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# Comparative Constitutional Law for the Americas

University of Georgia School of Law

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## **A. PARTNERSHIP**

“Comparative Constitutional Law for the Americas: Applying Common Foundations to Novel Realities” is a project that spearheads a long-term institutional partnership between the University of Georgia/Dean Rusk Center (UGA), Georgia State University (GSU), and the Universidad del Salvador (USAL) in Argentina. It was conceived through an extensive exchange between the Universidad del Salvador’s law school and University of Georgia visiting faculty, and in response to recent developments in constitutional experimentation and interpretation in Argentina. The strong similarities between the U.S. and Argentine constitutions stem from the use of the former as a legal template by Argentina. In conjunction with novel realities and experiences of Argentina in recent years, these common foundations provide a unique opportunity for scholarly exchange in comparative constitutional law, from which each party has much to gain. In drawing on the strengths of each institution, this partnership strengthens the comparative foundation of constitutional law scholarship and broadens the foundations of teaching, research, and outreach at each partnering institution.

The partnership design stems from ongoing liaisons between the University System of Georgia (U.Syst.GA) law faculties and Argentina, bolsters academic collaboration between public law universities in Georgia, and reflects the relative strengths of participant institutions. Collaborative scholarship on constitutional law in the Americas and its interpretation strengthens dual ongoing cooperative agreements between the State of Georgia and Argentina (UGA-USAL in 1991 and U.Syst.GA-USAL in 1994). Also, with little history of international collaboration between two public law schools in Georgia, this project will catalyze a most needed collaboration between member institutions of the U.Syst.GA. Three faculty members from each university will participate in this preliminary stage of the partnership. At the University of Georgia, faculty representing three generations of constitutionalists will contribute a depth and breadth of perspective on comparative constitutional law. Georgia State will complement these strengths with hands-on experience in the legislative process at state and federal levels and expertise in comparative legislation and constitutional interpretation. Universidad del Salvador has taken the initiative to request a formal collaboration on constitutional law issues in an effort to spearhead critical scholarship on cases whose adjudication rests on the 1994 amendment of the Argentine Constitution.

## **B. SIGNIFICANCE OF THE PROBLEM**

The drafting of the United States Constitution and the documents of our founding fathers were used as a template by Argentina. The commonalities in our legal systems are far more extensive than the differences. At the same time, each state has experienced profound transformations as a result of ongoing historical circumstances that has led each to experiment with its legal system and to interpret the constitution in novel ways. This richly textured experience at opposite ends of the Americas holds great potential for collaborative dialogue, exchange, collaboration, and scholarship and for mutual learning experiences that far transcend the lessons that might be learned in isolation. However, barriers of language, geography, and vision have limited this synergy in practice.

This is a critical moment in Argentina. The constitutional reform of 1994 has produced an array of cases that have been brought before the courts. These developments are of interest to the United States due to the influence of U.S. constitutional law on the Argentine system and recent reforms to it. In Argentina, the leading constitutional lawyers are anxious to gain an understanding of Supreme Court rulings and case studies to assist them in navigating this uncharted terrain. However, the availability of relevant information on the U.S. experience is sorely limited. U.S. Supreme Court rulings are difficult to access, in particular, given the language barrier. Less accessible still is critical commentary on these decisions. A productive exchange with scholars from the U.S. will: 1) make scholarly comment accessible to daily decision-making (lawyers, etc.) in Argentina and 2) contribute a great deal of understanding to broader issues of legislation and constitutional interpretation in both countries.

In April-May of 2000, the Argentine House of Representatives denied an elected representative his seat. This decision of the house has since been taken before the Supreme Court of Justice in Argentina, and the decision is pending. This is a case of first impression in Argentina and it undoubtedly will require that the Argentine Supreme Court look for authority in the disposition of similar cases in the U.S. The *Facultad de Ciencias Jurídicas* at the Universidad del Salvador has requested that a scholarly exchange (UGA-Salvador) be initiated to generate critical comment on the forthcoming decision of the Argentine Supreme Court and, more generally, to strengthen collaborative scholarship and teaching in this area of law. This is a rare, promising, and timely opportunity to bring resources and expertise of the U.Syst.GA

to bear on these critical issues and to develop a lasting partnership between constitutional lawyers and scholars of Argentina and of the United States.

## **Objectives**

This project will address the current gap in academic exchange between constitutional lawyers in the U.S. and Argentina through scholarly exchange applied to current developments in Argentina.

Through the strengthening of a trilateral dialogue between the University of Georgia, Georgia State University, and the Universidad del Salvador, this project will help to understand not only the implications of the case in question but also of future constitutional developments in both countries.

Scholarly collaborations will be lasting, including students, educators, and scholars alike in the effort to articulate findings on comparative constitutional law. These collaborations are consistent with the broader mission of the three institutions. Specifically, this project will:

- Broaden the international and comparative perspectives of legal research, teaching and scholarship at participant universities in the area of constitutional law.
- Build a lasting partnership between Argentina and the State of Georgia through scholarly research and exchange in areas of mutual interest.
- Assist the government of Argentina in charting its course through new legal terrain in its journey toward democratic change.

## **Strategic Planning Priorities**

This project is in keeping with the U.Syst.GA's 1995 Policy Directive "Internationalizing Education," each institution's strategic plan, and the planning done by Professor Milner Ball of the University of Georgia School of Law with representatives of the Universidad del Salvador in April and May, 2000. Professor Ball and USAL faculty engaged in a collective identification of areas for future collaboration that would enhance the mutual benefits of partnering institutions, as spearheaded by this project.

