CAFTA in Costa Rica Would Cause Deepening Inequality," in *DR-CAFTA Year Two: Trends and Impacts* (Washington, D.C.: Stop CAFTA Coalition, 2007).

To represent Costa Rica, Pacheco appointed a team of technocrats to the Ministry of Foreign Trade with more expertise than many of their peers from other Central American trade agencies.⁷ At the negotiation table, the Costa Rican delegates expressed hesitations on certain aspects of the text. The requirement that the state dismantle its long-standing electricity and telecommunications monopoly in particular gave them pause, as they recalled the mass uproar that had erupted after a similar attempt was undertaken just a few years prior.⁸ Still, later reports revealed that several of the Costa Rican negotiators received salaries from a foundation funded in part by the U.S. Agency for International Development, leading to accusations of bias.⁹ As in El Salvador civil society groups decried the process as opaque, wherein the text of the agreement was not made public until after the Pacheco administration signed it. Eventually, the delegation accepted some provisions most onerous to civil society – privatization of the telecommunications industry and enhancement of intellectual property rights seen as threatening to the country’s natural biodiversity.

Costa Rica signed the preliminary agreement on January 25, 2004, a month after the other stakeholders, so that it could hold an additional negotiation round with the United States.¹⁰ It then joined its neighbors in officially signing the agreement in May 2004. While every other leader quickly overcame the legislative hurdles to ratification, Pacheco postponed submitting the agreement in Costa Rica after the April-May deadline

⁷ Rose Spalding, “The CAFTA Debate in Costa Rica,” (paper presented at the annual meeting of the American Political Science Association, Washington, D.C., September 1-4, 2005), 10.

⁸ Ibid.

⁹ Eva Carazo Vargas, *Costa Rica: Why We Reject CAFTA* (Washington, D.C.: IRC Americas Program, March 8, 2007), 2.

¹⁰ Spalding, 10.

set by the U.S. Trade Representative until the Legislative Assembly passed fiscal reforms. Then, an additional corruption scandal that implicated a number of his cabinet members effectively paralyzed the Pacheco government. These scandals fueled citizen disdain for the political system, as surveys showed that three out of four Costa Ricans believed that corruption was endemic among public officials.¹¹ Because of the outcry against his government, Pacheco was forced to postpone ratification further.¹² The president tried to explain his decision as natural for a country that valued political gradualism: speaking at a summit in Panama in July 2005, he said, “we Costa Ricans have a reputation for taking things slowly, and this has worked for us down through history.”¹³ Other internal crisis, such as the ethics scandals, obligated the President to relegate one of the highest priorities on Costa Rica’s political agenda to the backburner.

The poor performance of the Pacheco administration on the CAFTA question resulted in greater fears that Costa Rica might actually renege on the agreement. The vocal and well-organized opposition to the agreement and his general unpopularity as a president seemed to indicate a significant challenge to Costa Rican democracy.¹⁴ The continued delay meant that the future of CAFTA became a central issue in the 2006 presidential election. The election itself will be analyzed in greater detail in the coming Electoral Processes Dimension, but it suffices to say now that the pro-CAFTA Óscar Arias, the former President, won a narrow victory over his anti-CAFTA opponent.

¹¹ Lehoucq., “Costa Rica: Trouble in Paradise” 149.

¹² Eduardo Frajman, “Paradise Transformed? CAFTA and Costa Rica’s New Politics,” *Delaware Review of Latin American Studies* 9, no. 2 (2008): 3.

¹³ Marianela Jimenez, “With U.S. approval, CAFTA turns to last battle in Central America,” *Associated Press*, July 28, 2005.

¹⁴ *Ibid.*

Arias took the reins in advancing the trade agreement. However, as will be evaluated in the Civil Society section, he embraced citizen participation while he still spearheaded ratification. The 2006 legislative elections virtually guaranteed passage of the treaty through a bloc of pro-trade delegates from Arias's National Liberation Party (PLN), the PUSC (the Social Christian Unity Party and Pacheco's party), the Libertarian Movement (ML) and two additional one-seat parties.¹⁵ Together, these parties banded together to grant "fast track" authority to the various bills related to CAFTA.¹⁶ Eventually, under much public pressure, Arias announced that he would put CAFTA to an up-or-down vote via popular referendum. By holding a referendum, Costa Rica is a pioneer among countries signing trade agreements, a topic that will be developed later in this chapter. After a contentious debate, the referendum passed in October 2007, thus officially ratifying CAFTA. The package of complementary bills then stalled in the Legislative Assembly, forcing Arias to request an extension for implementation from the other trade partners, set for March 30, 2008. They eventually passed, and CAFTA finally entered force in Costa Rica on January 1, 2009.

Initial Economic Effects

The principal difficulty in using Costa Rica as a case study for this analysis is the extremely short time span that CAFTA has been in effect there. One year of implementation is too brief to measure long-term economic consequences of liberalization. For this reason, the two dimensions in which CAFTA as a policy role

¹⁵ Frajman, 3.

¹⁶ Carazo Vargas, 4.

plays a role, not its written content, will figure more prominently in the forthcoming analysis. This challenge will arise in the second and third dimensions we consider because of their relationship to the agreement's text. Nonetheless, some basic economic indicators can begin to show the direction that Costa Rica may take in the coming years.

Figure 5.1, available at the end of the chapter, shows data for the same measures given for El Salvador in Chapter 4. During the period of the ratification debates, Costa Rica experienced very high economic growth, far higher than El Salvador did. Trade as a percentage of GDP drove the vast majority of the economy even before CAFTA was implemented, so it will be interesting to observe the changes after 2009. Foreign direct investment spiked after 2005, but because the complementary investor protections laws had not yet been passed, CAFTA-related policies cannot explain this increase. Recent GDP figures showed a contraction by 1.3 percent, but this has more to do with the global financial crisis. Because of Costa Rica's strong dependence on foreign trade, the U.S. recession extended into Costa Rica as well. Quarterly reports, though, have shown a moderate recovery in the Costa Rican economy, attributable in part to the restoration of trade.¹⁷

Ultimately, an evaluation of CAFTA's influence on the Costa Rica economy is futile at present. The general dearth of information will make some portions of the Democratic Audit challenging. Nonetheless, CAFTA as a political issue has still left significant consequences to Costa Rica. Because of the indeterminate results, at this time I cannot reasonably offer an overall conclusion on the effects of CAFTA on the politics

¹⁷ Adam Williams, "Economy Begins a 'Slow Recovery,'" *Tico Times*, March 5, 2010.

and institutions. Instead, I must rely on the differentiation between CAFTA as policy and subject of debate and CAFTA as an agreement with specific content on institutional reform. Keeping this bifurcation in mind, I will allege that that the phenomenon of CAFTA has had a *positive impact* and that the text of CAFTA has had an *indeterminate impact* on the politics and institutions of Costa Rica.

Electoral Processes Dimension: The Elections of 2006 and 2010

As Costa Rica addressed CAFTA as a major policy matter, its political democracy was undergoing a general malaise. The two preponderant parties, the PLN and the PUSC, seemed to offer only staid policy alternatives that did not inspire a relatively disenchanted electorate. Remarkably, though, the trade agreement played a major role in revitalizing Costa Rican democracy. As one of the principal issues in the 2006 and 2010 presidential elections, it generated broad debate that reengaged the citizens in their government. For this reason, CAFTA can fit into Costa Rica's Democratic Audit. The results of these two elections and their preceding campaigns demonstrate that CAFTA has had a *positive effect* on the Electoral Process Dimension.

The 2002 election of Abel Pacheco, the PUSC candidate, presented a major affront to the Costa Rican two-party state. The newly established Citizen Action Party, a breakaway faction from the PLN, won 25 percent of the vote with its representative Ottón Solís, a former advisor in the first Arias administration. Because none of the major candidates captured the constitutionally mandated 40 percent threshold to win the presidency, the nation held its first runoff election since 1936, with an eventual victory

for Pacheco and the PUSC. Lehoucq describes this election as the collapse of the two-party system in Costa Rica and the rise of independent third parties with actual leverage. “Not since 1974 has the median voter failed to send his candidate to the presidency ... dissatisfaction with the two-party system thus led the electorate to change the nature of presidential competition and activate a multi-party system that [proportional representation] electoral laws for the legislature permit.”¹⁸

At the time, predictions differed on how the 2006 elections would respond to the political situation. A flowering of third parties could either reenergize the system or could immobilize any policymaking at all.¹⁹ President Pacheco’s decision to sign CAFTA but delay ratification posed the crucial question in the election. Amid a political environment devoid of consensus and accomplishments, such a contentious issue could have sparked a major unraveling of the system.

In the midst of this crisis, former president Óscar Arias (1986-1990) managed to provoke the Constitutional Court (*Sala IV*) into annulling a provision banning reelection. The reemergence of Arias, a popular figure and a recipient of the Nobel Peace Prize for his efforts in mediating the Central American peace accords, was greeted enthusiastically; Costa Ricans believed that he would stabilize the political environment and crack down on corruption.²⁰ As a member of the PLN and the immediate favorite among the presidential candidates, his advocacy of economic liberalism gave hope to CAFTA

¹⁸ Lehoucq, “Policymaking, Parties and Institutions in Democratic Costa Rica,” 19.

¹⁹ *Ibid.*, 152.

²⁰ Frajman, 2-3.

proponents that his government would certainly pass the agreement if Pacheco's could not.

