

The Poet, The Lady, And The Lawyer

by David J. Perlman

A man and a woman are lying in bed, she awake, he drifting to sleep. They have been together all day, maybe even the previous night. Perhaps they have known each other for some time and have finally declared their love, or perhaps theirs was, and will be, only a brief acquaintance. In any case, she foresees his leaving in the morning, and, perhaps, love wisping away. She reflects on their having been lovers for a “whole” day—“whole” because so much has transpired and time seemed to stand still. But “whole” in an ironic sense as well since it has been only a day, after all:

Now thou hast lov'd me one whole day,
To morrow when thou leav'st, what wilt thou say?

Thus begins John Donne's "Womans Constancy"—with that anxious, plaintive question. While writing this and other love poems posthumously published as the "Songs and Sonnets," Donne was immersed in the techniques of legal dispute. In 1591, at 19, he had entered Thavies Inn, one of the Inns of Chancery. The Inns of Chancery were preparatory schools for the Inns of Court, and the following year, he advanced to Thavies' sister Inn of Court, Lincoln's Inn, where he studied during the next two years. Probably the Inns' most influential training exercises, dating back centuries, were the arguments over mind-bending hypotheticals, known as moots. The facts of a moot were often improbable with creditors marrying debtors or landlords becoming monks. Their purpose was not to mimic reality but to train aspiring lawyers to fashion legal arguments, especially arguments that cut against common predispositions. "Womans Constancy," though a love poem, is also a product of, and commentary on, such lawyerly play. (Scroll down to see the poem.)

Like many of Donne's lyrics, "Womans Constancy" is a dramatization. A play within a play, it consists of a voice within a voice within a voice; there is Donne creating the poem's speaker, who is imagining the voice of the sleeping lover. Although the genders of the speaker and the sleeping lover are ambiguous, one must imagine who is male, who female. A female speaker would correspond to Donne's "Breake of Day," in which a woman, lying beside her lover, argues against his abandoning her at dawn for the business of the world. Here, too, one can imagine the man departing and the woman, at least until the last line, the more committed lover. A female speaker also puts the lawyerly rhetoric, as we shall see, in the male voice (as imagined by the female speaker), which seems appropriate since the law was a male occupation. Despite the unresolvable ambiguity—consistent with

the poem's underlying themes—one can identify the *dramatis personae* of "Womans Constancy" as the Poet, the Lady, and the Lawyer.

"What wilt thou say?" the Lady asks. Will there be a change of heart, and if so, how will the Lawyer justify it? Perhaps she asks the question because she fears the worst or perhaps she already knows theirs is only a passing union. In recreating the Lawyer's voice, in lapsing into his rhetoric, the Lady does something very lawyerly herself—she anticipates her opponent's arguments. She tests five arguments, five attempts to justify what is ultimately as irrational and unjustifiable as the weather.

Naturally, each proves inadequate; legal distinctions fail to explain or excuse a lover's change of heart. The flux and flow of life, of experienced reality and human feeling, run too deep for the limiting categories of a rational system such as law. The first rationalization immediately signals the legal character of the poem:

Wilt thou then Antedate some new made vow?

Like "postdating" a check, backdating a promise so that it will supercede another is a legalistic ploy. Typical of the practice of law, it is an effort to structure or characterize an act so that it receives positive treatment under the prevailing system of evaluation. Ironically, a specialized term like "antedate" can sometimes lend misfeasance a sense of legitimacy; a descriptive term, when it enters legal discourse, may acquire the discourse's aura of objectivity and neutrality and lose a corresponding measure of moral opprobrium. Still, the reader senses that the legal fiction of antedating, like postdating, is merely a self-interested manipulation.

Indeed, antedating a promise so that it supercedes another was likely to be unlawful in Donne's day. Edward Coke, the great Renaissance jurist, touched on antedating in one of his legal compilations. In his Third Part of the Institutes of the Laws of England, while discussing a statute concerning the conveyance of land, he described antedating as a type of forgery: "And yet if A make a feoffment by deed to B, of certaine land, and after A maketh a feoffment by deed to C of the same land with an antedate before the feoffment to B; this was adjudged to be a forgery..."

The legalistic strategy of antedating a new love commitment in order to sever the old obviously fails, and so the Lawyer moves on.

His next argument, as the Lady imagines it, is an attempt to overcome an objection to the first. Although you cannot change a vow—you cannot

even change the date it was made—each of us in some way surely changes over time.

Or say that now
We are not just those persons, which we were?

