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From Honor to Dignity:
Criminal Libel, Press Freedom, and Racist Speech in Brazil and the United States

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Reports on violence against journalists in Brazil have captured media attention and the concern of international organizations such as the Committee to Protect Journalists and Reporters Without Borders.[1] Short of violence, other concerns about press freedom have surfaced, such as the successful assertion by public figures of their right to keep unauthorized biographies out of print. The case presented in this article involves another such concern: the use of criminal defamation laws to punish journalists for criticizing public officials.[2] At the same time, Brazilian media sources regularly report on crimes of racism, which most often involve derogatory name-calling and hate speech. By examining the intersection of these apparently contradictory concerns, this article sheds new light on speech rights in Brazil and the United States and argues that a comparative perspective is crucial to contextualizing and harmonizing free speech and its limitations under modern democratic constitutions.

The Case and the Law

When I first learned that a Brazilian blogger and journalist, José Cristian Góes, from the small northeastern state of Sergipe, had been prosecuted and found guilty of criminal libel, it seemed like an open and shut case of government repression and a clear human rights violation. International press freedom organizations had picked up on the case and Góes, who is not a nationally-known figure, was flown by Article 19, an international nongovernmental organization,[3] to testify at a public hearing of the Inter-American Commission on Human Rights of the Organization of American States in October 2013.[4] His case was presented as indicative of a lack of press freedom in Brazil and posited as a human rights violation. As I investigated the circumstances of the case and looked into its legal underpinnings, it became clear that my perspective as a United States lawyer and anthropologist had led me to assume that freedom of speech from a constitutional perspective is an uncomplicated, universal principle and that my assumptions needed to be revised. I discovered that a single case that could have been scripted for the Theater of the Absurd might shed light on larger issues associated with free speech in Brazil, the United States, and other democratic countries. As noted by comparative law scholar, Ronald Krotoszynski, "[u]nlike some rights, free speech simply is not the subject of broad transnational consensus as to either its shape or scope" (222).

Without delving too much into its deeper political history and meaning, the blogger's case can be outlined as follows: In 2009, Edson Ulisses de Melo, a lawyer who had been involved in a variety of human rights initiatives in the capital city of Aracaju and a respected member of the local bar association, was named by his brother-in-law, Marcelo Déda, governor of Sergipe and a strong supporter of the national Workers Party (the ruling party of Luiz Inácio Lula da Silva, president from 2003 to 2010, and Dilma Rousseff, president from 2011 to 2018), to sit as a judge on the highest court of the state of Sergipe.[5] When the appointment was announced, José Cristian Góes posted a series of blog entries complaining of possible nepotism.[6] Although not mentioned in the blog, Déda was diagnosed with pancreatic and stomach cancer in 2009 and died at the age of 53 in December 2013. In May 2012, when Governor Déda was taking his final round of chemotherapy, Góes posted a "fictional" story told in the first person from the ostensible perspective of the governor, although he was not named.[7] The published story portrayed the narrator as an old-fashioned *coronel*, a despotic,

oligarchical figure (common in Brazilian history and folklore) who controlled large estates and the peasants who worked on them.[8] This was a metaphor for Déda's control of the state with specific reference to alleged misuse of state funds. Góes wrote, presumably in the voice of Déda, "I am the one with the money, despite the view that the money is public. I am the big boss. I am the one who hires and fires. I am the one who contracts ass-kissers, gunmen, and jesters…" Obliquely, but recognizably, referring to a statewide teachers' strike earlier that year and a building occupation by an urban social movement, against which Judge Edson Ulisses had issued injunctions, the story continued, still in Déda's presumed voice, "It is said that strikes are part of democracy and I have to accept that. I accept nothing. I hired a personal gunman of the laws (*jagunço das leis*), who is, not by coincidence, the husband of my sister, and gave these people a kick in the butt". Judge Edson Ulisses brought a criminal complaint for defamation, charging that Góes had impugned his reputation and offended his dignity.

