

EMOTICONS, MEMES AND CYBERBULLYING: GENDER EQUALITY IN COLOMBIA¹

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Abstract.

In this paper I want to analyze bullying and cyber bullying for the Colombian case. I want to show the role social media play in the dissemination of hurtful words and symbols, especially emoticons and memes. This paper analyzes the long history of social mobilization, where the Courts have played an important role to advance their rights and how, in some cases, social media, memes and emoticons have been used to express agreement or disagreement with this struggle. We wish to analyze three cases: one where words were used to hurt an adolescent, who killed himself as a result of a context of exclusion and institutionalized bullying. In another case, at the Universidad de los Andes, in Colombia, a group of students created a Facebook page to attack lower class students in the University and even some professors whom they did not like. One of them was Prof. Carolina Sanín. In one of the posts in the Facebook page she was depicted as a battered woman, and this was perceived as a threat for her feminist activism. The University, instead of supporting their professor, decided to expel her because of her criticism toward the institution. The third one is related to the election of the first woman and openly gay person to be elected as mayor of Bogotá, Colombian capitol, and the use or lack thereof of her sexual identity. At the end, I want to analyze whether these emoticons, symbols, pictures or expressions fall within the reach of freedom of expression, according to Colombian Constitutional Court and the Inter-American Court of Human Rights.

Keywords: gay rights; social media; cyberbullying; social mobilization; constitutional law; strategic litigation; freedom of expression; hate speech; education; women's rights; Colombia.

¹ I thank Andrés Contreras, from Universidad del Rosario, for his very useful comments to improve the paper. The final responsibility is, of course, mine. While writing this paper, the Colombian Police killed 17 years old Colombian student Dylan Cruz during a peaceful protest for better education in Colombia and against some neoliberal measures taken by President Duque. His death is just a sample of the difficulties social activists have to face in a country like this.

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1. Introduction.

On August 4th 2016, Colombian high school student Sergio David Urrego Reyes committed suicide for the bullying he had to endure when the school where he was studying found out that he was gay. Sergio Urrego received verbal attacks from authorities in the school and they were so grave that he decided to end his life. I will analyze institutional bullying and the oppressive use of the word (Minow, Ryan, & Sarat, 1995).

In another case, at the Universidad de los Andes, in Colombia, a group of students created a Facebook page to attack lower class students in the University and even some professors whom they did not like. One of them was Prof. Carolina Sanín. In one of the posts in the Facebook page she was depicted as a battered woman, and this was perceived as a threat for her feminist activism. The University, instead of supporting the professor, decided to expel her because of her criticism toward the University. Again, some comments in the section in newspapers were so aggressive that they could amount to bullying. The Constitutional Court protected her right to express disagreement but also the rights of those who hurt her with words and pictures.

Finally, on October 27th, citizens of Bogotá elected the first woman and openly gay person as major of the city. There were some comments during the election as to the fact that she was lesbian, but none that amounted to an open attack due to her sexual identity. It seemed that politicians recognized her for her policies and her proposals as a candidate to the office of Major. However, the night of the election, she kissed her partner, as any other person would do in a moment of happiness, and this brought about criticisms from some right-wing journalists who considered this expression as a sample of the exclusion to come.

Words were used to attack these people in Colombia. But emoticons and memes have been also used to express one's position on people's identities. Emoticons as symbols can convey a message of acceptance or rejection. They can express happiness or sadness about a particular topic. But they can also express hatred in a way more hurtful than any other form of expression. It is true that emoticons can have an ambiguous meaning, but in this ambiguity a message lies, which has a more direct result. To show a face with poop can express the feeling that everything about a person is excrement, and deserves rejection, but it can also hide the real meaning that the author wishes to express, and, in that sense, it can avoid negative reaction towards the author since s/he was *just* joking. In this paper I want to analyze bullying and cyber bullying for the Colombian case. I want to show the role social media play in the dissemination of hurtful words and symbols, especially emoticons and memes. The Colombian gay community, for instance, have worked hard to ask Google to introduce

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gay emoticons for the gay pride day. This is a realization of the importance symbols play in the construction of one's identity and in its acceptance or rejection. In the first section I will show the historical development of a movement for equal rights. In the second to the fourth part I wish to analyze the three cases already mentioned. In the final section I will show the connections between emoticons and freedom of expression in the Colombian case.

