

Contemporary Lessons in Decorum: Maintaining and Challenging the Status Quo

Ty Lasater, Texas State University

This paper adds to our understanding of how decorum can function hegemonically by focusing our attention on the events surrounding Wendy Davis' 2013, 13-hour filibuster and the three types of decorum violations with which Davis was charged: inappropriate style, inappropriate argumentation and inappropriate timing or observance of kairos.

In 1868, Harriet Beecher Stowe argued, “All places where women are excluded tend downward to barbarism, but the moment she is introduced there come in with her courtesy, cleanliness, sobriety and order” (p. 32). However, when women are charged with introducing rudeness and chaos into orderly (male dominated) environments, the conspicuousness of her gender and actions draw heightened attention. Although women have made great strides toward equality, when they participate in the legislative process their voices are often still silenced, marginalized, co-opted, or commoditized.

In this paper we examine a notable case of a female legislator, who when debating women’s health issues, was silenced via hegemonic uses of decorum. In 2014 Sen. Wendy Davis was gaveled off the Texas Senate floor via cries of indecorous behavior. Davis’s case adds to our understanding of how decorum can function hegemonically by focusing our attention on the events surrounding Davis’ filibuster and the three types of decorum violations with which Davis was charged: inappropriate style, inappropriate argumentation and inappropriate timing or observance of *kairos*.

Decorum, Kairos and Silencing Spectacles

Drawing a distinction between *kairos* and *decorum* makes both concepts more understandable and usable. Both concepts have been investigated since ancient times and are still being explored by scholars today. Although we see the topic of *decorum* discussed in the writings of ancient Greek and Roman philosophers, the most thorough treatment of it comes from Cicero (106-43 BCE). Cicero begins *Of Oratory*

with an explanation of why the education of the orator is important, how rare it is to find a great orator, what the orator must know, and how important oration is to society. He argues, "...eloquence is dependent upon the trained skill of highly educated men" (Book One, Chapter 2). For Cicero, the ingredients that produced "real" eloquence were wide learning (wisdom) plus competent speaking (eloquence) minus abstract rules (philosophy). Part of training the orator toward eloquence included imparting an understanding of prudence (a quality of an author) and decorum (a quality of a text). Cicero's interest in the "rules of conduct suited to ordinary folk" focused attention on the practical application of decorum to attaining the goals of the speaker. In this way, his treatment of decorum was concerned with questions of appropriateness involving the occasion, subject, and audience. He draws links between ethics (considering it to be that which is *expected*) and decorum and positions decorum as an element of the rhetorical situation that can be used for the achievement of some effect, but often as a means or resource for maintaining the status quo. He identifies decorum as a continuum between "revolt" (having no mind for what is proper) and "flattery" (only upholding decorum, seldom remembered). By doing so, we can see decorum as a constraint or an opportunity. Some two millennia later, scholars are exploring decorum as a part of the rhetorical situation (Leff, 1987), as praxis for existential communication (Smith, 1992), and for its role in shaping political discourse (Hariman, 1992).

The ancient notion of *kairos* is also important to consider when discussing the ways decorum can function hegemonically to silence free expression. The work of Eric Charles White (1987) is especially helpful when trying to recover the complexities of this concept. He explains that the word means 'the right moment' or 'the opportune,' derived from two differing uses of the word coming from the practices of archery and weaving. When used in archery the term refers to an opening or a 'long tunnel-like aperture through which the archer's arrow has to pass.' The arrow must be fired precisely and with enough power for it to penetrate the target. In weaving, *kairos* refers to the 'critical time' when the 'weaver must draw the yarn through a gap that momentarily opens in the warp of the cloth being woven.' White continues, asserting

that when we put the two concepts together, we have a concept of *kairos* that refers to ‘a passing instant when an opening appears which must be driven through with force if success is to be achieved (White, 1987, p.13)’. The concept represents the opportunity for change, creating a new trajectory for the flow of time. Regarding political discourse, *kairos* is a perfect moment in the process of discourse for a particular speech act to have the maximum persuasive effect. The rhetor is then responsible for properly observing and seizing the opportunity in a manner that adheres to the decorum, or in the case of the radical voice, doesn’t. Contemporary scholars interested in *kairos* have explored its importance in regards to rhetoric of belief (Sullivan, 1992), rhetoric of science and technology (Miller, 1992; 1994), and risk management (Scott, 2006).