In Brazil, defamation, in addition to being a civil claim, can carry criminal penalties. Under the current Brazilian Penal Code there are three privately-initiated criminal actions referred to as "crimes against honor", in descending order of punitive harshness: calumny or falsely accusing someone of a crime (six months to two years and a fine); defamation (three months to a year and a fine); and *injúria* (which may be translated as offensive insult) (three months to a year and a fine). The prohibition against *injúria* was amended in 1997 to increase penalties if the offensive language makes reference to race, color, ethnicity, religion, or origin (referred to as *injúria qualificada*) and in certain cases, penalties may be increased if the offended party is a public official (and the offense goes to the function of the position), elderly or disabled.[9] In the case at hand, the blogger José Cristian Góes was prosecuted, at the judge's initiative, under the *injúria* section of the law, found guilty, and the decision was affirmed on appeal.[10] Góes was not fined, but was sentenced to perform community service (in lieu of a seven-month term of house detention), although in subsequent blog postings and other reports about the case, Góes stated that he was "condemned to prison". Albeit inaccurate, international organizations picked up and used this language in their reports to enhance their assertion that press freedom is under attack in Brazil.

Góes asserted in his defense that the column was a work of fiction, even though to anyone familiar with state and local politics there could have been no doubt as to whom it was referring. In court papers and blog posts after the original July 4, 2013 trial court decision and before the appellate court upheld it three months later, Góes hung his argument entirely on the assertion that it was only "possible" to identify Governor Déda and Judge Edson Ulisses since the story had been written in the first person. Based on the language of the law and jurisprudential interpretations, as well as testimonial evidence, both courts ruled that no one could mistake the identities of the characters in the story and that the judge's honor had been offended, his reputation besmirched, and his dignity damaged. The trial court found that "journalists have the right to opine against and criticize, even in severe, ironic, and merciless ways, any person or authority, but this right is limited by the fundamental right to *intimidade* [intimacy, selfhood, privacy] of the person who is the target of the criticisms." Looking to the penal code provisions, the finding that the judge had suffered *injúria* was all but impossible to avoid. It was clear that the blog post referred to the judge and that his reputation in relation to his public functions had been impugned. This was all the statute required and the state courts deciding the case were not in a position to declare the federal statute unconstitutional even if they had wanted to do so.[11]

The enhanced protection of public officials from defamation has a long history in Brazil, while in the United States public criticism of government officials or candidates for office that are potentially defamatory in nature has, since the 1960s, often been seen as an important component of an open political process. Therefore, to those most accustomed to the United States policy of enhanced protection for those defaming public officials, the Brazilian system that considers it worse to insult a

public official than an ordinary person seems anti-democratic or overly protective of those in power. On the other hand, some argue that those willing to perform public service at their own personal risk should receive protection from personal attacks. However, if the anti-racist speech provision of the anti-defamation law in Brazil were to be invoked in such a case, a public official who is the object of racist remarks should perhaps be permitted even further enhanced protection. This matter has not been discussed in the Brazilian literature, nor has it yet been considered in the United States.

Despite, or perhaps because of its absurdity, the Góes case was used in campaigns by international organizations, such as Reporters Without Borders, Article 19, Committee to Protect Journalists, and International Freedom of Expression Exchange (the Canadian-based free expression network currently known as IFEX), to illustrate a lack of press freedom in Brazil. Their stories about the case invariably glossed its details as "exposing corruption"—an overstatement that concealed more than it revealed. As is the case in Brazil (and elsewhere, other than the United States), the word "corruption" is often used to increase political stakes at the local or national level and to attract international attention. Allegations of corruption are mostly reserved for developing countries and most recently particularly for the BRICS countries (Brazil, Russia, India, China, and South Africa) that pose economic challenges on the world scene. This is not to deny the existence of corruption and illegal financial practices in those countries, but to point out that the media, governments, and international nongovernmental organizations often deploy the discourse of corruption strategically.

The Góes case, rather than being about corruption, was more accurately about personal animosity and political differences that erupted into a public argument in which a traditional notion of "honor" was invoked. As explained in the courts' decisions, evidence of the judge's loss of dignity was crucial to the outcome of the case because loss of honor and dignity are fundamental elements of the statutory crime of *injúria* for which the blogger Goés was prosecuted. Although difficult to understand for those of us in the United States who take for granted an expansive interpretation of free speech as embodied in the First Amendment, this odd case can serve as a point of entry to investigate its placement within the firmament of Brazilian legal tradition and constitutional law. Moreover, the case can provide an unusual opening for a consideration of how honor, dignity, and free speech may be related.