2. A movement towards equality: a constitutional path

Women in Colombia have the right to vote since the 1954 Constitutional Reform, under Gustavo Rojas Pinilla's dictatorship (1953 – 1957), who saw it as an opportunity to give legitimacy to his government (Uran, 1983).³ They enjoyed the right to be elected in municipal elections since the 1936 Constitutional Reform, under the liberal mandate of Alfonso López Pumarejo. But it is only until 1981 that we can see real developments in the process for the elimination of all forms of discrimination in the country. That year Colombian Congress incorporated in the domestic legislation the 1979 United Nations Convention on the Elimination of all Forms of Discrimination against Women CEDAW, which defined discrimination and called states to implement legislation to end discrimination against women.⁴

In the development of the principles stated by the CEDAW, Act 23 of 1982 was issued and this meant a significant advance in terms of the struggle against discrimination against women. With this law, women's civil rights in Colombia are recognized. This Act, also known as *Act of emancipation of women*, establishes that each spouse preserves the free administration and disposition of goods during marriage. In this Act, it is also established that married women, of legal age, may appear freely in court and that she does not require marital or legal authorization to access her goods, having free representation of herself (in the previous regime the legal representative was her father or spouse).

³ They exercised this right for the first time on December 1st 1957, when Colombians voted for a constitutional reform to establish a transitional mechanism to avoid violence in the future. This new institutional setting was known as the National Front. Since 1945 women were recognized as citizens, but without the right to vote and to exercise common rights such as their right to freely dispose of their own property, not to mention their own body.

⁴ The story for women's equal rights is a long one that was connected to the changes in the economic system and in the demography of the country. As a result of the One Thousand Days War (1899 – 1902), peasants were forcibly displaced from the countryside to the cities. Women had to enter the labor market, given the economic needs of their marginalized households. Women participated in the struggles for better salaries and they even created their own Labor Unions, such as the *Sindicato Nacional de Obreras de la Aguja* in 1917, the *Sociedad de Obreras y Artesanas de Monteria* and *Sociedad de Obreras Rendición de la Mujer*.

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The equality regime is ratified with the Constitution of 1991, which, in art. 43, establishes:

Art 43. Women and men have got equal rights and opportunities. Women must not be subjected to any kind of discrimination. During pregnancy and after childbirth she shall enjoy appropriate services and protection by the State and will receive food subsidy if she were unemployed or helpless.

The State shall provide especial support to women heads of household.

In this way, Colombian legislation –and not necessarily public policies– has been facing the issue of economic inequality. However, the situation of general inequality prevails. Although women have accessed the labor market, education and high positions in the private sector and in the State, the wage gap still exists, and so does the situation of real economic difference and discrimination. The fact that Colombians have a progressive legislation and an even more progressive constitutional precedent should not hide the fact that women still face discrimination and violence (Benavides Vanegas, 2015), and that there is institutionalized violence against them, which is shown in the common occurrence of cases of sexual harassment and sexual violence in the public and private spheres.

But the situation for the LGTBI movement has been even more difficult, because not only their sexual expressions were considered a crime until very recently (Bustamante Tejada, 2006),⁵ but also there is a majority of people who see their struggle for equal rights as a way to impose what they call a gender ideology⁶. Before addressing that issue, I would like to analyze the constitutional development of gay rights in the Colombian Constitutional Court⁷.

Structural discrimination against the LGTBI community has been fought in different ways. On the one hand, activists have marched and lobbied to have a better legislation, but this is difficult in a society where most of the population is sexist and homophobic. On the other hand, they have used to their advantage the fact that

⁵ Between 1936 and 1980 the Colombian Penal Code included the crime of Homosexual Sexual Intercourse (*Acceso Carnal Homosexual*, art.323 Código Penal 1936, derogated by the 1980 Penal Code).

⁶ Jonathan Goldberg Hiller and Neal Milner show this perception of gay rights as excesses in the discussion of same sex marriage in Hawaii (Goldberg-Hiller & Milner, 2017). For an interpretation of rights from a perspective that uses the concept of gender ideology see (Campillo-Vélez, 2013). In this text, Campillo-Vélez presents gender ideology as a sort of international conspiracy connected to the Kissinger report, to the role of the UN, NGOs and the left. This text makes a strange combination of antiimperialist discourses with right-wing fantasies.

⁷ A good account of the development of the doctrine on gay rights in Colombia and how they emerged through legal cases can be found in (López Medina, 2016).

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Colombia has a liberal constitution and that had, for a long time, a progressive Constitutional Court (Azüero Quijano & Albarracín Caballero, 2009).