The work of Dewberry & Langford (2012) on the centrality of *kairos* to any rhetorical situation through the “silencing of spectacles” shed important light on the relationship between decorum and *kairos* in contemporary settings. They explain that the idea of the free expression spectacle is seen in nearly all of the First Amendment jurisprudence. More importantly, cases of obscenity also frame the speech act turned free expression spectacle as not the actual production of the material but as merely the distribution it. Returning to our central argument, we claim that once a free expression spectacle happens, indirect censorship occurs, even when the speaker’s actions are later adjudicated on behalf of the free expression. There are two causes of this indirect censorship that revolve around the concept of time, which we conceptualize in two ways. First, the amount of time (the sequence of events) that elapses separates the individual from the rhetorical situation. Second, the public discourse during this time (time as “social meaning”) focuses not on the content of the (free) expression but rather the applicability of the First Amendment. In its most basic form, time is a series of unrelated or related events in a sequence. A court decision based upon the First Amendment begins with a free expression spectacle, which, as described, is a rhetor responding to an exigency with a speech act that is bulwarked. To fully understand this rhetorical situation we turn to Bitzer (1968), who explains that in order to understand a rhetorical situation we must “know the nature of those

contexts in which speakers and writers create rhetorical discourse” (1). He claims that any rhetorical communication is influenced by exigence, audience, and constraints, which, when taken together, enable critics to evaluate the communication as a “fitting response.”(6) This initial speech act turned into a free expression spectacle has social meaning, not for the legal community, but for the individual speaker. Furthermore, the social meaning of that time for the speaker is one of negativity, for the speaker’s message is lost indirectly in a twofold way: 1) there is a near complete loss of the rhetorical situation; 2) the message is lost when the interest of the public discourse is on the First Amendment—not the content of the expression itself. To explore how decorum and *Kairos* are exploited to both enact and silence free speech spectacles in contemporary society let us examine the case of Wendy Davis.

The Case of Wendy Davis

On June 24th 2013, the last day of the 30-day special session of the Texas State Senate, Senate President/Lt. Governor David Dewhurst (R) made a motion to vote on Senate Bill 5. The bill proposes that the state ban all abortions after 20 weeks as well as enforce a series of restrictions pertaining to how abortion clinics and their surgical staff get licensed (Tinsley, 2013). The bill's opponents insists that the proposed law is politically motivated, unconstitutional, and in direct challenge to the ruling from *Roe v. Wade* in that implementing it would require clinics make upgrades to facilities too expensive for most to afford and is estimated to result in all but 5 of the 42 Texas abortion clinics being forced to close (Fernandez, 2013). Of the Texas Senate’s 31 members there are 19 republicans and 12 democrats. With such a majority, a required two-thirds vote is the only stipulation that allows for the democratic minority to affect legislation. SB5 is composed of language introduced in four bills (SB25, SB97, SB537, and SB98) filed during the regular session by Republican senators that all died thanks to the two-thirds vote requirement that is not enforced during special session meetings.

Sen. Wendy Davis (D-Fort Worth) claims that by using the special session, which requires a simple majority, to debate this bill, majority leaders (Gov. Rick Perry and Lt. Governor David Dewhurst) are going against the “Texas Senate tradition” of