Honor, Dignity, and Racist Speech

Honor has received more attention than dignity in historical work on Brazilian life and law.[12] Protection of honor was most often invoked to preserve the position and status of a person in power, supporting and reinforcing a fundamentally unequal social system. Based on a colonial system concerned above all else with honor and status, the advent of the Brazilian Republic in 1889 and the first postcolonial Penal Code, enacted a year later, reveal "more continuity than change from colonial to modern times" (Uribe-Uran 458). The Penal Code of 1890, although "a far cry from the colonial Philippine Code", was "permeated by rigidly hierarchical, status-based conceptions of public honor and draconian punishments for its infringement. Yet it still enshrined a broadly defined concept of honor as a fundamental individual right and attribute" (Fischer 181). In fact, the current law governing *injúria* under which Góes was prosecuted is not very different from the law as it stood in 1890, although the prescribed punishments are very much reduced. Always considered a "private crime," prosecution can only be initiated by the injured party, as it was by Judge Edson Ulisses.

Dignity, while sometimes included as a discursive sibling of honor, has a related yet distinct trajectory. Honor was seen as protecting an individual's reputation or face to the world, while dignity carried a more internal sense, protecting an individual's self-worth (Fischer 182).[13] As noted above, this aspect of the Góes case alleging *injúria* was an important deciding factor in ruling in favor of Judge Edson Ulisses. The court reproduced the judge's testimony in full supporting the damage he had

suffered in which he detailed how the words of the blog post attacked the "core of his personhood," especially since he had always been an important defender of human rights. While subjective and difficult to measure, the importance of dignity and what it has come to mean in recent years holds the key to assessing the variety of perspectives on free speech in liberal democracies.

With the development of a democratic aspiration and ethos in Brazil, earlier aristocratic notions of honor have increasingly become associated with a broader distribution of dignity throughout society. What legal history described as a protection of the hierarchical status quo in the form of crimes against honor became, in the late twentieth century, associated with the protection of individual dignity as a right for all citizens —an equalizing measure designed to enhance the rights of those who had never before been entitled to traditional notions of honor. And with a legal commitment to equality comes the drive to protect that equality. Shortly after the end of the Brazilian military regime (1964-1985), a Constituent Assembly was formed in 1987 with more than 550 elected delegates who worked for over a year in committees, holding hearings, and receiving letters, petitions, and testimony from across society. The result of those deliberations was the democratic Constitution of 1988, which begins with an affirmation of the foundational importance of dignity. Brazil, it proclaims, is a "democratic state founded on the dignity of the human person" (Article 1, III).

This emphasis on dignity has been interpreted by legal scholars as infusing the traditional notion of honor with a duty of equal treatment and respect for all individuals in their personal and professional lives, with special attention to self-esteem and individual autonomy. Often associated with a Kantian perspective on dignity, this provision was modeled on the German constitution of 1949 (Martins; Sarlet).[14] It is the first hint that the Brazilian constitutional limitation on freedom of expression is tied to the post-World War II European impetus to protect individual members of vilified minorities against the effects of institutionalized hatred (with postwar Germany as the clearest example). Evidence of this transition from honor to dignity is best illustrated in the watershed Brazilian case of Siegfried Ellwanger, who in 2003 was condemned by a state court for the crime of racism for publishing books that spread prejudice against Jews. This was the first hate speech case to come before the Brazilian Supreme Court, which upheld Ellwanger's conviction by a seven to three vote. The majority opinions considered this case as an opportunity to address the perceived conflict between free speech, on the one hand, and equality and anti-discrimination, on the other.

This is unlike the United States, whose unqualified constitutional protection of free speech is unusual on the world scene. The first amendment to the United States Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; *or abridging the freedom of speech, or of the press*; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" (emphasis added). On its face, no balancing is required—freedom of speech is supreme and unfettered. Brazil's free speech provision, on the other hand, is not facially unlimited, and thus requires direct balancing of two fundamental rights—personal dignity and freedom of expression (Ardenghi; Farias). The Ellwanger case provided the opportunity for the Brazilian Supreme Court to address this balance directly.