## **C. ACTION PLAN / TIMETABLE**

This project promises immediate and direct action on the recent constitutional proceedings in Argentina. This potential stems from: 1) extensive contacts with Universidad del Salvador, 2) ongoing bilateral agreements (UGA-Salvador, U.Syst.GA-Salvador), and 3) an exchange stemming from the direct request for collaboration in constitutional interpretation by Argentine counterparts.

The action plan will begin with the visit of two Argentine scholars to Georgia to discuss the legal dimensions of the case. Spanish-speaking students from the U.Syst.GA graduate law programs will translate official documents and record the minutes from this exchange for Argentine parties. During this visit, a workshop will take place between UGA, GSU, and USAL participants. The purpose will be to identify the dimensions to be researched and to delegate responsibilities to participant faculty and students. Workshops II and III will follow and, will include participants from UGA and GSU. A recommendation for Argentina will be drafted on the basis of extensive discussions and research findings. Next, student and faculty representatives from UGA and GSU will travel to Argentina to present the recommendations to a panel of constitutional law professors, students, and judicial officials. These recommendations and future directions for collaboration will be discussed. The final step of the seed grant will constitute the publication of the results of this project.

#### **D. IMPACT AND POTENTIAL**

The activities described above will have broad-ranging impacts. The foundation of cooperation (signed agreements, a history of academic exchange, etc.) between USAL and UGA on the one hand, and the U.Syst.GA on the other, will help to ensure the project's successful implementation and its strategy for sustainability. In addition to addressing significant issues affecting both countries, the project activities will:

##### *For the University System of Georgia and the State of Georgia:*

- Familiarize the U.S. and U.S. constitutional lawyers with the constitutional developments taking place in Argentina. Examples include the *Jefe de Gabinete* (an administrative officer who keeps a reign on bureaucracy) and extensive amendments to strengthen rights of citizens to test governmental acts.
- Provide a comparative perspective on the processes of constitutional development and implementation. Historical and contemporary developments in constitutional law unique to Argentina serve as comparative lens of the benefits and drawbacks of each system, with benefits for teaching, research, and scholarship at U.Syst.GA institutions.

##### *For the Universidad del Salvador:*

- Improve accessibility to U.S. Supreme Court rulings and provide a comparative basis for constitutional interpretation through both collaborative research on relevant cases and access to U.S. scholarly interpretation of specific Argentine cases.

##### *General:*

- Contribute to scholarly research on the development of constitutional law in the U.S. and Argentina.
- Familiarize students and faculty from each university with comparative constitutional law and the cross-cultural understanding needed to understand comparative differences through faculty exchange, collaborative (trilateral) scholarship and student research.
- Disseminate findings in English and Spanish through the *Journal of International and Comparative Law* (University of Georgia) and *La Ley* (an Argentine publishing house and law journal). Identify other mechanisms to facilitate bilingual academic exchange that will ground a lasting partnership.

- Research comparative differences in law pedagogy via scholarly exchange between the two systems.
- Increase the knowledgeableability of students and faculty on developments in constitutional and legal matters stemming from the globalization of economies, culture, and academics.

**Seed Grant**

This project will be used as a seed grant for an expanding partnership between the three participating universities in comparative constitutional law. Academic conferences, visiting scholars, and study abroad programs are envisaged as future components of the partnership.

**E. PLAN TO SECURE CONTINUED FUNDING**

The Dean Rusk Center- International, Comparative and Graduate Legal Studies has established records of internal and external funding to initiate promising projects and expand ongoing partnerships. Given the University’s goal to “broaden the international perspective of its teaching, research, service, and co-curricular programs” in the Strategic Plan, future funding possibilities initiated by UGA are promising. Sources of outside funds for future initiatives stemming from this trilateral collaboration already have been identified (the Tinker Foundation, WestLaw, etc.).

**F. BUDGET**

<b>Program Budget</b>	<b>U. Syst. GA</b>	<b>UGA</b>	<b>GSU</b>	<b>USAL</b>	<b>TOTAL</b>
Faculty Exchanges	\$15,000 @ \$3,000 x 5 part				\$15,000
Workshops I-II-III	\$500				\$500
Student Exchanges	\$ 4,500 @ \$1,500 x 3 part.				\$4,500
Translation of Materials	\$3,000				\$3,000
Research Assistants	\$2,000				\$2,000
<b>Administrative Budget</b>					
Director Prof. Ball @ \$138,350 10% Salary + 26% Fringe Benefits		\$17,432			\$17,432
Prof. Coenen @ \$132,300		\$16,670			\$16,670
Prof. Beck @ \$80,000		\$10,080			\$10,080
Prof. Hogue @ \$122,251			\$15,403		\$15,403
Prof. Marvin @ \$124,700			\$15,712		\$15,712
Prof. Kinkopf @ \$73,000			\$9,198		\$9,198
Prof. Salvadores @ \$48,000				\$4,800	\$4,800
Prof. Safadi @ \$30,240				\$3,024	\$3,024
Prof. Rojo @ \$10,224				\$1,022	\$1,022
Indirect Costs 31% UGA MTDC (\$44,182) Unreimb. 31% MTDC (\$25,000)		\$13,696 \$7,750			\$13,696 \$7,750
<b>Total</b>	<b>\$25,000</b>	<b>\$65,628</b>	<b>\$40,313</b>	<b>\$8,846</b>	<b>\$139,787</b>