The PUSC, debilitated by the corruption scandals and Pacheco's impotence, played a minor role in the campaign²¹ – a first indication that 2006 would witness an exhaustion of the traditional two-party system. The pluralism predicted after 2002 election came true, as the field widened substantially to include aspirants from 14 different parties. The two chief candidates were Arias (PLN) and Ottón Solís, the PAC candidate who had lost to Pacheco four years prior.

The trade agreement became the pivotal issue in the presidential campaign.²² Arias argued for CAFTA, saying that the agreement was a necessary step for Costa Rica's economic development, while Solís and the PAC called for total renegotiation of the treaty.²³ Solís himself presented President Pacheco with a document listing eleven reasons that justified re-negotiation, although the administration rebuffed his demands.²⁴ Rather than argue against free trade itself, Solís contended that the scheme waged through CAFTA in particular would denigrate the country's unique social model and reduce its relatively high standards of living to those of its poorer Central American neighbors.²⁵ Results from a poll conducted by the University of Costa Rica showed a strong correlation between candidate preferences and attitudes toward CAFTA: 71.4

²¹ Raymond Hicks, Helen V. Milner and Dustin Tingley, "Globalization and Domestic Politics: Party Politics and Preferences for CAFTA-DR in Costa Rica" (paper prepared for the American Political Science Association conference, Toronto, 2009): 15n.

²² See Hicks, Milner and Tingley, 15.

²³ Ibid.

²⁴ "Costa Rica's government denies re-negotiation of Central America-US Agreement," *La Nación*, March 31, 2005.

²⁵ Marla Dickerson and Evelyn Iritani, "Trade Accord with U.S. Splits Voters in Costa Rica," *Los Angeles Times*, February 7, 2006.

percent of pro-Arias respondents also supported the agreement while only 44 percent of intended Solís voters also favored it.²⁶

The election was one of the closest that Costa Rica had ever experienced, with the PLN mustering only 40.92 percent of the vote against 39.80 for the PAC. Notably, the election broke the historical PLN-PUSC dominance with a third party, the Libertarian Movement (ML) taking third place in the results with 8.48 percent and the PUSC coming in fourth with just 3.55 percent.²⁷ Because of the Arias's tight victory over Solís, the pending Congressional vote on CAFTA was postponed again until after the Supreme Electoral Tribunal completed a manual recount that finalized the results.²⁸ Arias officially won by only 18,000 votes, hardly the mandate that he and his party claimed to legitimize their completion of CAFTA. In fact, "*ex post* analysis attributed the surge of support for Solís to a depth of feeling against CAFTA-DR, which had apparently eluded detection by pollsters."²⁹ Nonetheless, the PLN's supposed prerogative was augmented by the PLN's near sweep of the local elections held in December of that year. These electoral triumphs seemed to demonstrate that a majority of the population supported CAFTA, since ratification was such an important part of the party's platform. In fact, an August 2005 poll taken by the newspaper *La Nación* noted an increase in support for

²⁶ Anita Breuer, "Costa Rica's 2007 Referendum on the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR): Citizen Participation or Citizen Manipulation?" *Representation* 45, no. 1 (2009): 457.

²⁷ *Ibid.*

²⁸ Kristin Comeforo, "The referendum & freedom: The hegemonic struggle to define *authentic* participation and public reasoning through the discourse of CAFTA-DR in Costa Rica," (paper presented at the Human Development and Capability Association Conference, New York, September 17-20, 2007), 9.

²⁹ Breuer, 457.

CAFTA by Costa Ricans to 54 percent from 43 percent the previous November; only 26 percent of respondents rejected the agreement, down from 38 percent.³⁰

As a political issue, CAFTA effected significant shifts in Costa Rica's electoral democracy. Candidates opposing the treaty were not relegated to minor parties; in fact, a new party and its standard-bearer who adopted CAFTA as his central concern just barely lost in a contest traditionally waged between the triumphant party and another faction. Voters perceived that Solís had a genuine chance of winning and defected from the feeble PUSC and from minor candidates in favor of a candidate who once had only been projected to win a quarter of the vote.³¹ Under the rubric of the Democratic Audit's Electoral Processes Dimension, CAFTA had an effect, as it clearly shaped the content of the 2006 contest. What had originally appeared as a guaranteed win for Arias turned out to be one of the narrowest margins of victory in Costa Rican history. In addition, the election established the PAC as a legitimate political voice to replace the lackluster PUSC and one that offered a new economic alternative for voters. The results for the legislative elections also forced the PLN to reconcile its ratification strategy, as it failed to win a simple majority of seats.³² Although the party ended up forming a coalition with other parties to approve the treaty, this still proves that tactics in Costa Rican politics needed to deal with greater pluralism. Above all, though, the 2006 election reenergized the electorate into participating in their democracy, even if this participation entailed denunciation of the prevailing economic agenda. A greater variety of alternatives for

³⁰ "Around 54% of interviewed in Costa Rica agree with US-Central America agreement; Growing support for CAFTA," *La Nación*, August 25, 2005.

³¹ Dickerson and Iritani.

³² Breuer, 458.

economic policy, illustrated by their CAFTA positions, abolished the equivalency among parties that had characterized the system. As one index in the Electoral Processes Dimension indicates, a wider range of options for voters is a key feature in a democracy.

This citizen involvement later expressed itself in the historic 2007 referendum. The referendum on CAFTA ratification merits extensive analysis, but because of the vocal public campaign that preceded it, it will be evaluated through the lens of the Civil Society dimension later in this chapter. It suffices to comment now that the referendum passed with a small majority, thus narrowly approving the treaty. It also generated a groundswell of popular enthusiasm that has since been sustained. As the Electoral Processes dimension deals with elections for government positions, we will focus now on the recent presidential vote held February 7, 2010. As the first national contest after the implementation of CAFTA, the trade agreement played a large role in the campaign discourse. It also became a means for citizens to convey their attitudes toward the outgoing Arias administration, the standard-bearer for the agreement during the 2006 vote and the referendum. As other scholarly analyses of the 2010 election have yet to be published, this thesis seeks to introduce a new theme to the literature by positing that CAFTA had a *positive effect* on this vote.

The election featured a wide range of candidates from across the ideological spectrum, but as the campaign progressed, three particular individuals took the lead. The frontrunner always was Laura Chinchilla, a member of the PLN and Arias's former vice-president. Representing the ideological center-left, Chinchilla pledged "continuity" with the Arias government. She argued that, "the best thing that can happen to us is to

consolidate the work of Mr. Óscar.”³³ In keeping with the Arias position, Chinchilla endorsed CAFTA as it was ratified and additional free trade initiatives to further Costa Rica’s market liberalization. Her greatest opposition came from Ottón Solís, the leftist PAC candidate bested by Arias in the 2006 election, and from Otto Guevara, a candidate from the right-wing Libertarian Movement (ML). The fact that the ML, which had secured only about 8 percent of the vote in the previous election, managed to field a relatively mainstream candidate exemplifies the transformation from an intransigent two-party state that Costa Rica has seen to a pluralist, multiparty democracy. These two candidates presented themselves as change agents; their television campaign advertisements portrayed Chinchilla as a puppet manipulated by Arias.

Criticisms of CAFTA and Chinchilla’s support of it came from both sides: Guevara argued that the agreement was conservative, saying “CAFTA was not a true opening of the market. There are still some things hidden in the closet that would bring in much more investment.”³⁴ He recommended privatizing the national oil refinery monopoly and dollarizing the Costa Rica economy to attract more foreign investment, effectively endorsing even greater economic liberalization than his opponents on the left and center-left. Solís declared that upon taking office he would dispatch a commission to the U.S. to overhaul the treaty, and that it would be the primary topic in a potential first meeting with U.S. President Barack Obama.³⁵

³³ Angus Reid Global Monitor, “Election Tracker: Costa Rica.” http://www.angus-reid.com/tracker/view/costa_rica_2010/.

³⁴ Adam Williams, “Candidates Eye Business Needs,” *Tico Times*, January 22, 2010.

³⁵ Oscar Núñez Olivas, “Ottón Solís quiere renegociar el CAFTA si gana elecciones en Costa Rica,” *Agence France-Presse*, February 4, 2010.

In a poll conducted three months before the election, 53 percent of respondents pledged to vote for Laura Chinchilla, well above the 40 percent threshold. Guevara, the ML candidate, received only 15.7 percent and Solís (PAC), only 12.3 percent, with the PUSC candidate barely commanding 1.5 percent.³⁶ Over the next few months, though, the race narrowed. Solís actually accused the polls of inaccuracy and overt prevarication, observing that polls before the 2006 presidential contest and the 2007 CAFTA referendum had projected outcomes that widely diverged from the actual results.³⁷ Less than a month before the election, two smaller progressive parties unofficially withdrew their candidates from the race to ally behind the PAC, which they viewed as the most viable option on the Left to win the election. Together, the alliance presented a common program that placed renegotiation of CAFTA as its paramount objective. This late-term development sought to stave off further movement to the right among the campaign, which narrowed into a contest basically between Chinchilla and Guevara, two pro-market candidates. Furthermore, the alliance tried to consolidate the grassroots anti-CAFTA coalitions whose loyalties were split among progressive factions.³⁸ This affair emblemizes the importance of CAFTA to the campaign. In spite of the treaty's implementation, it still served as a point of contention that could rally voters, especially on the Left. All the candidates issued promises on trade, given its significant influence in the Costa Rican economy.