Because "constitutional text matters" (Krotoszynksi 215), the language of the Brazilian Constitution itself is an important place to start. Article 5, with its 78 sections, sets forth the terms under which all residents of Brazil are guaranteed "the right to life, liberty, equality, security, and property". Those terms include: the "free expression of thought, so long as not expressed anonymously" (Section 4); "free expression of intellectual, artistic, scientific activity, and of communication" (Section 9); the "inviolability of intimacy, private life, honor, and image" (Section 10); and Article 220, which expands on freedom of the press, reaffirming the limitation that Section 10 (privacy) places on that freedom. Brazilian constitutional limitations on free speech, grounded in human dignity, reflect international law as well as the laws of almost all Western democracies, except for the United States. Article 19, the international nongovernmental organization that paid for Góes

to testify at the Inter-American Commission on Human Rights, mentioned in the opening of this article, is named for the free speech provision of the 1976 International Covenant on Civil and Political Rights (of which Brazil is a signatory). Ironically, however, unlike the First Amendment to the United States Constitution, and more like the Brazilian 1988 Constitution, Article 19 of the International Covenant on Civil and Political Rights is explicitly limited by "respect for the reputation of others".

Long before the Brazilian Constitution was adopted in 1988 in an atmosphere of incipient democratic debate, an anti-press freedom law, known as the Press Law of 1967 (Law No. 5250/67), was decreed in preparation for the darkest days of the military regime, which began with the declaration of Institutional Act 5 (AI-5) in December 1968. That draconian anti-press law, with broad terms and long, mandatory prison sentences added to those of the standard anti-defamation provisions of the Penal Code, placed specific restraints on journalists "by banning information that [was] contrary to good customs, decency, family values, and even national symbols" (Lanao 351). Although used much less often after the 1988 Constitution came into effect, the Press Law of 1967 remained on the books for twenty years—well into the consolidation of democracy in Brazil.[15] It was finally declared unconstitutional by the Brazilian Supreme Court in 2009 with a 7 to 4 vote.[16] The powerful language of the majority opinion did not find it necessary to address, let alone overturn, the sections of the Brazilian Penal Code that continues to levy criminal sanctions on various forms of defamation, including *injúria* (under which Góes was prosecuted) and *injúria qualificada* (against hate speech—more about this below), which had been added in 1997.[17] Interestingly, the majority opinion of the Supreme Court overturning the Press Law of 1967 was reprinted in its entirety in the decision condemning the journalist Góes. The court pointed out that Góes was not being prosecuted under the Press Law of 1967, but rather under the criminal libel law (*injúria* in this case) that remains in effect.

It is my contention that the criminal libel law under which Góes was prosecuted (and had been in place in some form for over a century) was left in place and has not been declared unconstitutional precisely because it has come to be seen as protecting human dignity. The key to this argument is that a provision for *injúria qualificada* was added in 1997, which provides an enhanced legal remedy for individuals who are subjected to racist hate speech. Returning to the International Covenant on Civil and Political Rights, the provision immediately following the eponymous Article 19 prohibits "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". This language of Article 20 of the International Covenant on Civil and Political Rights is equivalent to Article 5, Section 42 of Brazil's 1988 Constitution, which makes racism, including racist speech, an unbailable offense. Some assert that the addition of *injúria qualificada* created an end-run around the constitutional anti-racism provision by allowing bail for racism, with the result that individuals who hurl racial insults do not go to jail, seen as a serious problem. At the same time, there is a clear increase in complaints. According to Raíssa Lopes, in the state of Minas Gerais (where there is no police office dedicated to taking racist criminal complaints, as there are in São Paulo and Rio de Janeiro), in 2013 there were 167 complaints of crimes resulting from racism, while in just the first four months of 2014 there were already 66 complaints. In Brasília, the number of complaints rose 40% from 2012 to 2013 (310 to 434). All of these provisions, together with increased public awareness of them, are evidence of the international consensus that hate speech should be prohibited. They go hand in hand with the limitations that a commitment to human dignity, in the form of protection of the intimate self, place on unfettered freedom of expression in the overwhelming majority of democratic countries in the world today—again, except for the United States.[18]