only discussing bills that could not have been addressed during the regular session and suggests that doing so is a deliberate attempt by presiding republican senators to eliminate the democratic minority's power to block the bill (Mardoll, 2013). Davis argues that this maneuver is unjustifiable when considering a bill that has consequences affecting "many, many people..." and that "...hurt[s] women; hurt[s] their families." (Mardoll, 2013) Texas Democrats haven't won a statewide race in two decades and the history of the Texas State Senate is quite clear on matters of this type: "If there's ever a vote of the body, Dems will lose" (Collins, 2013; King, 2013). Davis expresses a feeling of futility in making attempts to affect legislation citing an incident in the past years in which a male senator ignored her questions and then later explains that he has "...trouble hearing women's voices (Collins, 2013, paragraph 19)". At 11:18 a.m. Sen. Davis began what would become an 11 hour, 39 minute filibuster intended to deter SB5 from being brought to a vote. In order for Davis' filibuster to be successful, she was required to speak until midnight, the deadline for the end of the 30-day special session called by Governor Rick Perry. In addition to speaking for almost 12 hours straight, Davis was required to stand unaided. She was not allowed to take breaks to eat, drink, or go to the bathroom, and she could not lean on anything for support (Pieklo, 2013). Just before Davis began her filibuster President David Dewhurst expressed concerns about adherence of the gallery and senate floor to senate decorum, stating, "...it could be a long day, it's a matter of great passion, among all of the people in the gallery and all the people that are on the senate floor...but I wanted to make sure it's communicated that we ought to maintain decorum." (Mardoll, 2013). The warning indicates the weapons of choice for the war to be waged: the Senate Rules pertaining to decorum and conduct.

Much of Davis' filibuster was spent reading testimony from women in opposition to the bill and the struggles they faced before abortion and birth control were legalized. Davis stated "women realize that these bills will not protect their health... they will only reduce their access to abortion providers and limit their ability to make their own family-planning decisions" (Smith & Sutton, 2013). The filibuster is broadcasted in a live YouTube video that draws in people from surrounding areas to

come support the spectacle, turning the crowd of hundreds into thousands (Steltar, 2013). In order to bring the filibuster to an end the Senate would have to find her guilty of three violations of the Senate Rules (2013), which then would require the floor to vote to end the filibuster or allow it to continue. Lt. Gov. Dewhurst retains the right to evoke the Senate's rules of decorum and imprison any observers who attempt to disrupt proceedings for up to 48 hours without the typical rights of due process an arrest would require (Senate Rules, 2013). Though observers in the gallery were made aware of this early in the day, several outbursts marked a crowd that was clearly overcome with passion for the topic of discussion (Batheja, 2013).

The first strike that came against her (and subsequent outburst from the gallery) happened early when Sen. Davis spoke about cuts to Planned Parenthood and her comments were ruled off topic. Article 4, Rule 4:03 in of the State of Texas: Senate Rules adopted on January 9th, 2013 in relation to senate decorum states that "...when speaking, a member must confine himself to the subject under debate..." or be called to a point of order. (Senate Rules, 2013) Her second warning came later in the evening as a fellow senator assisted Davis in putting on a back brace, which violated filibuster rules (Kliff, 2013). The third warning came at about 10:00 p.m. when Senator Donna Campbell objected to Davis' discussion of the 2011 senate-passed pre-abortion sonogram which was ruled off topic (Mardoll, 2013). The third strike marks a potential end to the filibuster at hand and results in an emboldened sea of abortion rights observers wrapping through the Senate gallery and down three flights of stairs voicing their dissent by chanting, "Let her speak" (Lindell & Ward, 2013). A fury of partisan procedures erupted in an effort to win the moment as Republican Senators' attempts to quickly end the filibuster and bring the bill to a vote before the midnight deadline were combated by Democratic Senators' attempts to tie parliamentary procedure in a complex bow that would require much longer to unravel than the time allotted to vote. Senator, Leticia Van De Putte (D), was overlooked in the procedural chaos and raised the ultimately rallying rhetorical question: "At what point does a female senator need to raise her voice to be heard over the male colleagues in the room (Ramsey, 2013)?" When Dewhurst was

perceived by Democratic senators to be attempting to unilaterally move to end Davis' filibuster without a full senate vote, the occupants of the gallery erupted in outrage. (Vertuno, 2013) Although a "ceremonial" vote did occur at the end of the proceedings in which majority leaders claimed SB5 was passed into law later examination of official timekeeping shows that the vote occurred a number of minutes after midnight, thus nullifying the vote and effectively reversing the decision (Ramsey, 2013).