The first constitutional decision on the rights of the LGTBI community was taken in 1996, in the constitutionality decision C098/1996 (Lemaitre Ripoll, 2005). But it is the Constitutionality Decision 075/2007 the one that represented a transformation in the way gay rights were seen under the 1991 Constitution. As Alejandra Azüero shows (Azüero Quijano, 2009), the first decisions avoided the recognition of LGTBI couples as worthy of protection, even though they were recognized as individual subjects who deserved the protection of the law. According to the Court, in case C098/1996, there is a distinction in the rights accorded to LGTBI people as individuals who belong to a community that historically has been discriminated against, and the rights they have as members of a same sex couple. To the Court, they can only be protected if they have been discriminated against because of their sexual identity, that is, as homosexuals. But they do not have the right to claim equal treatment in cases where they are not the subjects of the legislation. The measures taken in the law, to protect heterosexual families cannot be interpreted as discrimination, because the goal of that legislation is to protect the family as it is regulated in the Constitution, that is, a heterosexual family, and not to grant homosexuals the right to enter into same-sex marriages. In several cases the Court ratified this precedent, up to case 075/2007.

In this case, Act 54/1994 was challenged because the norm that regulated couples as made up only between a man and a woman was against the 1991 Constitution. Not only this provision affected the right to dignity of gay couples, but also did it affect their right to a dignified life, that is, the material dimensions of the right to dignity. According to the Court, this Act excluded LGTBI people from accessing the benefits included in the law for couples. A *de facto* couple existed after two years of common life of the members of the couple⁸. Since it is the recognition of a common life project based on solidarity and mutual support, there are no reasonable grounds to exclude same-sex couples from this protection. Furthermore, the recognition of gay couples did not affect at all the rights and protections of heterosexual couples. In that way, the Court comes into the way of those who hold that by recognizing rights to same sex couples the Court is destroying the traditional family.

By recognizing this right, the Court eliminates the two tracks the used to exist in its precedent. In this decision the Tribunal departs from the idea that LGTBI couples can only fully enjoy their rights if there is a recognition of them as subjects before the law, with the same rights as any other person, regardless of their sexual identity. The Court understands that by refusing to include gay couples in this protection there is a violation of the constitution. From now on, citizens do not need to prove that they

⁸ A similar regulation, but with a shorter term, of a common law couple.

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were discriminated against because of their sexual identity, but they can also prove that the existing legislation is putting them in a situation of legal and material disadvantage because of the lack of inclusion in the legislation that protects all couples.

In 2015, the discussion about the right of LGTBI people to have access to same rights as any other Colombian citizen returned to the Court, this time to ask for the recognition of same sex marriage. In decision C577/2011 the Court recognized that same sex couples constitute a family and are protected by the Constitution. According to the decision, the lack of a legal definition of this *uniones civiles* led to a situation where their rights would not be protected. For that reason, it ordered Colombian Congress to regulate their marriages and in case they did not do it by June 20th 2013, gay couples had the immediate right to go to the judges as ask for a civil marriage, protected by the law. There were attacks from different sides: some judges and notaries refused to celebrate the marriages; right wing *Procurador General* threatened those who married gay couples with disciplinary action which led to an ineffective decision⁹. In order to clarify the situation and to determine the reach of the *Procurador's* power, new cases were taken before the Court. In 2016, after months of discussions, the Colombian Constitutional Court released decision SU-214/2016 where it declared that same sex marriage was a valid institution under Colombian law. As a result of this decision, gay couples who are married constitute a family and have all the legal protections accorded to any other married couple.

These achievements are important in the legal mobilization of gay people. But, as in the case of women, this does not mean that they are free of violence, be it physical or symbolic. In the next three sections we will introduce two legal cases dealing with violence against a literature professor in Bogota and the bullying that led to the suicide of a high school student. The third case has to do with the reaction to the election of the first woman and openly gay person to be elected as mayor of any Colombian city.

3. Sergio Urrego: the violence of the word and resistance through our bodies

Sergio Urrego's case received wide media attention because of the circumstances of his death. On August 4th 2014, Sergio, who was 16 at the time, decided to kill himself in a mall in Bogotá. But this was not a common suicide, but a political statement to protest the kind of institutional discrimination and bullying he had to endure in the school he was attending in Bogotá. He was a gay adolescent who exercised his right to

⁹ In Colombia, the *Procuraduría General de la Nación* has disciplinary control over public employees. So a threat from the head of the institution is not to be taken lightly.

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express freely his sexual identity. He once kissed another boy and some people took a photo of it. What is surprising about the case is that the school treated a constitutionally protected action as if it was a crime. In fact, the school's rules prohibited any form of open expression of affection in public, but it was only same sex affection the one that was persecuted and stigmatized. But Sergio was also a political activist who criticized his school for the many failings he saw in their administration. He was known for this activism and for his political anarchism¹⁰. But it was his sexual identity the main goal of the school to ostracize him. Sergio Urrego's case is important for the fact that represents an example of institutional bullying, that is, the persecution and discrimination against a person, in this case for his sexual identity, with the use of all the power of the institution¹¹.