Balancing Freedom and Equality

In countries such as Brazil and in many parts of Europe where a "culture of honor" was historically predominant, the expectation of respect that goes hand in hand with notions of honor has,

since the late twentieth century, begun to be democratized (Whitman 1328). These systems can be seen as "hav[ing] human 'dignity' today largely because they had personal 'honor' in the past" (Whitman 1385). Moreover, dignity has become integral to the post-World War II human rights regime (Beitz), which since the late 1970s has become, for many, critical to humanitarian hope for the future (Moyn). Dignity has also become the justification for limiting free speech (Carmi) and "expresses the idea of the high and equal rank of every human person" (Waldron and Dan-Cohen 14). In other words, Brazil can be seen as using the modern concept of dignity, as it has been incorporated into human rights discourse, to tip the balance of free speech versus equality in favor of the latter. By infusing the language of "honor" with the discourse of "dignity", countries such as Brazil (in line with the postwar European trend) are taking a stand on group libel, a term often preferred by countries that outlaw it (Waldron 40) and a term that comports with the language of Article 20 of the International Covenant on Civil and Political Rights ("any advocacy of national, racial or religious hatred"). As such, they are choosing to prevent attacks on the dignity of members of society, to avoid a "polluted social environment", and to "protect an atmosphere of mutual respect" (Waldron 35, 30) at the expense of absolute free speech.

This can be seen most clearly in relation to the criminalization of racism. Brazil's governments, since the postwar democratic period, have consistently criminalized racism, and particularly racist speech. The 1988 Constitution makes racism an unbailable offense and a number of laws since then, including the *injúria qualificada* addition to the Penal Code in 1997 have been enacted to operationalize that constitutional provision by increasing penalties for defamation if it involves racist speech.[19] With the exception of a handful of law journal articles, there has been very little public discussion in Brazil of what in the United States is seen as an almost intractable contradiction between regulating hate speech and the First Amendment, which since the mid-twentieth century has been the symbol of an unfettered right to free speech.

The United States perspective is often referred to as speech absolutism, authoritarianism, or fundamentalism (Gilreath; Waldron). In the view of legal scholar and gay rights activist Shannon Gilreath, the expanding breadth of the First Amendment to include anything short of "fighting words" in relation to personal invective (and not restricted to political speech) leaves little room for considering the effects of words on equality rights (122). In his view "it is entirely consistent with the commitment to free speech to draw a distinction between speech that has as its aim genuine political debate […] and speech that has as its aim the silence and demoralization of others" (Gilreath 213). Gilreath places hope in a case in which the Ninth Circuit Court of Appeals approved a high school's decision to forbid a student's homophobic t-shirt on the grounds that it condemned and denigrated other students on the basis of their sexual orientation (117). In an unusual move for United States federal jurisprudence, rather than looking at possible disruption as a justification (the test of "clear and present danger"), the court examined the right to be free from "assaultive speech" short of fighting words.[20] From the perspective of Gilreath and others who would like to see greater consideration given to the power of language as a force equivalent to other forms of illegal discrimination, this case may be the beginning of a shift in perspective—a shift that could lead the United States in the direction of Brazil and Western Europe in relation to hate speech regulation.[21]

Scholars and members of the general public in the United States are rethinking the "marketplace of ideas" argument for absolute free speech. In the words of media historian John Durham Peters, expressing his critique of that doctrine, the "credo that anything is permitted because everything in the end advances the public good looks dubious, and the theodicy that pain always bears fruit seems indecent" (287). In 1990, legal scholar Charles Lawrence published a bracing argument in the Duke Law Journal in favor of campus speech codes, which although declared unconstitutional in the 1990s recently captured the imagination of my large class of undergraduates, many of whom suffer racist slights on a regular basis. The recent revelations about sexual assault on college campuses, and

the accompanying increased enforcement of Title IX by the Justice Department, raises the possibility of a return to some form of *in loco parentis* on campuses. That doctrine was in effect until the early 1970s when, as a result of campus unrest and demands, the Family Educational Right to Privacy Act of 1974 (FERPA) was enacted. That law, still in force, provides college students who are over the age of eighteen with rights of privacy that keep their educational records confidential and out of the reach of their parents and other family members. Now that there is a call for greater attention to the safety of college students, the question whether there might be a return to greater university-level administrative protection of students is being discussed. If so, it would be interesting to consider how speech codes (forbidding racist and other forms of hate speech on campus), which were overturned by federal courts twenty-five years ago, might fare in the current climate of greater demands for oversight of the emotional and psychological well-being of college students.