The filibuster successfully stifled the vote on SB5 that day due in part to what Gov. Rick Perry called "...a breakdown in decorum and decency..." in the Senate gallery (Hoppe, 2013). Immediately after the senate's failure to vote on the bill, Gov. Rick Perry announces his intentions to call another special session on July 13th to vote on a bill of the same nature. Ultimately the bill passes into law on July 13th upon the completion of the second special session and Davis' filibuster is seen by some as a battle won while the war is lost (Smith, 2013).

The case of Wendy Davis is evidence for the potential for rules of decorum to be used to silence the voice of the radical minority and aggressively defend the status quo when wielded by a hegemonic majority with the proper rules in place. This case also illustrates the effectiveness that claims of incivility and indecorous behavior can have in redirecting the attention of the audience from focusing on the message of the rhetor and instead viewing the event through the larger frame of free speech and civility, effectively dissolving any kairotic exigency that existed in favor of the rhetor prior to the charges of indecorous behavior. More specifically this case provides us with a number of examples of the ways in which decorum is called into question contemporarily. The acts that prompted objection from senate leaders on the basis of decorum fell into three categories: using inappropriate style, inappropriate arguments and inappropriate timing (*kairos*).

Inappropriate Style

Inappropriate style is one way that decorum was called into question during Davis' filibuster. Here inappropriate style concerns the manner in which a speech act

is expressed rather than the content of the act. Appeals to inappropriate style suggest that the speaker in question is not acting delivering their speech in conjunction with the implied or written rules of decorum. This is interpreted broadly by the senate leaders and both the speaker and the audience are held to standards of style in their participation in the debate. In Davis' case specifically, her style was criticized not for what she did, but *how* she did them. Although Davis was the primary speaker, the Republican majority claimed indecorous displays of style were performed by the gallery, as well as other Democratic Senators. These instances of inappropriate style ranged from the vocal support orated by spectators on site, to the assistance of another Senator in putting a back brace on Davis during the filibuster.

Davis is first found to be in violation of filibuster rules concerning style when approximately seven hours into the filibuster, another senator tried to put a back brace on her for assistance. The Republican Senator who declared this act indecorous is cited as saying, "The tradition of this filibuster in the Senate has always been that you had to do it on your own" (Fernandez, 2013). The issue is not that Davis was seeking to use a back brace, but that someone was attempting to help her into it. This violation to the filibuster and its emphasis on the inappropriate use of style serves to demonstrate one-way rules of decorum can function hegemonically.

A second reference to inappropriate use of style is issued indirectly as Lt. Gov. David Dewhurst denounced the gallery occupants as "an unruly mob" stating that "with all the ruckus and noise going on, [he] couldn't sign the bill" (Associated Press, 2013). Spectators had been told to "be respectful, and to respect decorum" (Batheja, 2013). Dewhurst refers to the gallery spectators as "an unruly mob using Occupy Wall Street tactics [...] to derail legislation that has been intended to protect the lives and the safety of women and babies" (Batheja, 2013). Sen. Dan Patrick (R-Houston) calls the night "an embarrassment," claiming, "I didn't fear for my safety, but I did fear for our constitution. You cannot have mob rule dictate whether a bill passes or not (Jervis, 2013)" and framing Davis's actions and speech as being in direct opposition to law and order. The spectators' participation in the night's events is credited with preventing the Senate from casting the vote before the midnight

deadline (Straw, 2013). The voices of the gallery spectators were viewed by senate leaders as an unwelcome and indecorous interference to the workings of parliamentary procedure, preventing the senate from casting their vote. Governor Rick Perry makes reference to the night's events, specifically the gallery participation, as "the breakdown of decorum and decency" (Collins, 2013). Lt. Gov. Dewhurst simultaneously announces of his intention to strictly enforce the Texas Senate's rules of decorum, primarily citing Article 3, Rule 3:04 and 3:05 which prohibit the possession of posters, place cards, banners, and signs as well as the use of applause, outbursts or demonstrations in the gallery.

In the case of the Wendy Davis filibuster and these two specific instances of charges of decorum violation via inappropriate style, it was not *what* was said or done that was deemed indecorous, but *how* it was said or done. In cases where human rights are under deliberation, is the emphasis on content, or form that is of utmost importance?