After Sergio's picture kissing a classmate was known, a teacher of the school confiscated the cell phone to "prove" the *irregular behavior* that broke school's regulations. As a result, the school forced him to declare his sexual identity, "claiming that the kiss was an obscene, grotesque and vulgar manifestation according to the coexistence manual, and required the couple to sign a commitment to distance themselves" ¹². The school falsely accused the young boy to sexually harass one of his classmates, even though he proved that the kiss was consensual. Apparently under pressure from the School, the other kid's parents filed a complaint against Sergio for sexual abuse.

The School's authorities persecuted Sergio in all the ways they could, to prove to him that his behavior was wrong. They even asked for a psychological certificate for him to be allowed to go back to classes. They made clear to him that he could not speak ill of the institution and that he could not contradict school's authorities. Even when he decided to leave the School and go to another and more open one, they would retain his certificates, so he could not move to another institution and had to put up with the one he was in.

But the school's persecution did not stop there. They filed a complaint against Sergio's mother for child abandonment, because she worked in another city and left her kid with her mother during the week. The Police authorities found no grounds for the complaint. In order to protect their rights, Sergio's family filed a complaint against the School, but local authorities supported the school. The Director of the school warned the students that they should be discreet and that "people like that are not acceptable in school"¹³; Another colleague confessed, in an email, that the director

¹⁰ (Redacción, 2014).

¹¹ (Cardona, 2014).

¹² (AAVV).

¹³ Ibid.

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would have said that Sergio's death was a benefit to society and that they were not to blame because Sergio had committed suicide when he was no longer a student at the Castillo Campestre Gymnasium. Sergio's family asked for constitutional protection which was granted in the first instance, but the *Consejo de Estado*, a conservative high administrative Court decided not to protect his rights because dead people do not need that kind of protection. The case reached the Constitutional Court, which decided in favor of Sergio's family.

In the decision the family, with the assistance of Colombian NGO *Colombia Diversa*, asked the Court to protect their right to not be discriminated for his/her sexual identity in a school¹⁴. In this decision, the Court first analyzed whether it was possible to use this protection on behalf of a person who died. According to the Court, the family of the deceased has the right to protect the dignity, good name, memory, image, privacy of the person who has died. For that reason, and in order to protect those rights, the Court granted standing to Sergio's family. In the decision the Court held that the right to privacy means also the protection of a person's sexual identity. Schools cannot forbid, expressly or tacitly, the freedom of expression or affect the right to dignity, because in doing so it could violate the right to equality. For that reason, a student can exercise his or her autonomy, and within it they can exercise openly and without restriction their sexual identity. This means that the school cannot penalize this expression. The Court found that the School used the process and its authority to attack Sergio's sexual identity, and with it they violated Sergio's rights. As a result, the Court protected Sergio's and his family's rights.

Sadly, Sergio's case is not unique in the Colombian local school system. As Pulecio shows it, schools in Colombia exercise and tolerate hurtful and insulting language against gay people. (Pulecio, 2015). Schools are places where kids are supposed to learn democratic values, to become good people who recognize the ethnic, class, and sexual pluralistic character of the Colombian nation. However, as Pulecio shows, in cases of discrimination against kids who are expressing their sexual identity, bullying comes not only from the students but also from the school authorities. To Pulecio, "The repercussion Sergio's social case draws not only his drama, but that of many other young people LGBTQ, and symbolizes the existence of a deep cultural abyss that separates society heteronormative of sexually diverse sectors. LGBTQ youth are still extremely vulnerable in school spaces. Therefore, although academic discussions about sexuality are increasingly novel, today a teenager hardly has the ability to oppose the power of hate speech. Not even Sergio Urrego, despite his intelligence and ability to reflect, could continue to face institutional harassment" (Pulecio, 2015, pág. 24). The case of Sergio Urrego shows the importance of words in one's identity.

¹⁴ Corte Constitucional. Sentencia T-478/2015. In this decision the reader can find a summary of the facts of the case that shows the level of discrimination that Sergio and his family had to face.