³⁶ "Poll: Laura Chinchilla Clear Frontrunner in 2010 Costa Rica Presidential Race," *Al Día*, November 10, 2009.

³⁷ Carlos J. Mora, "Ottón inicia nuevo round contra las encuestas," *La República*, January 22, 2010.

³⁸ Luis Alberto Muñoz and Carlos J. Mora, "'No estamos por la vanagloria': Ottón Solís aseguró que en su eventual administración promoverá un diálogo fluido con la oposición," *La República*, January 28, 2010.

The electoral results surprised political analysts who had expected a much tighter outcome. Laura Chinchilla won with 46.8 percent of the vote, avoiding a runoff and besting Solís and Guevara, who captured 25.1 percent and 20.9 percent, respectfully. It is worth noting that Solís's charges against the polls were correct: not only had the most recent surveys predicted a runoff, they had placed Guevara ahead of Solís. The PLN also won a plurality of 23 out of 57 seats in the Legislative Assembly, although without a majority, it will need to seek coalitions to pass its most contentious projects.³⁹

The triumphant presidential candidate in Costa Rican elections has tended to appeal to the median voter, which until recently resulted in the two major parties drifting toward the center.⁴⁰ In 2010, the centrist Chinchilla, articulating a program of stability and continuity, again appealed to the median voter far more than her opponents on the ideological right and left.

Only recently minor parties, the PAC and the ML managed to strengthen their position in the political system; the ML more than doubled its share of votes in this election since the 2006 contest. These two factions have fashioned themselves as anti-establishment alternatives that, while not victorious in this presidential election, will continue to be formidable political rivals to the PLN.⁴¹ CAFTA and similar economic policy thus further opened up the range of ideological alternatives for Costa Rican democracy.

³⁹ Blake Schmidt, "Chinchilla Wins as First Female Costa Rican President," *Bloomberg*, February 8, 2010.

⁴⁰ Lehoucq, "Costa Rica: Paradise in Doubt," 144.

⁴¹ Pablo Duncan, "Partidos políticos tras las elecciones," *La Nación*, February 19, 2010.

The fact that the PLN candidate won the election after that party had associated itself inextricably with CAFTA is especially significant. Voters selected stability over change, voicing their support, if not for CAFTA itself, then for its proponents.

Chinchilla managed to win a larger share of the vote than the agreement itself did in the 2007 referendum, which barely squeaked by with a majority of votes. One can speculate if Costa Ricans considered CAFTA a settled matter after its approval in the referendum; no one could henceforth argue that the trade agreement was approved over the will of the people. If this is the case, voters preferred continuity in policy rather than enduring another political fight to renegotiate the treaty.

At the beginning of the decade, voter apathy started to afflict Costa Rican democracy. Near uniformity among the political parties fostered disinterest that was supplemented by poor executive leadership. Once free trade became a campaign issue, CAFTA brought ideological diversity to the country and regenerated citizen enthusiasm. The 2006 election featured a razor-thin victory by an established party – with its acclaimed representative – over a new one, when ordinarily such parties gain small shares of the vote in their first nationwide elections. These two parties contrasted on the principal campaign question, free trade. The next election expanded pluralism even more by pitting three candidates against each other over the products of the Arias administration, whose legacy will be defined by the agreement. Costa Rica clearly experienced major developments in its Electoral Processes Dimension through the policy question posed by CAFTA. Therefore, I can safely conclude that CAFTA had a *positive impact* on this dimension.

Open and Accountable Institutions

Similar to the often plodding developments in electoral politics, Costa Rican political institutions has been characterized by gradual and methodical change, a principle invoked even by President Pacheco in postponing CAFTA's ratification. The participatory nature of the democratic process has in fact handicapped the ability to spearhead major reform. Public sector reform has frequently encountered structural obstacles that delay the realization of initiatives. Particular to Costa Rica is its reliance on autonomous public institutions to coordinate domestic and social policy. More than 100 such institutions administer and regulate banking, pensions, and health care.⁴² The Costa Rican Institute of Electricity (ICE), funded in part through telephone and utilities charges, was heavily involved in the telecommunications industry, and its privatization was a major source of contention in CAFTA negotiations. Clark notes that, "there is little popular feeling in Costa Rica that government institutions and services that are mistakes that ought to be dismantled."⁴³ During the 1990's, subsequent administrations sought to privatize large public institutions, but union opposition and incoherent measures stymied their intentions.⁴⁴ Partisan gridlock in the Legislative Assembly and the short electoral cycle in Costa Rica – which included until 2006 only one-term presidencies – discouraged opportunities to execute transformational projects.⁴⁵

⁴² Lehoucq, "Policymaking, Parties, and Institutions in Democratic Costa Rica," 9.

⁴³ Mary A. Clark, *Gradual Economic Reform in Latin America: The Costa Rican Experience* (Albany, NY: State University of New York Press, 2001), 137.

⁴⁴ *Ibid.*, 73.

⁴⁵ *Ibid.*, 77.

The piecemeal approach to policymaking is quite evident in the CAFTA proceedings, which took an extended period of time just to achieve ratification, and then implementation generated additional legislative battles. The plans that address the government institutions, as mandated by the text and the side agreements, especially demonstrate this quality. Institutional reform was always a controversial point for Costa Rica's involvement in CAFTA, given the importance of its welfare state to its historic development strategy and to popular opinion. Regardless, CAFTA presented an extraordinary opportunity to privatize Costa Rican institutions. This section will consider the impact of privatization in the so-called implementation agenda of CAFTA – the institutional and legal reforms associated with implementation. The reforms were mostly based on statute: because of Costa Rica's delay in adhering to the accord, its government could not take advantage of the U.S. trade capacity projects to modernize its institutions dedicate to labor rights. Still, the time frame has been too short to make any substantial assessments. Despite the preliminary evidence and the large case study of telecommunications reform upon which I will rely, I suggest that CAFTA has had *neutral effect* on Open and Accountable Institutions in Costa Rica.

Unlike with the case of El Salvador, it is more difficult to use indicators and standards to gauge the development of institutions in Costa Rica, mainly because of the recency of CAFTA in that country. In fact, at the time of this writing the World Bank has not published a revised edition of its *Worldwide Governance Indicators* that includes updated 2009 figures. The lack of data associated with CAFTA notwithstanding, we can still draw on the *Indicators* to establish context. Between 2003 and 2008, ratings of voice

and accountability, political stability, government effectiveness, and rule of law in Costa Rica have all decreased.⁴⁶ Note that while this time period does not include any years while CAFTA has been in effect, it does span the years of its negotiation and debate in the Costa Rica public forum through the Arias election and the referendum. While CAFTA's content could not have had any impact on these indicators, it is still safe to argue that the agreement entered into force amid a nationwide decline in institutions.

The *Ease of Doing Business* surveys from the World Bank also can provide some basic context, although no recent data is available to illustrate any shifts in the commercial environment post-CAFTA implementation. We will again consider three indicators for political institutions and entrepreneurship: "registering property," "protecting investors," and "contract enforcement." Between 2006 and 2010, the cost of registering property has dropped by only 0.2 percent of the property value, and the time and number of procedures required has stayed the same – 21 days and 6 procedures. As in El Salvador, investor protections have remained the same across the time period. Contract enforcement did improve after 2007, when the cost of dispute resolution nearly halved from 46.8 percent to 24.3 percent of the claim.⁴⁷

This background information suggests that the business environment was relatively stable as CAFTA came into force. It is arguable that the many changes obligated by the treaty will change the environment in some way, but it is too early to

⁴⁶ On a scale of 1-100 percentile ranks, accountability decreased from 77.9 to 77.4; political stability, from 76.0 to 65.1; government effectiveness, from 68.2 to 65.9, and rule of law, 68.6 to 62.7. The reader will note Costa Rica's higher initial rankings in these categories compared to El Salvador's. Source: The World Bank, *World Governance Indicators*. Available at <http://info.worldbank.org/governance/wgi/index.asp>.

⁴⁷ World Bank, *Doing Business 2010: Costa Rica* (Washington, D.C.: International Fund for Reconstruction and Development, 2009).

issue conclusions. After CAFTA was ultimately ratified as a treaty, the Legislative Assembly had to pass a bundle of thirteen laws considered vital for the country's incorporation into the treaty. These laws addressed issues of patent, government procurement, and regulatory reform, among others. A number of sensitive provisions dealt with telecommunications reform, which will be assessed in detail in a moment. One law, the "*Ley de la Promoción de la Competencia y Defensa Efectiva del Consumidor*," established a Commission on Competition to safeguard the rights of foreign and national businesses to operate in the freer market.⁴⁸

During the implementation period after the referendum had passed and President Arias affirmed the treaty as law, anti-CAFTA members of the congress used parliamentary tactics to block votes on complementary bills. Their legislative sabotage succeeded in forcing President Arias to extend his deadline for implementation from March 1, 2008.⁴⁹ In the end, though, free trade prevailed and the legislature approved the final bill, regarding intellectual property, in November 2008, leaving only a few pending regulatory modifications before actual implementation.⁵⁰

Even after implementation, some laws to accompany the trade agreement remained unapproved. For example, legislative discord had precluded the passage of a provision on copyright protection, known as the 14th Amendment. Until its adoption, though, the U.S. continued to bar additional Costa Rican sugar imports. The former

⁴⁸ William Méndez, "Cambios obligados tras Cafta," *El Financiero*, April 20, 2008.