Inappropriate Arguments

In this case the most prominent violations of decorum were invoked claiming Davis' use of inappropriate arguments. Here the concern is that the arguments being forwarded are topically and logically relevant to the issue being debated. Two of the infractions against senate rules Davis was accused of cite Article 4, Rule 4:03 stating that "...when speaking, a member must confine himself to the subject under debate..." (Senate Rules, 2013)". This rule exemplifies the notion that arguments which are deemed as inappropriate may be used to silence.

Then while discussing the effects the bill would have on clinics like Planned Parenthood Davis referred to a law passed recently that cut funding for contraceptives in poor communities explaining that, "The damage has already been wrought, and it's going to take a long time to undo it (Collins, 2013)." This statement was ruled by Lt. Gov. Dewhurst as the first violation of decorum citing Article 4, Rule 4:03. While Davis attempted to establish the context in which the bill was being proposed the rules of decorum were interpreted in such a way that even the mere mention of another law is sufficient to silence the speaker's ability to discuss it regardless of how relevant it

may have been to the bill in question. Here it was not the style of Davis' speech but the implicit argument that the law she makes reference to had necessarily done "damage" which qualifies the statement as arguing inappropriately.

What ultimately was Davis' filibuster-ending decorous violation of going off topic came shortly after 10:00 pm when Sen. Campbell objected to Sen. Davis' discussion of a 2011 law mandating pre-abortion sonograms (Fernandez, 2013). This functionally seated and silenced Davis, unseated the entire audience in the gallery into an auditory frenzy and prompted Democratic senators to once again vehemently argue the merits of the interpretations of senate rules by the accusing parties (Ramsey, 2013). Afterward Davis asserts, "This wouldn't have happened to any other senator," insisting that she was silenced because she was a woman senator, one who was simply "discussing state abortion law during a debate about abortion (Collins, 2013, paragraph 13)."

Inappropriate Observance of Kairos

Finally, decorum was invoked to silence the filibuster with appeals to inappropriate *kairos*. The notion of *kairos* is deeply entrenched in sophistic teaching which encourages the rhetor to appropriately choose an effective response to a given situation in consideration of the response' timing (Miller, 1994). Therefore, appeals to a mistaken attempt to identify and exploit *kairos* insist that the individual in question has not appropriately adapted to the immediate moment in which they are speaking. In other words, the rhetor misread what was appropriate for the situation in regards to the timing of their speech act.

Since Governor Perry had called the emergency session, which necessarily lasts thirty days, it was on the thirtieth day that the bill would finally be voted on. If Davis could stall the passing of the bill until midnight, the congressional clock would run out and any passage of the bill would take place outside of the allowed window, rendering it invalid (Koppel, 2013). As a result of this constraint, in the interest of achieving her goal to keep the bill from passing, Davis' appeal was in the prime of *kairos*.

Proponents of the bill, however, see the situation quite differently. Even more, they make claims about Davis' lack of decorum accordingly. A political science

professor at Rice University named Mark P. Jones explained, “Democrats are likely to win the battle but lose the war over Senate Bill 5” (Fernandez, 2013, par. 12). This sentiment came to fruition the very day after the filibuster when Governor Perry called a second emergency session (Associated Press, 2013). By repositioning the time and place of the emergency session, Perry enabled himself, his supporters, and onlookers to repurpose the *kairos* to which Davis responded as inappropriate. Put another way, when there was a single emergency session, Davis’ impetus was appropriate as it stripped the hegemonic Republican party of the ability to vote on the bill. By adding an additional session, however, Perry extended the timeline. Immediately following the first special session Sen. Dan Patrick announced his intentions to “call the previous question,” or procure a list of sixteen senators signatures (a simple majority) prior to the second session, in which case the chance of a filibuster is eliminated (Smith, 2013). When Davis spent half a day on her feet in the middle of the new timeline rather than the end of the previous timeline, her rhetorical actions became framed as inappropriate literally overnight.