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People can learn to defend themselves from those words, but in the context of the school, those words are more hurtful, because kids are more vulnerable to how adults and their classmates perceive them. Insults have the ability to create or transform reality. They have a performative effect; they can change how we see ourselves and how people are going to see us. Hatred has a long history against gay people. They have been described as sick people, perverts and criminals. These insults are not presented as such, but as descriptions of a reality. Language is part of this expression of hatred. As Castelar and Quintero write, language operates as a body modification device, which submit to discipline and restraint those beings considered inferior. It goes through direct verbal aggression, which is gradually shaping insecure, fearful, guilty beings. However, language too can be a way to try to symbolically challenge the reality that is imposed” (Castelar & Quintero Aguirre, 2012, pág. 215). As Eriborns says, gay people learn that one day or another they will have to face the rejection of their identity masked in the form of an insult (Pulecio, 2015, pág. 26). Facing an insulting behavior or language, gay people can resist, adapt, or just accept reality as it is. Young boys like Sergio can decide to resist and to use their body and their lives as a political statement. Sergio’s death should lead us to reflect on the way we use words, and how we use science to cover our prejudices. Institutional bullying in schools take advantage of the power of language to create a reality where gay people’s identity does not exist and where any form of resistance is prevented. Given the limits of language, activists and political citizens use their body to express their resistance and their rejection to that language, transforming their body in a language of power (Foucault, 1995). By using language and images, those who oppressed via institutional bullying seek to give a person an identity, that of a marginal, the excluded. They are taught to hate themselves, to accept the dominant identity, to not question the system of exclusion. Emojis can then be used against that language of power, because they appeal to images and meaning construction. The flatness of the insult is replaced with the complexity of the emoji or the meme. In Sergio Urrego’s case, emojis and memes were not as relevant as in any other cases. Words were used as the instrument of exclusion. Institutions were ensembled in such a way that bullying became a powerful means to exclude and oppress a young boy. Given the power of the word, the body became the symbol of resistance. In the next section, I will analyze the use of memes as a way of oppression. And in the fourth section and I will show the emancipatory power of the image.

4. Carolina Sanin: memes and the violence of the image

The world of social media is becoming more complicated. Young people are replacing direct interaction with a virtual one. The world of the Internet is no longer an expression, it has become the place where many people live as citizens of the web. It is very common to see new Apps that are trying to substitute the power of the word

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and to mask people's identity behind their virtual persona. The situation, which is described in the Netflix series *Black Mirror*, is a dystopia that is too real. Twitter, Facebook, Instagram and other social media are non-geographical spaces where people live and where they can re-create their identity. The fact that most interactions are anonymous allows people to show and express in a more open way an identity, which is either their real self or the self they want others to see. This virtual schizophrenia is not less real than the factual self of our everyday life. In this world, images are more important than words. Emoticons are part of that new language, with new meanings and new expressions of power. But memes are also important in the new virtual reality. Memes create a scene that conveys a meaning for people to read with a clear intention of expressing these feelings they cannot or would not be able to express with words. In this section I wish to analyze a case of exclusion using memes, which will show us the emancipatory and oppressive character of the image.

The *Universidad de los Andes* is the most important private university in Colombia. It is not unusual for Colombian elites to study in this university. However, due the economic situation of the country, a university like this cannot afford to live only off the elite students' fees. That is why they took advantage of a government program to give scholarships to students from the lower classes that meet the scores required by the University. These students were excluded before, only because they did not have the money to pay these expensive fees. It is true that the university had some scholarships, but they were not enough. But with this program, called *Ser Pilo Paga*¹⁵, these students could have access to the University. The presence of these students elicited different responses. Some of them thought it was a good idea because it would increase the university's diversity; others thought otherwise. Professor Carolina Sanin, a literature professor and a writer, criticized the university because it increased the number of students without improving the university's physical plant. She criticized the mercantilist approach of the University that led to an overcrowding in the classrooms, similar to a prison when considering Prof. Sanin's viewpoint. In her tweets she declared herself not to be surprised that this prison-like overcrowding had the effect of creating criminals in the University¹⁶.

¹⁵ *To be Smart, pays off*. This is a program created by then Minister of Education Gina Parody to give scholarships to lower class students to study in any public or private university of their choosing. The program has been criticized because it was based on a charity approach and because it showed the absence of a public policy on education. The Minister assumed that the problem in the university system was just one of fees.

¹⁶ (Meneses, 2016). Professor Sanin is known for her aggressive tone when expressing her opinions. This has brought her many detractors but also many supporters. Some might consider that her opinions are vulgar and rude, but others would say that she uses this language to be known and to have her opinions matter. At the same time, she usually responds to condescending behavior, just to not let this kind of attacks be unnoticed.

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In the university, students used social media to express their thoughts or their critiques. Therefore, we will analyze two memes that were used in Sanin's case. In one of them she is objectified whereas in another her virtual identity is transformed to fulfill the fantasies of the students in charge of the meme. A group of students, who called themselves *Chompos y cursos asperos*, created a Facebook page to publish memes to comment on university life. According to the creators of the page, their intention was to criticize students and professors, and have an open discussion about topics that are not usually discussed within campus. They saw themselves as being an iconoclastic group that wanted to subvert the university's reality and that was politically incorrect¹⁷. For them, they live in a virtual reality, and that is why they said that what happens in the group should not transcend the reality of the social media. Everything is and should be possible in this virtual world.