Since those campus speech codes were overturned, there has emerged a cadre of US scholars who are dedicated to considering the pain that language can inflict and to finding legal means of addressing that pain.[22] As a result, regulating hate speech is beginning to look a bit less blasphemous in the theoretical universe of First Amendment scholarship than it was for most of the twentieth century.[23] Even some of those who believe that freedom in the United States depends on protecting "the thought that we hate", such as Anthony Lewis (157-167), have been moving toward rethinking protection of historically demeaned minorities from hateful public speech. Debate in the United States, which seemed to be settled not that long ago, has found renewed life with the Internet, bullying, and, most recently, nongovernmental consequences exacted for racist speech. In that regard, it is important to note that approximately fifteen states in the United States have criminal libel laws on the books and many are still in use, mostly in connection with cyber-bullying cases (Pritchard).[24]

Conclusion

This article has traced an unusual conceptual road from a seemingly odd case of criminal defamation involving a blogger and a judge in the smallest state of Brazil to the grand question of hate speech regulation in Western democracies. By considering the infusion of traditional notions of honor and status with post-World War II views of dignity, it is possible to see that a case whose result can be the subject of international press freedom campaigns can also be used to drive a comparative consideration of how best to combat racism and whether hate speech regulation should be part of that struggle. As such, the type of law often used to protect the powerful in Brazil could come to be used to protect the vulnerable in the United States. When, as Brazilian constitutional scholar Daniel Sarmento (238) notes, "hate speech is destined exclusively to negate the fundamental principal of equality between people, propagating inferiority of some and legitimating discrimination", the irony of free speech becomes more than just a scholarly debate.

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Notes

[1] Violence against journalists in Brazil today and since democratization in the mid 1980s is not state repression or state sponsored. Rather, private parties, often through hired gunmen, sometimes perpetrate such violence to keep corporate or individual wrongdoing from the public eye or to aid in a political campaign. For coverage emanating from the United States of violence against Brazilian journalists, see *Journalism in the Americas*, a blog sponsored by the Knight Center of the University of Texas at Austin (https://knightcenter.utexas.edu/blog/00-14077-freedom-expression-unfulfilled-promise-brazil); Council on Hemispheric Affairs (http://www.coha.org/press-freedom-in-brazil-sound-the-alarm/); and Freedom House (http://www.freedomhouse.org/report/freedom-press/2013/brazil#.U9P3MFbBCRI).

[2] Although it is not addressed in this article, one could argue that publicity regarding violations of press freedom is, in part, politically motivated, i.e. by political forces opposed to the current government. The political positioning of the Brazilian media has been noted by some Brazilian social scientists after the coverage of the pre-World Cup protests in 2013. See Feres, Miguel, and Barbabela for an empirical analysis of news reports on the protests in mainstream Brazilian media sources.

[3] The international nongovernmental organization Article 19 (http://www.article19.org), founded in 1987, opened its doors in Brazil in 2008. Its concern with freedom of expression is focused on the world outside of the United States (http://www.article19.org/pages/en/where-we-work.html) and is named for Article 19 of the International Covenant on Civil and Political Rights, adopted in 1966 and entered into force in 1976, which provides that: (1) Everyone shall have the right to hold opinions without interference; (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any

other media of his choice; (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.

[4] For a video recording of the October, 29, 2013 hearing at the Inter-American Commission on Human Rights, see https://www.youtube.com/watch?v=CtTlkaIeZKI.

[5] Appointments of judges are conducted through the state bar association, which puts forward three names. The governor then chooses from that list.

[6] In 2011, an investigation of Governor Marcelo Déda was initiated by the federal attorney's office (for which Góes worked at the time) on similar grounds, but did not result in prosecution.

[7] The full text of the blog post, "Eu, o coronel em mim", dated May 29, 2012, can be found at the following site: http://www.infonet.com.br/josecristiangoes/ler.asp?id=128810. All quotations from the blog post and the judicial opinions in the text are my translations.

[8] For a famous treatment in film of *coronelismo*, see the 1978 film directed by Geraldo Sarno, *Coronel Delmiro Gouviea*. For a historical and socio-political analysis of the subject, see Faoro.

[9] See Brazilian Penal Code, Articles 138, 139, 140, and 141. This is a different model than that developed by the United States Supreme Court. In the case at hand, the judge was both a public official and elderly, thus increasing the penalty. In 1964, the United States Supreme Court held in *New York Times vs. Sullivan* that a public figure, including a public official, carries a greater burden of proof to obtain damages in a civil defamation action.