⁴⁹ Breuer, 461.

⁵⁰ Daniel Zuera, "Costa Rica: Se remueve ultimo obstáculo al DR-CAFTA," *Inter Press Service*, November 13, 2008.

Minister of Foreign Trade derided the U.S. action as an attempt to delegitimize the credibility of Costa Rica as a trade partner.⁵¹

Costa Rica has sustained high institutional integrity going into CAFTA, although its degree has declined somewhat in the past years. The 13 implementation laws certainly will have an impact on the business climate due to the protections for investments and property rights, so we will expect to see improvement among the *Ease of Doing Business* measures. Unfortunately, none of the aforementioned data provides any information on the quality of the institutions themselves. Government procedures and transparency may not have experienced any enhancement due to the CAFTA ratification debate, and the lack of recent data makes drawing conclusions after implementation impossible. Therefore, our analysis through this point indicates that CAFTA has had an *indeterminate effect* on Open and Accountable Institutions. We must rely on individual cases, rather than data, to assess the institutional effects of CAFTA in Costa Rica. The proposed effort to privatize the national electricity and telecommunications industry may serve as an exemplar.

In many Latin American countries with extensive welfare states, such as Costa Rica, efforts to reform institutions have faltered due to complex organizational turf wars between state and societal interests groups.⁵² In the implementation of CAFTA in Costa Rica, this scenario played out in the attempt to privatize the state electricity and telecoms company, the Costa Rican Electricity Institute (ICE), the last monopoly of this industry in

⁵¹ Daniel Chacón, “Retraso con ley del Cafta sería un problema de imagen,” *La República*, December 12, 2009. See also Chrissie Long, “In Costa Rica, CAFTA hits a snag,” *Tico Times* January 15, 2010.

⁵² Clark, 9.

Latin America. In Costa Rica, the “telecommunications” sector has encompassed the telephone system in addition to modern internet and network information technology.⁵³

The process to reform this important institution serves as a notable case study in assessing the Open and Accountable Institutions in that country.

The ICE enjoyed high esteem among the population and had historically accomplished its objectives efficiently despite being state-run. Established in 1949 alongside the drafting of the current constitution, the ICE provided for both energy generation and national telecommunications. It played a significant role in the state-directed industrialization of the mid-20th Century: “as electricity was a key concern for all sectors of society, the ICE became probably the most emblematic institution of the Costa Rican development model.”⁵⁴ The Institute’s work enabled Costa Rica to develop one of the most comprehensive telephone networks in the developing world. The ICE had successfully connected 95 percent of the population with phone coverage and had electrified almost 97 percent of the territory, charging service fees far lower than the prevailing rates in the rest of Central America.⁵⁵ For this reason, it became a source of significant national pride.

Notwithstanding this success, the state electricity industry could not avoid the paradigm shift in the Costa Rican economic model toward market liberalization after the 1980’s foreign debt crisis. During the first Arias administration, it became clear the ICE

⁵³ Bert Hoffmann, *Why Reform Fails: the ‘Politics of Policies’ in Costa Rican Telecommunications Liberalization*, Working Paper no. 47 (Hamburg: German Institute of Global and Area Studies, 2007): 24n.

⁵⁴ *Ibid.*, 13.

⁵⁵ Spalding, 14.

could not afford the necessary investments in infrastructure as rapid technological change rendered many of them obsolete and unproductive.⁵⁶ Once a regional leader in telecommunications, Costa Rica now lags behind its less developed neighbors in terms of phone line penetration – only 44 lines per 100 residents.⁵⁷ The ICE could not sustain its previous successes in supplying nearly ubiquitous electrical and telephone service. By the end of the 1990's, 70 percent of rural households lacked phone service.⁵⁸ Keeping with the hegemonic neoliberal model, subsequent PLN and PUSC administrations proposed plans to privatize the industry or at least start to open it somewhat to investment from the private sector. These projects consistently collided with vocal opposition from public sector unions and the general public, which overwhelmingly opposed breaking up state monopolies such as the ICE.⁵⁹ Indeed, loyalty to the ICE divided the political parties themselves: Ottón Solís was originally Arias's planning minister until he resigned in protest of the administration's plans to liberalize the ICE.⁶⁰

The 2000 attempt to privatize the telecommunications industry erupted in massive protests across the country. The "*Combo del ICE*" law restructured the state company and initiated the liberalization of the energy and telecommunications sectors. While the bill narrowly passed the Legislative Assembly with support from the PLN and PUSC, previous popular disillusionment with the political parties erupted into outright anger;

⁵⁶ Lehoucq, "Policymaking, Parties, and Institutions in Democratic Costa Rica," 13.

⁵⁷ By comparison across CAFTA countries, El Salvador has the most at 113 phone lines per 100 residents. Nicaragua has the least, save for Costa Rica, with 55 phone lines. Source: Carlos Cordero Pérez, "Costa Rica posterga 'sine die' licitación de telefonía móvil," *El Financiero*, February 5, 2010.

⁵⁸ Lehoucq, "Policymaking, Parties, and Institutions in Democratic Costa Rica,"

⁵⁹ *Ibid.*, 80.

⁶⁰ Hoffman, 13.

this would be a crucial episode in the rising national dissatisfaction with democracy at the beginning of the decade. Union members and university students organized large anti-*Combo* mobilizations that were supported by two-thirds of the population, according to one survey. Eventually, the government succumbed to the demonstrations and retracted the law, but citizens expressed their sentiments at the ballot box in 2002, handing a large portion of the vote to the PAC's Solís, the anti-*Combo* candidate.⁶¹

This brief account is necessary to explain the precarious political environment encountered by telecommunications reform through CAFTA. Not only is the ICE a key state institution, it carries with it a sense of patriotism. As the government entered into CAFTA negotiations, its largest state enterprise was the ICE, which employed some 12,000 workers, or 10 percent of federal employees.⁶² Initially the Costa Rican trade delegates balked at offering any concessions on telecommunications reform, but they eventually surrendered. In the ratified text, Costa Rica pledged to undertake a gradual privatization of the private network services, internet services, and mobile phone services sectors, as long as the process facilitated the inclusion of poor and underserved segments of society.⁶³ By embedding the entire telecoms liberalization scheme in the free trade agreement, the government managed to reignite the fury from the “*Combo del ICE*” fiasco as well, helping unite social groups in opposition to institutional restructuring.⁶⁴

⁶¹ Ibid., 16-9.

⁶² Spalding, “The CAFTA Debate in Costa Rica,” 13.

⁶³ Carlos Felipe Jaramillo and Daniel Lederman, *Challenges of CAFTA: Maximizing the Benefits for Central America* (Washington, D.C: World Bank, 2006), 54.

⁶⁴ Hoffmann, 21.

In terms of the actual institutional reform, the ratification of CAFTA set in motion a series of processes to privatize the ICE. One law in the implementation agenda opened mobile phone and Internet services to private concessions. In signing it into law, President Arias called it part of the “backbone” of the implementation agenda, further declaring that its passage reinforced Costa Rica’s commitment to free trade.⁶⁵ In May 2008, the Legislative Assembly approved a law that finally dissolved the ICE’s monopoly in the telecommunications market. It then created a new government body, the Superintendence of Telecommunications (SUTEL), to regulate the privatized industry. The piecemeal liberalization will not completely sideline the ICE, which will keep control over telephone land lines and will grant the obligatory licenses for private entities to operate legally in the market.⁶⁶ The state has since granted access for 19 telecommunications companies to enter the newly competitive Internet services market, choosing from hundreds of potential investors that submitted requests.⁶⁷ SUTEL has lauded the rise in competition as a means to improve rural access to technology. More providers will race to provide services in remote areas of the country currently untouched by Internet connections due to the inefficiencies in the ICE infrastructure.⁶⁸

Cellular phone deregulation has taken place more slowly, due to bureaucratic wrangling over the process during the first year of CAFTA’s implementation. After liberalization, ICE will no longer be the sole cellular phone provider in Costa Rica, as

⁶⁵ “Congreso de Costa Rica aprueba ley clave para vigencia de TLC con EEUU,” *Agence France Presse* February 14, 2008.

⁶⁶ “Presidente Arias firma Ley General de Telecomunicaciones,” *Business News America*, June 6, 2008.

⁶⁷ Adam Williams, “Preparing for Telecom Industry Competition,” *Tico Times*, August 28, 2009.

⁶⁸ *Ibid.*

SUTEL has called for an auction to sell off the rights to the mobile phone sector.

Investors include a number of multinational telephone companies based in Latin America to offer wireless service alone in Costa Rica. These private businesses will have to compete with ICE, which will maintain a smaller but still substantive influence in the telecoms market.⁶⁹

How does telecommunications reform in Costa Rica fit into the Open and Accountable Institutions Dimension? Through CAFTA, the government has finally managed to surmount obstacles to liberalize ICE, perhaps one of the most popular and most accessible state institutions. It is too early to say how liberalization will affect the ICE's ability to provide quality products for the population and how responsive this state enterprise will be to both popular needs and the market. We can make some projections, however, based on the literature discussed in Chapter 2 on capitalism and democracy. A stronger market for telecommunications will improve and increase the connectivity of the citizens and will thus enable them to communicate faster and better, serving the democratic process. On the other hand, citizens may not rely on the state as a voice acting nominally in their favor would once foreign telecoms firms began to penetrate the market. Still, though, the government has approached the process to open up the telecoms market systematically by auctioning some sectors while keeping others state-owned. Through SUTEL it also will maintain a strong regulatory capacity, thus ensuring that Costa Ricans receive fair treatment and that the market remains accountable. At this

⁶⁹ Ronald Buchanan, "Costa Rica bandwidth sale pulls wide interest," *Financial Times*, January 25, 2010.

time, then, I will argue that telecommunications liberalization, as initiated through CAFTA, will have a *positive effect* on Costa Rican institutions.