Despite their intentions, there was a meme that brought them to the first row. In one of the memes, which they entitled *cosas que me quiero comer en 2016*¹⁸, they presented some food alongside with a picture of Professor Sanin. It was not clear what the intention of the creators was, but the sexual tone and the objectification of this professor was unavoidable. To some people, Sanin had to accept to be part of a meme like this one, considering that she is a public personality with more than 13,000 followers on social media. Her right to privacy is limited, because she cannot have the expectation of being free of manipulations of her public persona¹⁹. As a response to Sanin's reaction, the authors of the meme published a new one, where Sanin had a black eye as if she had been battered. The legend in the meme read "*when oppressive heteropatriarchy puts you in your place*"²⁰, which could mean that this is the kind of response that those who dare to criticize the Facebook page deserve or that women who are participating publicly in an open discussion should be punched in the eye, so they are quiet. But this was not the only virtual attack, because in another case a member of the group threatened to kick one lower class student who was trying to do a crowdfunding at the university to pay her university fees. They did not materialize the threat, but they marched before her classrooms pretending to be Nazi followers and chanting *heil Chompos*, as if that was funny. This kind of bullying affected the student who had to seek psychological assistance. After a debate in the University, around the Sanin case, a member of the group regretted to be public, because their reality is a virtual one: "Our fault, *chompos*, is to believe that this group is just as strong on the internet as it is outside - - a woman in the group said that night - - we

¹⁷ (Serrano, 2017).

¹⁸ (Meneses, 2016). The expression they used has a sexual meaning. *Comerse* (to eat) someone means to have sex with a person, but it also has a passive meaning, because the action lies in the person eating the other person. One interpretation is that the author of the meme wants to have sex with this professor, but not in an active way, but treating her as a passive subject.

¹⁹ (Serrano, 2016).

²⁰ (Redacción, 2016). The word when is written originally in English.

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don't make that mistake of going back to real life (...) this is not a sect, this is a place of recreation and collective mockery.²¹" They want to live in a reality they can control, one where their prejudices and fantasies can be real; one - according to the memes - where the woman submits to male power and where criticism is nonexistent.

The dispute between Prof. Sanin and this Facebook group reached newspapers and brought about the expulsion of this Professor from the university. According to the University, this professor insulted the institution and violated its code of conduct. In several newspaper articles, columnists defended and attacked Sanin for her behavior. To some, she had to see this coming, because with her critical reactions she pissed people off and had to face the consequences. Sanin asked for constitutional and judicial protection, so she sued the university. In the first decision, the judge protected Sanin freedom of expression. In the second instance, the Judge considered that this professor's behavior was against the expected behavior of a university professor. They did not analyze the attacks against her in social media, and her right to respond to students who were using offensive language. According to the judge, her language was violent, unruly and incited to violence. For that reason, the decision did not find anything wrong in her expulsion from the university²².

This case shows how words are easily controlled, whereas memes, not matter how insulting or aggressive they are, can be protected under the right of freedom of expression. Since they have an ambiguous character, and since they play with images only transformed by the fact of being together, it is difficult to determine if they are insulting to someone or if they are discriminatory. However, in cases such as Sanin's, the context explains the meaning of the images. They have a use in Colombian language where they express objectification of the professor's body and a threat to be hit if she does not remain quiet.

5. Claudia López: thou shall not kiss in public?

On October 27th 2019, Colombian politician Claudia López became the first woman and openly gay person to become Mayor of Bogotá, the capitol of Colombia. During her career she has not hidden her sexual identity but has not used it as part of her political agenda. Surprisingly, during her campaign she has not been openly attacked because of her identity, but she, of course, has had to endure the aggressive and insulting language against gay people in a homophobic country such as Colombia²³.

²¹ Ibid.

²² The decision was selected for review in the Constitutional Court, but at the time of writing this paper it has not been decided.

²³ When she was a Senator She was sued because her partner was a member of the House of Representatives and some people saw it as a violation of the legal inabilities to become a

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<https://doi.org/10.1080/10350330.2020.1731169>

During her campaign she did not run with an agenda of gay rights or even gender rights. Hers was an agenda like that of any center-right politician who defends law and order, and who is asking for zero tolerance policies against common crimes or against sexual violence against children. She is a supporter of life imprisonment for child molesters and child rapists.