[10] Edson Ulisses de Melo v. José Cristian Góes, Penal Pública Condionada, Juizado Especial Criminal da Comarca de Aracaju, Sergipe, Sentença, July 4, 2013 (Processo No. 201245102580); Recurso de Apelação, Acordão No. 5450/2013, October 22, 2013 (Processo No. 201301008618). A three-judge panel heard the appeal. The vote was two to one with the dissenter arguing that the criminal defamation law should not be enforced as a violation of freedom of the press. On August 15, 2014, the Brazilian Supreme Court denied Góes's further appeal and let the appellate court's decision stand and remain in effect.

[11] See Pasqualucci for a comparison of positions on free speech (limitations versus absolute right) by the Inter-American Commission on Human Rights, the European Court of Human Rights, and the United Nations Human Rights Committee.

[12] For examples of historical treatment of honor in Brazilian life, see Beattie; Caulfield; Fischer; Rebhun; Santos.

[13] The much discussed difference between honor and *honra* in early modern peninsular Spain is most often associated with Américo Castro's explanation that "El idioma distinguía entre la noción ideal e objetiva del 'honor', y el funcionamiento de esa misma noción, vitalmente realizada en un proceso de vida. El honor *es*, pero la honra pertenece a alguien, actúa y se está moviendo en una vida" (69). For Castro, "la palabra honra parece más adherida al alma de quien siente derruido o mermado lo que antes existía con plenitud e seguridad" (70). Donald Larson (7), cited in Barahona (233), summarizes that difference as "in sixteenth and seventeenth-century Spain honor was derived both from *who* one was as from *what* one was". In this conceptualization of a distinction made by literary scholars, perhaps one can see the germ of a connection between modern notions of the difference between honor and dignity.

[14] Article 1(1) of the German Constitution provides, "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority".

[15] For the roles, both potential and real, that literary and musical production played in contributing to the dismantling of the hegemony of the Press Law of 1967, see Atencio; Lehnen; and the music of Chico Buarque and Geraldo Vandré, among others.

[16] Supreme Court Justice Carlos Ayres Britto, who wrote the primary decision declaring the Press Law of 1967 unconstitutional, was the uncle of the named partner in the law firm that represented Góes in the Aracaju court and lost the appeal. Britto has been consistent in his position on absolute freedom of expression, including his dissenting opinion in the Ellwanger case.

[17] The international organization Committee to Protect Journalists, on May 7, 2009, published an article declaring victory when the Press Law of 1967 was overturned. It is interesting to note that, although the Committee to Protect Journalists called for the overturning of the existing criminal libel law, it made no mention

of the anti-racist speech provision added in 1997. See http://www.cpj.org/2009/05/in-victory-for-press-brazils-high-court-strikes-do.php.

[18] See the Joint Declaration on Universality and the Right to Freedom of Expression issued on May 6, 2014 by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, available at http://www.oas.org/en/iachr/expression/showarticle.asp?artID=945&lID=1.

[19] See Silveira 64-71.

[20] The case in question is *Harper v. Poway Unified School District*, Ninth Circuit 2006. According to Gilreath, this is the first time that the first prong of the *Tinker* test on students' rights in public schools had been invoked.

[21] On the other side, as an example of the Supreme Court's expanding view of free speech absolutism, is the case *RAV vs. City of St. Paul* (1992), in which the majority ruled that cross burning in front of the house of a black family is protected speech and not the equivalent of fighting words. For a critique of this case, see Butler.

[22] See Fiss; Hernandez; Rosenfeld; Schauer; Waldron.

[23] In all the recent literature questioning the almost sacred assertion of absolute freedom of speech, there has been discussion of a Supreme Court decision, *Beauharnais v. Illinois* (1952), in which group libel was made an exception to the absolute right to free speech. Although Beauharnais has never been explicitly overturned, most courts conclude that it was eviscerated by later Supreme Court cases, particularly *New York Times v. Sullivan* (1964), and that it has no lasting effect. However, given its citation in so much of the recent literature rethinking hate speech, a resurrection may be in the offing.

[24] See Lisby and http://www.firstamendmentcenter.org/criminal-libel-statutes-state-by-state. For example, in the state of North Carolina, which still has a criminal statute for libel applicable to the press, a senate bill prohibiting Internet libel was introduced in 2009, although did not become law at that time. See http://mountainx.com/news/community-news/bloggers_gone_bad_criminal_penalty_for_libel_considered/.