Based on my two grades for the Open and Accountable Institutions Dimension – indeterminate and positive – I will assert that overall, the dimension has enjoyed a weakly *positive impact* from CAFTA. The actual consequences of the new laws on intellectual property and government institutions are still being explored, and further study will provide some answers to the questions that arose during the agreement's negotiation. These include the role of the state to protect natural resources, for example. In the coming years, analyses of democracy and CAFTA in Costa Rica should pay attention to manner in which the government addresses the future of the ICE, a once beloved state enterprise. This episode may offer clues in future institutional development.

Civil and Political Liberties

Given the short amount of time that CAFTA has been in effect in Costa Rica, the Civil and Political Liberties dimension will consist of the least amount of information. Unlike in El Salvador, where four years of implementation has yielded some positive and negative consequences in labor rights – the specific focus in this analysis – Costa Rica has had little opportunity to initiate and undergo major reforms in its labor sector. Therefore, I will mostly consider the content of the treaty and the trade capacity agreements alongside it that have intended to address labor rights. Their successes or failures, however, are still undetermined.

According to the International Labor Organization, Costa Rica maintained relatively high labor standards before enacting CAFTA. The strong democracy with a substantial social welfare system offered workers considerable benefits and protections. The Labor Code recognizes the freedom of workers to associate into unions or even dissociate from them. The Code also sets obligatory minimum standards for employees to accept worker collective bargaining and strikes.⁷⁰ Costa Rica ratified all eight fundamental Conventions considered by the ILO, including the two that El Salvador had not prior to CAFTA implementation. In fact, according to the Costa Rican legal system, international labor laws to which Costa Rica supersede any related constitutional or domestic statutory law. The ILO did raise a concern over the speed at which anti-union discrimination suits are adjudicated, mostly because Costa Ricans feel so confident with the labor law courts that they flood the system with claims. Nonetheless, the Supreme Court heeded the international organization's recommendations and prepared new reforms to expedite the judicial process.⁷¹

The U.S. Trade Representative's office heralded several immediate improvements to Costa Rican labor laws that resulted from CAFTA-related negotiations. The Legislative Assembly passed new regulations to clarify legal protections for labor unions and to guarantee an expedited trial of anti-union violations – notably, an ILO recommendation. The appointment of 37 new labor court judges has helped to accelerate

⁷⁰ International Labor Office, *Fundamental Principles and Rights at Work: A Labor Law Study* (Geneva: International Labor Organization, 2003), 7-9.

⁷¹ DR-CAFTA Ministers of Trade and Economy, *The Labor Dimension in Central America and the Dominican Republic – Building on Progress: Strengthening Compliance and Enhancing Capacity*. Submitted to the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic (April 2005), 17

the judicial process. Additionally, the government created a new alternative dispute mechanism to solve labor abuse cases through conciliation.⁷² Notably, these initiatives only dealt with legal adjudication of violations, rather than through bureaucratic mechanisms to monitor or curtail them in the first place. Costa Rica did not receive the same trade capacity projects that El Salvador or any other CAFTA signatory did; furthermore the Trade Representative does not list any program to modernize or improve the Costa Rican Ministry of Trade from its \$40 million appropriated for this purpose across Central America.⁷³ Scholars speculate that since Costa Rica did not implement the treaty until 2009, the year the appropriated funds were set to expire, it could not enjoy any of the benefits offered through the U.S. labor capacity projects. In this respect, CAFTA has not had the same initial programmatic effects for political and civil liberties in Costa Rica as it did in El Salvador.

A number of projects stipulated by the labor side agreements to CAFTA for Central America have initiatives in Costa Rica. Part of the \$6.92 million appropriation through the U.S. Department of Labor is distributed to the Costa Rican Foundation for Peace and Democracy (FUNPADEM) to provide better equipment and training for labor inspectors. FUNPADEM received an additional \$4.2 million to support its work.

Fortunately, Costa Rica has not experienced the instances of labor repression as in the other countries that signed onto CAFTA. The WOLA report on labor rights does not mention any examples of labor intimidation, harassment or even assault related to

⁷² Office of the U.S. Trade Representative, *Real Results on Labor Rights: Improvements as a Result of CAFTA* (Washington, D.C.: Office of the U.S. Trade Representative, February 2005).

⁷³ *Ibid.*, *CAFTA-DR – Labor Capacity Building* (Washington, D.C.: Office of the U.S. Trade Representative, July 2007).

CAFTA in Costa Rica. This distinguishes the country from El Salvador, where the Pacific Rim Mining dispute has turned violent at times, and from Guatemala, for example, where many labor organizers have been assassinated. One proposed bill in the Legislative Assembly did attempt to restructure the work week that could have eliminated overtime pay for some workers, but it is unclear if this bill became law.⁷⁴

A thorough analysis of the labor situation in Costa Rica post-CAFTA is extremely complicated, not least because the relevant laws are still fresh. Furthermore, there is little information available about the improvements rendered to the institutions charged with protecting labor rights. Costa Rica started with such a high level of political protections, so it is questionable that the funds authorized from the U.S. government had the same rate of impact as they did in other CAFTA countries. The U.S. appropriations to improve the labor ministries were dispersed across Central America to subsidize similar projects in each country. While some funds were earmarked for country-specific initiatives, one can wonder the degree to which the authors of the bill took into account differences in the particular national demands. Without any data to prove otherwise, I must conclude that CAFTA has had an *indeterminate effect* on the Civil and Political Dimension.

Civil Society: The 2007 Popular Referendum

Indisputably, the most significant aspect of Costa Rica's CAFTA debate was the 2007 popular referendum on the agreement's implementation. For the first time anywhere, the government of a country seeking a free trade agreement placed the policy

⁷⁴ Vicki Gass, *DR-CAFTA and Workers' Rights: Moving from Paper to Practice* (Washington, D.C.: Washington Office on Latin America, May 2009), 18.

decision up to a vote, thus enabling citizens to express their opinion on such a divisive issue through a legitimized medium. The narrow victory of CAFTA did permit Arias, the champion of the agreement, to realize his long-sought goal, but this belies the actual momentous nature of the referendum. The vote reinvigorated Costa Rican democracy through a fierce debate that enflamed civil society. As I will continue to detail, these results had a *positive effect* on the Civil Society Dimension in this Democratic Audit.

Costa Rica enjoyed a relatively strong civil society sector for much of its history as a democracy, as its citizens have taken part in civic organizations and engaged in political affairs at levels far higher than their peers in the Latin America and the developing world in general.⁷⁵ Unlike the political environment, civil society did not enervate in the beginning of the decade; in fact, the crisis of legitimacy wrought by the corruption scandals mobilized civil society discontent.⁷⁶ The 2000 protests against the threatened ICE privatization amassed a large social movement that clearly had an impact, since the government reneged on its objective. This movement also laid the foundation for the later anti-CAFTA protests; the resentment of demonstrators who opposed liberalization of one key industry only multiplied once Costa Rica began to pursue an international treaty that would extend liberalization through the economy. The negotiations themselves did encourage some level of civil society participation, but as in El Salvador, in reality the participation was minimal. A commission of prominent citizens formed by Pacheco to assess the treaty concluded that the agreement was neither positive nor negative *prima facie* but that measures should be implemented to mitigate its

⁷⁵ John A. Booth, "Costa Rica: The Roots of Democratic Stability," 445.

⁷⁶ Rudín and Hintjens, *The 2007 "No-CAFTA" Movement in Costa Rica*, 28.

more harmful effects.⁷⁷ In the earlier round of negotiations, President Pacheco seemed more amenable to the participation of civil society groups. The Ministry of Foreign Trade established venues for citizen feedback that received commendation for its inclusiveness.⁷⁸ Forty-two “side room” sessions were convened over the duration of the negotiations. Certain think tanks, universities and trade unions sponsored additional forums – with trade negotiators in attendance – to discuss the implications of the treaty and, in many cases, offer alternatives to the market-based development strategies.⁷⁹ The actual impact of this civil society representation, though, is dubious: one reflection on the negotiation process suggested that, “participants were unable to effectively raise questions about larger social and economic goals and the way the trade agreement advanced or impeded the realization of these objectives.”⁸⁰

Regardless of their involvement, civil society groups had to cope with Pacheco’s signing of CAFTA. Almost immediately, though, anti-CAFTA organizations began to protest further implantation of neoliberalism in Costa Rica. The groundswell of popular resistance gave the Pacheco administration pause, leading to his rather cautious position and postponement of ratification. As was already addressed, CAFTA occupied a significant position in the Arias election and the early part of his presidency as he tried to pass the treaty through the legislature. In October 2006, resisters held two days of public

⁷⁷ Carazo Vargas, 3.

⁷⁸ Frajman, 2.