Mayor López rules in a tolerant city, that recognizes the rights of the LGBTI community since the 1990s. Given the lack of interest in her sexuality during the campaign, it was surprising that it became an important matter in election day, because of a kiss she gave to her partner as a way of celebrating her victory. The first person to react was a right-wing journalist who wrote a tweet criticizing that kiss as a way of provoking heterosexuals and, according to some people, as a sample of the days to come, where heterosexuals would face exclusion as a result of a sort of gay conspiracy and the implementation of a *gender ideology*. In that tweet, this journalist said the following: “I do not care, but Claudia’s kiss in the mouth with her partner was unnecessary. Why does she want to offend Christian parties and their voters? She did not do it during the campaign. I am sure she will be a good mayor, I am sure of it, but do not start by challenging other minorities”.²⁴ Her reaction brought about an immediate response from Mayor Lopez’ followers. Some of the tweets used emoticons and memes to express their disagreement with this journalist:



Soy Homofóbica



Soy Homofóbica



Soy Homofóbica



Soy Homofóbica



Soy Homofóbica



"A mí me trae al fresco, pero es innecesario el beso en la boca de Claudia con su pareja. ¿Para que ofender a los partidos cristianos y sus votantes?"

In another tweet, a person did a meme, where someone is throwing a sort of lightning and put the words: “Get down, that here it comes the gay-making lightning”²⁵.

Congresswoman. But, in 2004, she and the Minister of Education were threatened in social media (Morales, 2016).

²⁴ A mí me trae al fresco, pero es innecesario el beso en la boca de Claudia con su pareja. ¿Para que ofender a los partidos cristianos y sus votantes? En campaña no lo hizo. Será buena alcaldesa, seguro, pero que no empiece retando a otras minorías” (Vargas, 2019).

²⁵ Agáchese miija q llegó el rayo homosexualizador!:((Parra, 2019).



Others published politicians kissing with each other, as a way to call the attention to the normality of the kiss:



The reaction in this journalist's twitter account attacked her for her nationality, but mostly people who rejected her comment put memes and emoticons to show how they felt about her homophobic remarks. In her comment, this journalist adopts a false conciliatory tone. She wrote that this kiss had not affected her and that her only concern was the protection of, according to her, the Christian minority²⁶. This reaction is not unprecedented in Colombia and symbolizes the everyday exclusion that gay people have to endure. In a recent case, a same-sex couple in Barranquilla was expelled from a restaurant because, according to the owner of the place, these two women were affecting the right families have no to see this kind of behavior. The owner of the restaurant talked about a family environment, the strange situation of two women holding hands, the condition of "good behavior" to be able to enter his place of business. To the Court this is hurting language that affects the rights of this couple, because it normalizes exclusion and it is essentially discriminatory. This is a language that hides difference and in doing so it violates the Constitution²⁷. In yet another case, a gay couple who were kissing and hugging was attacked by a man who

²⁶ Colombia's population is mostly Catholic and Christian. Her strategy is to use a language of human rights and minority to rights in order to defend the *right* that an oppressive majority has to oppress.

²⁷ Corte Constitucional. Sentencia T-335, July 31st 2019.

Benavides-Vanegas, Farid Samir. 2020. Emoticons, Memes and Cyberbullying: Gender Equality in Colombia. *Social Semiotics*, 30 (3), 328–43.
<https://doi.org/10.1080/10350330.2020.1731169>

said that their public affection insulted him and put his kids at risk²⁸. He never explained at risk of what. The Police reaction was not to protect them, but to sanction them for their *indecent behavior*. After taking the case to the media, the Police had to accept their mistake and recognize that they mishandled this situation, where a couple's rights were violated.

Lopez' case also takes us back to the idea that the language of hate tries to define a silenced and oppressed subject. This journalist's tweet is an attempt to define Mayor López homosexuality, given that she has not done it in public, so people like the journalist can control what they say and can place them in a category that makes it easier to exclude them. By paying attention to the kiss, the journalist sets the spaces where the new mayor can move: that of the prohibition. She would not be able to implement any special policy for gay people because if she does so it would mean that the kiss was, as she *predicted* it, an announcement of the exclusion to come. The use of social media, and the first expression, *I do not care but*, is telling us about the prohibited character of the kiss. She is not the one who makes the prohibition, but she is just the messenger.

Emojis were used in this case as instruments of resistance. In the first one, with the flags, the reader can find a combination of national identity and the real meaning of language. The creator of the emoji presents what people really say in other countries, and the hidden meaning that the journalist's tweet conveys. And the second one challenges the prohibition, to the power of the word, they oppose the power of humor and of the absurd. By putting Obama kissing with Chavez, for instance, they are creating a new world, one where everything is possible. A reality as real as that one where we eat, sweat and bleed. This use of reality is very similar to Ernst's "Sewing machine with umbrellas²⁹" or Duchamp's "The bride stripped bare by her bachelors"³⁰. A reality that is only possible because of the Internet. But this does not mean that they live in a free Republic. On the contrary, people can face a more oppressive reality, where people can be bullies and hide behind the anonymity of the web.

As Judith Butler has put it, the name homosexual has become a sign of desire. Within the framework of the prohibition, the name has replaced that desire which represents, but at the same time it has become the carrier that connects homosexuality with contagion. So, homosexuality is seen as the paradigm of contagion (Castelar & Quintero Aguirre, 2012, pág. 221). That is the reason why the right-wing journalist

²⁸ (Nación, 2019).