In a broader sense of timing, opponents of Davis have accused her of not adapting appropriately to a larger political timing. These opponents have, “charged Ms. Davis with thwarting the will of lawmakers elected by the majority of Texans” (Batheja, 2013). Perhaps, then, each political cycle indicates a new time period in which a mythical equal representation considers the views of citizens and awards contrasting sides an appropriate amount of representation, and awards one political party the opportunity to speak. The correct time to take a political stance, then, is when an individual has been elected as a member of the majority party. Here, *kairos* becomes politically awarded. Under this view, it is always inappropriate for the minority party to speak because it is not their turn, as it were.

Not only does this view of political timing privilege the majority to control the systems that disable and further disenfranchise the minority, but it effectively silences non-majority voices as well. Without the appropriate numbers to, in the minds of Davis’ supporters, protect the lives and health of Texas women, the only option was to

protect them by speaking. In the hands of the majority, however, this option was belittled and silenced the leftist attempt at legitimacy.

Implications and Future Considerations

At the National Right to Life convention Rick Perry expresses his values in an attack against Davis' character in which he states "It's just unfortunate that she has not learned from her own example (referring to the temptation for single mothers like Davis to get abortions)...What if her mom had said, 'I just can't do this, I don't want to do this.'(Root, 2013)" In this statement we see clearly that for Perry and his constituents abortion is morally wrong, the option to abort is never acceptable under any circumstances regardless of the effects it may have on women's healthcare and even having to debate it is 'unfortunate'. Davis' supporters responded to the statements with outrage while Davis' response is a good indication of her and her constituents underlying values: "[Planned Parenthood] was my sole source of health care for four or five years when I was a young adult. Consider [me] a 19 year single mom who wants to be smarter about her family planning so she can go to school and move forward with her career. Had I not had those services available to me, I would not be standing where I am today (referring to her struggles to get through Harvard Law School as a single mother). (Collins, 2013)" For her abortion clinics like Planned Parenthood are inherently good, empower and protect women's rights and are to be defended as a matter of human dignity. These two assertions from the opposing parties are clearly the product of two different and incommensurate value systems, one arguing for the status quo and one for change.

In cases of moral conflict such as these no argument formulated will move the opposing party and in the case of the Texas State Senate during a special session the floor's debate is merely a formality much like the rules of decorum themselves have become; all the majority requires to pass law is that the corresponding bill go to a vote. Davis, representing the radical minority, responds to this situations by enacting a spectacle in the form of a filibuster, making real for the senators and the audience the futility the minority feels regularly but is rarely able to communicate with a mass audience in a profound way (Stelter, 2013). The majority's silencing of the spectacle

actually forced the Republicans ultimately to reverse their announcement of the bill's passage into law, effectively leaving them with their tails between their legs (Fernandez, 2013). Unfortunately for Davis the brief success of her filibuster would be overshadowed by the bill ultimately passing at the second special session called by Gov. Rick Perry. While Davis has since run an unsuccessful campaign for Texas governor in 2014 the constitutionality of parts of the law enacted by the SB 5 have come into question by the Texas Supreme Court (Liptak, 2014).

While Davis' efforts lead to little change in the trend of policymaking in Texas it has provided a vivid picture of the way decorum is invoked today and that Cicero's concerns for the potential for it be a tool used to protect the status quo are still relevant. We can also see the manner in which claims of violations of decorum can be instrumental in silencing the free speech spectacle and reshaping the exigence of the rhetorical situation of a speech act. Upon examining the claims of indecorous behavior closer we see that there were three violations legislators categorized as indecorous; use of inappropriate style, arguments, and timing or observance of kairos. This incident draws our attention to a number of questions that arise when we consider the implications of the ways in which the notion of decorum has been preserved, interpreted and used in modern legislative proceedings. As legislative proceedings become more transparent and available for public consumption via technology and social media the people that the legislators were elected to represent are becoming more capable of accessing video and audio of elected officials, just as they did in Davis's case. This represents an opportunity for the public to see and respond to the ways in which decorum is being used to shape public discourse on issues as important as health issues for women and free expression for everyone.

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