⁷⁹ Diego Sánchez-Ancochea, “State and Society: The Political Economy of DR-CAFTA in Costa Rica, the Dominican Republic and El Salvador,” in *Responding to Globalization: The Political Economy of Hemispheric Integration in the Americas*, ed. Diego Sánchez-Ancochea and Kenneth C. Shadlen (New York: Palgrave Macmillan, 2008): 193.

⁸⁰ Spalding, 11.

action against the agreement, enthused by a poll showing a majority of voters now supporting withdrawal of CAFTA from consideration.⁸¹

Popular anti-CAFTA organizations began to call for a national referendum on CAFTA's ratification in the Legislative Assembly. The ability to convene a referendum was only a recent phenomenon in Costa Rica. A 2002 constitutional amendment had bestowed the citizenry with so-called "direct democracy" powers, including the right for the people to enact a popular initiative or the right for the legislative or executive branches to convoke a referendum. Citizens themselves proposed the anti-CAFTA referendum to the Supreme Electoral Tribunal armed with 132,000 signatures, the required five percent of the electorate needed to present an initiative petition.⁸² In April 2007, the Tribunal consented, but Arias, once skeptical of a referendum, co-opted the plan and personally called for a simple "yes" or "no" vote on CAFTA ratification. The Legislative Assembly and the Electoral Tribunal quickly approved the referendum and set the date for September but later postponed it until October 7.⁸³

The referendum campaign polarized two formidable forces to determine the future of free trade in Costa Rica. The resistance movement was composed of a heterogeneous amalgamation of groups that managed to proclaim a united message while keeping some level of autonomy. The level of organization and tactics that they exercised has been one of the most significant factors in determining the impact of the CAFTA debate to civil

⁸¹ Comeforo, 10.

⁸² Breuer, 458.

⁸³ Rudín and Hintjens, 24. The Supreme Electoral Tribunal postponed the referendum after a lawsuit was filed contending that the Legislative Assembly overstepped its limits by allowing a popular vote on a trade agreement. However, the lawsuit failed and the referendum continued as planned. See Martha Lauer, "CAFTA'S October Referendum: A Death Sentence for Costa Rican Trade & Foreign Investment?" (Washington D.C., Council on Hemispheric Affairs, 2007).

society. Opponents of CAFTA admonished the agreement and the means to approve it as an affront to Costa Rican democracy. Throughout the public deliberations these factions claimed that the state institutions failed to oversee the referendum process, advantaging the proponents and even undermining the rule of law. The latter argument came from an understanding that a functioning liberal democracy encouraged equal levels of political expression.⁸⁴

Small membership-based groups formed the seeds of the later organized anti-CAFTA movement. The National Coordinating Committee Against CAFTA emerged in 2002 to help arrange loose mobilizations of trade unions, small civic organizations, student and church groups, and non-governmental policy organizations. They began to draw more support as CAFTA was approved and set to become law. A number of smaller constituent committees within the larger group helped organize resistance activities across Costa Rica, including one national strike that paralyzed the economy briefly.⁸⁵ The *Patriotic Committee Supporting the National Campaign against CAFTA* tried to legitimize the cause in the mainstream political arena by presenting official statements of oppositions by prominent politicians, artists and academics.⁸⁶ Distinct branches of Patriotic Committees emerged in a rapid and decentralized way across the nation. They had an impressive ability to raise funds and coordinate activities through informal networks that emphasized discussions and participation of each individual member. These groups seem particularly important in considering the political

⁸⁴ Rudín and Hintjens, 33.

⁸⁵ Carazo Vargas, 6.

⁸⁶ Rudín and Hintjens, 28.

consequences of civil society development. “Generally, it seemed those in the Committees worked hard to democratize the whole CAFTA debate, by bringing up concerns and ideas from ‘below.’”⁸⁷

The phenomenon of transnational advocacy networks is reified in the Costa Rica anti-CAFTA debate. The Iniciativa CID and the Bloque Centroamericano (another name for the Foro Mesoamericano), the two major coalitions that directed the protests in El Salvador also maintained ancillary organizations in Costa Rica. After the Salvadoran counterparts failed to thwart CAFTA’s implementation in their country, they organized in solidarity with their Costa Rican brethren to defend against the agreement there. In Costa Rica, the Iniciativa CID coalesced a number of unions and university groups, while the Bloque Centroamericano mainly acted through a different organization, the Encuentro Popular, itself a synthesis of a hundred smaller groups. The Encuentro Popular was rather loose in its structure, as its members participated in a variety of other activities, but they had all united to resist the application of the neoliberal ideology behind CAFTA.⁸⁸ Furthermore, the membership of Patriotic Committees often consisted of veteran activists who recruited new people, and they often collaborated with other civil society groups.⁸⁹ As in El Salvador, the CAFTA debate thus encouraged pre-existing civil society organizations to associate into larger bureaucratic structures that could express themselves more influentially through their size.

⁸⁷ Ibid., 45.

⁸⁸ Carolina Quinteros, Maria Eugenia Ochoa and Diego Salcedo, “Impacto del Tratado de Libre Comercio entre EEUU y Centroamérica en los movimientos sociales centroamericanos” in the *Centroamérica en la Economía Mundial del Siglo XXI* (San Salvador: Universidad Centroamericana “José Simeón Cañas,” 2004), 4.

⁸⁹ Rubín and Hintjens, 46.

The PAC, the leftist party that emerged in the 2002 election under Ottón Solís, had less impact in the run-up to the referendum than one might expect from a mainstream political party. Bereft of a coherent message, which wavered between renegotiation and outright rejection of CAFTA, the PAC ultimately relinquished much of the leadership in the resistance movement to the civil society.⁹⁰ This seems to demonstrate the legitimacy of the civil society organizations in the debate, as they succeeded in outdoing an actual political party in running the campaign. In fact, research showed that anti-CAFTA voters were more influenced by members of civil society, particularly scholars, than by the PAC. In contrast, pro-CAFTA voters were more likely influenced by the PLN than by non-governmental groups.⁹¹

In the period preceding the referendum, all these organizations joined forces behind one *Movimiento Patriótico NO al TLC*. Still, they maintained some autonomy and diversity, which afforded them the ability to personalize their messages. The unconventional use of art and humor in the campaign materials, for example, contrasted with the tactics of the CAFTA proponents.⁹² This did put them at a major cost disadvantage: they could only rely on grassroots funding to bring what amounted to about \$30 million, unlike the “YES” campaign that generated an estimated \$500 million through private individual and corporate donations.⁹³ Without the means to finance large-scale media blitzes, anti-CAFTA activists organized marches, work stoppages, highway blockades, mass distribution of educational materials, and meetings with

⁹⁰ Hicks, Milner and Tingley, 18.

⁹¹ Ibid., 19.

⁹² Rubín and Hintjens, 39.

⁹³ Breuer, 459.

legislators.⁹⁴ Eugenio Trejos, the rector of the National Technologic Institute of Costa Rica, adopted the top leadership role of the nationwide “NO” campaign. As an academic, not a politician, he represented a more impartial wing from the hodge-podge of anti-CAFTA activists. Because of the campaign’s regional decentralization, Trejos primarily contributed a recognizable face to the public, rather than overt management.⁹⁵

On the other side, the CAFTA proponents executed a well-organized campaign to showcase the trade agreement as beneficial for the country and to marginalize the opponents as fringe radicals. Some analysts have accused the debate of asymmetry, as the “YES” side had the financial and organizational advantages that accompany government backing. Arias and the PLN headed the strategy by proposing that the agreement would benefit the country while not encumbering the state’s ability to fund its entitlement programs. Rejecting CAFTA would actually harm the economy, they argued, as it would force foreign capital flight and then contribute to job losses.⁹⁶ Because of the resulting inconsistency with its other Central American neighbors, Costa Rica might lose its destined FDI to a different CAFTA.

As “YES” on CAFTA was the position of the administration, proponents of the agreement enjoyed incredible advantages by mechanizing state institutions. Unlike the PAC, the PLN employed its party apparatus to campaign in favor of the referendum. As a political organization with far more regional influence, the PLN circulated its national policies through local party operations and placed pressure on regional mayors in rural

⁹⁴ Carazo Vargas, 6.

⁹⁵ Frajman, 5.

⁹⁶ Hicks, Milner and Tingley, 15-6.

areas. During legislative recesses, PLN deputies returned to their constituencies and named certain local leaders as the catalysts for district-wide campaigns.⁹⁷ President Arias made CAFTA a *cause célèbre* of his presidency, calling it an “opportunity” to solve underdevelopment of Central America and a “step that has to be taken.”⁹⁸ He personally appeared on television to stump for the referendum and assumed the undisputed leadership role in the campaign. Had the PLN not funneled such active support and organizational strength to the referendum, it is somewhat doubtful that the CAFTA vote would have succeeded.⁹⁹

The political establishment framed the discourse by attributing the legitimacy of the transformational referendum to the fortitude of Costa Rican democracy. Distancing itself from its earlier skepticism of a popular vote, the mainstream described it as a natural and stabilizing democratic process.¹⁰⁰ In their opinion the popular demonstrations mobilized by the anti-CAFTA movement actually jeopardized democracy through violence.¹⁰¹ The proponents also capitalized on their relationship with the news media to publicize their arguments. They published editorials in newspapers, ran television and radio propaganda, and distributed informational documents to generate conversations at universities and public forums.¹⁰² The “NO” movement accused the news media of generally offering relatively favorable coverage of CAFTA. The media often

⁹⁷ Ibid., 17.