²⁹ Lautreamont wrote: "as beautiful as the chance encounter of a sewing machine and an umbrella on an operating room". On dadaism and surrealism see (Adorno, 1998).

³⁰ See (Paz, 1978)

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<https://doi.org/10.1080/10350330.2020.1731169>

wrote against Mayor Lopez' tweet and why that man attacked the gay couple because they were kissing in public. They are afraid of contagion. Something that one of the memes understood perfectly: the idea that homosexuality can be transmitted, as if there was a gay lighting able to make heterosexuals into homosexuals.

6. Conclusion: symbolic language is as hurtful as written one. The limits of freedom of expression

Freedom of expression is protected in Colombia. Article 20 of the Colombian Constitution protects the right people have to “*express and disseminate their thoughts and opinions, to inform and receive truthful and impartial information, and to establish mass media. These are free and have social responsibility. The right to rectification is guaranteed under fair conditions. There will be no censorship*”. People can express their opinions without fear, no matter how obnoxious his or her ideas are for other people. This is a right that has had a broad development in the Constitutional Court³¹. Following the precedent established by the Interamerican Human Rights Court, freedom of expression can be exercised within certain limits. According to article 13 of the Inter-American Convention of Human Rights IACHR, people have the right to express their thoughts and ideas without previous censorship from the state. In any case, the person who disseminates false statements is responsible for his or her actions³². Constitutional and Interamerican Convention cases protect the written word, but images, emoticons and memes are not analyzed in the cases dealing with freedom of expression. From the Colombian constitutional precedent, we can say that people have a right to express their opinions, without censorship, but they have to

³¹ These are some of the cases dealing with this right: C-109/93; C-027/93; C-454/93; C-488/93; C-529/93; C-542/93; C-010/00; C-329/00; C-530/00; C-567/00; C-053/01; C-109/02; C-201/02; C-251/02; C-154/03; C-185/03; C-650/03; C-070/04; C-417/09; C-442/11; C-592/12; C-794/14; C-452/16; C-253/19.

³² Article 13 IACHR: 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals. 3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. 4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. 5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Benavides-Vanegas, Farid Samir. 2020. Emoticons, Memes and Cyberbullying: Gender Equality in Colombia. *Social Semiotics*, 30 (3), 328–43.
<https://doi.org/10.1080/10350330.2020.1731169>

respond for any information that can affect people's honor or that put in danger national security³³.

Prof. Sanin's case represented an opportunity to analyze the limits of freedom of expression in the times of emojis and memes. The thin line between opinion and aggression becomes even more blurred with this kind of images. Written statements, hateful speech is more difficult to control during these times, because words disseminate faster than ever, and courts arrive too late to avoid any damage to a person's reputation. But in the case of words it is easier to distinguish an opinion from a hateful comment. Words have a meaning that is more accessible to the reader. But in the case of emojis and memes the distinction is more difficult. As the case of Prof. Sanin shows, the image of her with a black eye was intended either as a bad and harmless joke or as a veiled attack to put her in her place. The University defended the students saying that they had the right to express their thoughts and that these memes were just jokes. However, Prof. Sanin's words were not treated as jokes but as attacks against the institution. Images were seen as a legitimate exchange of ideas, the written word as an insult to the students and the University. This is a dangerous view of free speech, because by distinguishing between images as jokes and words as insults, is allowing the dissemination of dangerous speech in social media (Maynard & Benesch, 2016).

Cyberbullying is one of the most important problems in the Colombian education system. Words and images can hurt people (Matsuda, Delgado, Lawrence III, & Crenshaw, 1993). They all have a meaning and an intention. We must be careful with limiting the right people have to express and disseminate ideas and information. But at the same time, we have to recognize that emojis and memes are not just jokes, they are something else. Political incorrection cannot be the excuse to insult and denigrate vulnerable people. The state has a duty to protect them and to guarantee that their freedoms are not affected by other person's insulting behavior. Emojis and memes need to be analyzed and fall within the reach of freedom of expression, with its possibilities and its limits.

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Notes on contributors

³³In a case, former President Alvaro Uribe said in a tweet that a journalist was a rapist. The Supreme Court, that analyzed the case, held that the right to insult and to attribute false criminal actions to another person is not constitutionally protected. Case STP14284-2017, Majority Opinion written by Patricia Salazar Cuellar.

Benavides-Vanegas, Farid Samir. 2020. Emoticons, Memes and Cyberbullying: Gender Equality in Colombia. *Social Semiotics*, 30 (3), 328–43.
<https://doi.org/10.1080/10350330.2020.1731169>

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