⁹⁸ Daniel Zueras, “CAFTA Not a Solution But an Opportunity, Says Óscar Arias,” *Inter Press Service*, February 7, 2007.

⁹⁹ Hicks, Milner and Tingley, 34.

¹⁰⁰ Initially, Arias had disregarded the notion of a referendum, arguing that it would backfire against anti-CAFTA activists and would obstruct implementation by the planned March 2008 deadline. See Zueras, “CAFTA is Not a Solution but an Opportunity, Says Óscar Arias.”

¹⁰¹ Comeforo, 14.

¹⁰² Frajman, 5-6.

downplayed the policy alternatives enunciated by the resisters and instead sensationalized their demonstrations, effectively depicting them as extremists. News stories allegedly held a bias that made a vote against CAFTA seem abnormal and frankly ludicrous.¹⁰³ The U.S. media also propagated a fear that the anti-CAFTA movements were covertly supplied by Hugo Chávez and Fidel Castro.¹⁰⁴ The conception that anti-CAFTA movements aligned with the radical leftist agenda in Latin America resembles much of the debate in El Salvador; in Costa Rica, trade advocates sparked fears that a rejection of CAFTA would draw the country into the sphere that was markedly undemocratic.

In the middle of the referendum battle, an official government memorandum directed to President Arias was leaked that revealed the administration's strategy. Authored by Kevin Casas, the vice-president and Minister of Planning, and Fernando Sánchez, a legislator and Arias's cousin, the memo consisted of several recommended tactics to confront the vocal opposition. For example, they called for a broad social coalition beyond government officials out of trepidation that the referendum could fail without support for it coming from small businesses or amenable labor unions. "The coalition against us is formidable: universities, the church, universities, environmental groups, etc. And, on the other side, in favor of CAFTA, there is only the government, and some of the big entrepreneurs. There is no way to win like this."¹⁰⁵ The memo also recommended a massive media campaign, saying that, "we should have no shame in

¹⁰³ Rudín and Hintjens, 36.

¹⁰⁴ Dan Beeton, "The Media Need More TLC in CAFTA Reporting," *Media Accuracy on Latin America, NACLA Report on the Americas*, March/April 2008, 47.

¹⁰⁵ Kevin Casas and Fernando Sánchez, "Urgent actions to activate CAFTA's YES campaign," memo to President Óscar Arias, 29 July 2007 (accessed from Washington Office on Latin America, "Leaked Memo on CAFTA Vote in Costa Rica," 17 September 2007). Available at www.wola.org/media/memocasasanchez_english.pdf.

saturating the media with publicity.” In particular, the authors argued that fear tactics should be employed – a rejection of CAFTA would cripple democratic institutions and would increase the influence of Hugo Chávez and Fidel Castro in the country.¹⁰⁶ One particularly egregious item in the memo also recommended that the central government withhold funds from mayors whose localities voted no in the referendum and to surreptitiously channel funds to the referendum campaign.

The memo spawned a massive outcry when it went public. Not only did it unequivocally outline the strategies that CAFTA’s proponents would (and did) pursue, it personified their genuine fear of the anti-CAFTA movement. Although Casas resigned from his office after the scandal broke, the controversy still strengthened the anti-CAFTA movement’s position.¹⁰⁷ Had the movement lacked potency, the administration would have had little need to devise a grand strategy to take it on. In this way, the memo actually can be seen as legitimizing the civil society uprising against CAFTA. In addition, the document advised methods that were either pure propaganda or blatantly against the law. This challenged proponents’ claim that their form of discourse was actually supporting democracy.

As the referendum drew closer, both sides ramped up their intensity. On September 30, more than 100,000 citizens, many dressed as skeletons or wearing masks of U.S. President Bush, demonstrated in San José.¹⁰⁸ Given the small population of Costa Rica, these attendance figures are especially significant. Meanwhile, the U.S.

¹⁰⁶ Ibid.

¹⁰⁷ Beeton, 47.

¹⁰⁸ “U.S. Trade Pact is Protested in Central America,” *Reuters*, September 30, 2007.

threatened to eliminate Costa Rica's trade preferences and declared that it would not renegotiate the deal if voters rejected CAFTA.¹⁰⁹ Several television stations aired stories on this threat, defying the ban on campaigning three days before an election.¹¹⁰ Costa Rican authorities prepared for a potentially earth shattering election.

The referendum on October 7, 2007, took place without violence and charges of fraud. After the votes were counted, it was determined that the agreement passed 51.56 percent in favor to 48.44 against, with a turnout of 59.2 percent of the electorate.¹¹¹ This figure is well above the 40 percent threshold mandated by the Electoral Tribunal to validate the vote, as well as the 46 percent predicted by a poll taken just before the referendum.¹¹² The high turnout, commensurate with recent voting patterns, reiterates the fact that the CAFTA debate aroused massive interest in the direction of the country. Post-election analyses revealed that predominately urban provinces voted in favor of the referendum, while the "no" vote prevailed in rural provinces.¹¹³

The spirited debate surrounding the CAFTA referendum left a significant impact to Costa Rican democracy, specifically in the Civil Society Dimension. The anti-CAFTA movement grouped a variety of citizen organizations behind a single banner but still allowed them to exercise their own authority and initiative. Decentralization allowed people from disparate backgrounds who otherwise might have felt alienated from the mobilization after hearing the biased, sensationalist news coverage to learn about the

¹⁰⁹ "U.S. Urges Costa Rica to Back Trade," *The Associated Press*, October 7, 2007.

¹¹⁰ Breuer, 459.

¹¹¹ Hicks, Milner and Tingley, 2.

¹¹² CID-Gallup, "Costa Rica: Referéndum se decide en la recta final," Opinion Poll number 113 (July 2007).

¹¹³ Breuer, 461.

movement and to participate in it. Hence this aspect upholds one of the two named indices in the Civil Society Dimension – the ample share of participation in the society. The ability of grassroots organizations to connect with individual voters helped strengthen communications across society. Activists attended meetings and visited ordinary citizens in order to spread their message as much as possible.¹¹⁴ They managed to reframe the debate into one dealing with the nature of the society at large beyond a question of free trade. As the leaked government memo warned, “the campaign about CAFTA is becoming what we should have never allowed it to become: a struggle between rich and poor, and between the government and the people.”¹¹⁵ The anti-CAFTA movement took on the well financed and well organized “YES” campaign with incredible skill, only narrowly being defeated at the ballot box. Both sides permeated society with their messages, the proponents using the established media circuit and the detractors using non-traditional material distribution at their demonstrations and presentations.

Moreover, the act of holding a referendum itself signals that a major step forward for Costa Rican democracy. The civil society lobbied successfully to put the trade agreement to a vote. The government took the referendum seriously and used the opportunity to advocate even more forcefully for the trade agreement. It confronted the anti-CAFTA activists directly, legitimizing them while – as the memo illustrated – trying to undermine them. Even before the referendum was called, Arias recognized the large civil society-based resistance movement and said in an interview, “I actually think it is

¹¹⁴ Frajman, 5.

¹¹⁵ Casas and Sánchez.

their right to oppose it for different reasons.”¹¹⁶ Civil society also approached the referendum peacefully, expressing itself through popular demonstrations but accepting the results, albeit reluctantly.

These reasons justify my conclusion that, in terms of civil society, CAFTA had a *positive effect* on Costa Rican democracy. Even though their struggle ended in defeat, the anti-CAFTA movement was not for naught. It is difficult to imagine that the strong popular networks that were created will be abandoned. Instead, the referendum helped reinsert a popular voice in the political debate through a dedicated instrument, civil society.

Conclusions

Costa Rica enjoyed high levels of democratic and institutional stability, even in spite of the changes in popular sentiment, when the government decided to embrace CAFTA. Still, the agreement has had provided some key consequences to the country’s political system. Because of the vast disparity in available knowledge, though, I am forced to offer two separate conclusions, unlike in my studies of Mexico and El Salvador. Based on my appraisal of the Electoral Process and the Civil Society Dimensions, I argue that CAFTA as a political entity has had a *positive effect* on Costa Rican democracy. However, based on my appraisal of the Open and Accountable Institutions and Political and Civil Liberties Dimensions, I suggest that CAFTA’s textual mandates have had an

¹¹⁶ Zueras, “CAFTA is Not a Solution but an Opportunity, Says Óscar Arias.”

indeterminate effect, as the *positive* characterization for the Open and Accountable Institutions dimension is still slightly weak and does not permit larger conclusions.

The main deficiency in the Costa Rica case is the challenge of time; at this moment, the bulk of CAFTA's impact has occurred through its relationship to politics. During the elections and the referendum, CAFTA acted as an emblem of the market-based economic ideology that has prevailed in Costa Rica. In that regard, the policy issue as a whole ignited debate and dissent, two key elements in a functioning democracy.

Irrespective of these actual conclusions, this case study has demonstrated that, on the larger level, the application of the Democratic Audit can work even in cases with insubstantial data. By categorizing different themes into the four Dimensions, the framework can help us extrapolate conclusion on the entire political system without overemphasizing one aspect that may have less support in the data. The evaluation of CAFTA in Costa Rica is well served in this regard, as I have been able to construct a picture of the country's democratic development based on those categories with greater information.

Table 5.1. Costa Rica Economic Indicators, 2003-08

Year	GDP per capita growth (rate)	Trade	Exports	Imports	FDI ^a	Manufacturing	Agriculture	Real Wages (Index) ^a	Unemployment (Annual %) ^a
2003	4.38	95.2	46.69	48.53	3.90	21.16	8.75	122.5	6.7
2004	2.38	95.74	46.26	49.48	3.30	21.74	8.62	115.5	6.5
2005	4.07	102.47	48.5	53.97	4.30	21.71	8.73	111.3	6.6
2006	7.01	104.41	49.13	55.27	6.50	21.56	8.97	115.7	6
2007	6.26	102.45	48.81	53.64	7.20	20.89	8.71	126.5	4.6
2008	1.48	101.6	46.03	55.57	6.90	20.69	7.29	129.2	4.9

Source (unless otherwise noted): World Bank, World Development Indicators 2010.

^a*Source: Inter-American Development Bank, Latin America and Caribbean Macro Watch (2010).*

Note: All data given in percent (%) GDP unless otherwise noted.

CHAPTER 6

Conclusions

When the Bush Administration declared that CAFTA would strengthen democracy in Central America, the actual outcomes are likely not what they had in mind. U.S. trade Representative Robert Zoellick remarked that trade liberalization would stimulate economic growth, which would further lift people out of poverty and help expand the middle class. The logic behind his argument is well founded in the theories discussed in Chapter 2 linking economic development, capitalism and democracy. Incorporation in the economic system would in turn integrate previously underrepresented sectors into the political system. According to his reasoning, a stake in the economy would enable a stake in the democracy.

Unfortunately, the lack of viable socio-economic measures to gauge the effects of CAFTA on economic development in Central America means that it is nearly impossible to consider the accuracy of this argument. The short time period of CAFTA's existence further hinders the present accumulation of such data. This dearth of reliable information is omnipresent. Even in the Mexican case noted in Chapter 3, it was difficult to establish a correlation between NAFTA and economic and political development without econometric analysis, and, indeed, confidence in the conclusions from these regressions could be limited. Economic growth is contingent on a multiplicity of factors: even if CAFTA did encourage greater trade and investment in El Salvador, for example, it

exposed the country to greater repercussions from the 2009 economic crisis and hence may have facilitated an economic contraction. The inadequacy of empirical evidence, therefore, might belie some of the assertions of ardent trade proponents.

Notwithstanding this skepticism, one can make a formidable case can be made that free trade does contribute to strengthening democracy. The Democratic Audit methodology helps us conceptualize those facets affected by the trade agreement, since quantitative economic growth figures alone may not suffice. A qualitative measure of the trade agreement works strictly *because* a significant amount of the agreement's content is itself qualitative by dealing with regulatory and institutional reform. Categorizing a democracy based on its electoral processes, open and accountable institutions, political and civil liberties, and its civil society, the Democratic Audit can consider more than just economic variables that are influenced by trade liberalization. In that sense, it can be utilized to measure far more aspects of democracy than just socio-economic factors.

Comparing the results from the Democratic Audit for El Salvador and Costa Rica, CAFTA did impact democracy in these countries, but not in the ways expected by its advocates. I determined that CAFTA had a weakly positive effect in El Salvador on the whole: after differentiating the dimensions into two sub-categories, I could argue further that as a policy phenomenon, it was positive, and as a textual mandate of reform, it was neutral. I also determined that in Costa Rica, as a policy itself CAFTA had a positive effect while its provisions had an indeterminate effect. My hypothesis, that there would be a positive impact overall, was correct, but not for the reasons that I had anticipated; the policy, rather than the content, presented the greatest influence to democratic institutions.

I resolve that CAFTA has had a stronger impact on democratic development in these countries as a policy itself than as a treaty calling on each signatory to enact certain commercial regulations. As a policy, it represented a major step of the prevailing agenda to pass market capitalist initiatives. Regardless of their ideological spectrum, political candidates and social groups articulated the ideas behind CAFTA in the public square. Proponents saw it as an instrument to expand economic development through commerce and investment, while detractors denounced it as an entrenchment of an ideology that marginalized citizens and subjugated them to foreign manipulation. Therefore, as a symbol of a transformational policy program, CAFTA became a feature in presidential elections and inspired the civil society. Information gleaned from Chapter 2's test of the Democratic Audit, Mexico and NAFTA, supports this conclusion – the nature of the 1994 campaign, Zedillo's reforms (which built upon Salinas's policies to garner American endorsements for Mexico's entrance into the trade agreement), and the Zapatista uprising may be the strongest factors resulting from NAFTA that contributed to Mexican democratization.

In Central America, CAFTA helped frame the debate through which more voices have been heard. The democratization of dialogue advanced political democracy. In the electoral processes, CAFTA and the domestic economic situations played authoritative roles in the Salvadoran 2009 election and the Costa Rican 2006 and 2010 elections. Interestingly, in all these examples, voters ultimately elected a candidate who endorsed CAFTA, even if the popular opinion generally did not. In terms of civil society building, CAFTA had an indubitable effect in both countries. Even though the anti-CAFTA

organizations lost their battles, they still developed strong relationships and adopted new tactics to express themselves. Once mobilized, these groups will continue to monitor the activities of the government and speak out on behalf of the population, as the example of the Salvadoran civil society outcry against the Pacific Rim Mining Company shows. The Costa Rican case serves this argument because of the referendum held over the agreement's ratification, which allowed a popular decision for the first time to determine if that country would implement some restructuring of its economy. Greater pluralism in the public sphere serves to consolidate democracy in countries that, for much of their existence, were beholden to the interests of foreign investors, elite landowners, or authoritarian regimes.

Also notable about the results from this assessment is the dearth of clear evidence suggesting that CAFTA has substantively affected the institutions and liberties of the countries examined. In neither case could an argument be made that the agreement had more than a neutral effect on the state institutions or on civil liberties, specifically labor rights. Unfortunately, this conclusion may illustrate the largest shortcoming of this study. Development of stronger institutions, rule of law, and individual rights takes time to occur. Such a generational shift cannot be assessed in the short period that CAFTA has existed. Most of all, the analysis demonstrates that an entire culture, in which the rights of businesses, organizations and workers are respected, must still grow and mature. One trade agreement, regardless of its impact on the country, can hardly foster this culture alone. More attention should be placed on improving the country's capacity to monitor and enforce these laws before we can adjust our conclusions about the

institutions and liberties in El Salvador and Costa Rica. This time issue aside, these conclusions reiterate the strength of the Democratic Audit as a construct. Even by showing that two categories may have indeterminate or neutral data, the Audit isolates those variables more or less affected. From this analysis, we can prescribe more normative solutions to address the gaps left by the trade agreement.

Above all, this thesis has revealed the irony in the democratization argument for trade agreements. CAFTA helped stimulate the democratic institutions of elections and civil society especially through opposition to its implementation. Rather than through increasing socio-economic standards, it enabled pluralism and representation. While these may be more immediate gains, and socio-economic and institutional reforms may lag, it is nonetheless clear that the initial effects of trade agreements *on democracy* are political, rather than economic in nature. The benefits of eliminating tariff barriers on sensitive products may make economic sense and in the long run promote development, but in the short run, these advantages can be masked by the “sound bites” of trade politics.

The implications of this thesis are vast. In considering the effects of CAFTA on political institutions in Central America, it ventures into scholarship relatively untouched by present literature. The major difficulties that it encounters due to the recency of CAFTA are not insurmountable; rather, they suggest areas of further research in the future as the provisions of agreement have had a longer time to permeate the democratic institutions. For instance, the effects of privatization of the Costa Rican telecommunications industry on that country’s democracy will be particularly noteworthy,

as it may illustrate the efficacy of balancing state regulations with private investment in a once protected sector that has a visible impact on citizens.

As this thesis has demonstrated, the Democratic Audit offers an ideal methodology to study the impacts of trade on democracy. After adapting it somewhat to the particular circumstance, it is a strong construct that integrates a number of dimensions that together uphold democracy. It even allows dimensions like electoral processes and civil society, ones that a trade agreement does not purport to involve, to be considered in the evaluation. As the question of CAFTA shows, these dimensions are of utmost importance and in fact exhibit some of the clearest evidence that trade agreements can influence a democracy.

Academics and policy-makers alike can reflect on the implications of this thesis and of the use of the Democratic Audit in considering future trade agreements. Bilateral trade agreements with developing countries will continue to serve as a key tool for U.S. foreign policy, and their proponents undoubtedly will assert that their implementation will advance democracy. The U.S. Trade Representative declares that approving the pending trade agreement with Colombia will “strengthen peace, democracy, freedom and security,” echoing the same arguments made about passing CAFTA less than a decade ago.¹ The results of the Democratic Audit in this thesis indicate that one should view this claim with some skepticism unless the potential effects to democratic institutions, not just economic growth, are taken into account.

¹ Office of the U.S. Trade Representative, *The Case for the U.S.-Colombia Free Trade Agreement* (Washington D.C.: Office of the U.S. Trade Representative, October 2008).

The negotiation and implementation of CAFTA was a historic moment for Central America. By choosing to cement their economic relationship with the United States, the governments of the region further dedicated themselves to advancing a project harnessing market capitalist principles to generate economic and political development. While it may be premature to suggest that they achieved the first objective, it is unquestionable that the experience begat new and stronger voices in the political debate and thus helped cultivate democracy.

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