There is no need to manipulate time or propose a temporal fiction like antedating to conceive that the person who I was yesterday is not quite the same as who I am today. Since we are different people from one day to the next, and since the commitment of one person does not obligate another, I am not obligated by yesterday's promise. Obviously, this argument would undermine every commitment, legal and social, dissolving human bonds. And yet, despite its overstatement, it has, like so many legal arguments, an appealing aspect. We are indeed permitted to change our minds, at least in the emotional realm, and change may be unpredictable, beyond deliberate, conscious control. The next argument is the defense of duress; the harmful act, though committed, is excused because one was coerced into doing it. Here, the Lawyer had an arrow held to his head.

Or, that oathes made in reverentiall feare
Of Love, and his wrath, any may forswear?

There is a religious, as well as legal, analogy here. It is reflected not only in "reverential" fear of an Old Testament "wrath" but in the dual religious/legal words of "oaths" and "forswear." An oath, Coke wrote, in the context of legal proceedings, "is an affirmation or deniall by any Christian of any thing lawful and honest, before one or more, that have authority to give the same for advancement of truth and right, calling Almighty God to witnesse, that his testimony is true." To violate such an oath, then as now, could be perjury. But, Coke also explained, if an oath were taken outside of a judicial proceeding, its betrayal would not be perjury but the more general act of forswearing: "...fore calling him a forsworne man, no action doth lye: because the forswearing may be extrajudicial." Likewise, if the false testimony is immaterial to the point in suit, Coke observed, it is extrajudicial and not perjury. Thus, under duress, fearing a wrathful, though ironically pagan, Cupid, one may break an oath without legal consequence.

What follows is common to legal reasoning—argument by analogy:

Or, as true deaths, true maryages untie,
So lovers contracts, images of those,
Binde but till sleep, deaths image, them unloose?

Just as death terminates the marriage contract, so a night's sleep or temporary "death" terminates the less permanent lovers' contracts. While the Poet continues the legal theme with "contract," he softens the finality of love's termination by the metaphors "untie" and "unloose." The suggestion is that the cords that connect us are not severed with the abruptness of death but gently, deliberately unlaced, like clothing. The word "unloose," describing the end of the lovers' affair, also falling at the end of the line and repeating the prefix, continues the metaphor of "untie." "Unloose" also strengthens a suggestion implicit in "untie"—that with this undoing of the ties comes a new freedom; let loose, the libertine Lawyer is freer to commence the next affair. But since waking from sleep is a common, daily event, the Lady is mocking this lawyerly rationalization.

The last rationalization is the most extreme. It states, in essence, that even if not true to the Lady, at least the Lawyer will be true to himself, for he was, even from the start, committed to switching lovers.

Or, your own end to Justifie,
For having purpos'd change, and falsehood; you
Can have no way but falsehood to be true?

The Lady imagines her Lawyer-lover presenting the argument as if he were forced into falsehood against his desire; he left her in order to remain faithful to his original commitment, which was "change." Breaking off the relationship after a single day was the only way to be true. The Poet's use of the word "end" at this point is characteristically double-faceted. Here the Lawyer is justifying his own end both in the sense of the *ex ante* objective he originally held, that is, the goal of "change," and the *ex post* actual conclusion or "end" of having a new beloved. Of course, the argument that the only way to be true is to be false turns argument on its head. Under this view, any conduct can find some sort of rationalistic basis: a skillful lawyer can invoke the most fundamental legal principle to achieve a result that undermines the very same principle. Reading the Lady's recitation, we sense the inadequacy of legal reasoning and argument. The fallacious arguments the Lady anticipates convey the vanity of the Lawyer ever persuading her that his change of heart is driven, or to be understood, by reason. She, at least, will not be fooled by his tedious law school nonsense.

Having anticipated these arguments, the Lady is herself skilled in the rhetoric of advocacy. Indeed, she is prepared to rebut these "scapes"—escapes from both honesty and the relationship.

Vaine Lunatique, against these scapes I could
Dispute, and conquer, if I would,

The words "Vaine Lunatique," like "end," carry a double meaning. That a change of heart cannot be rationally justified makes the Lawyer's arguments "vain"—in the Lady's view—and him, ultimately, a lunatic. But it would also be vain lunacy for the Lady to "dispute" the arguments because the language and rhetoric of disputation, of law, miss the mark.

But the poem does not end here. In the last line, Donne deploys his common rhetorical trick of the swift reversal. The Lady would dispute and defeat the arguments:

Which I abstaine to doe,
For by to morrow, I may thinke so too.

She is as likely to be a libertine as her lover. Schooled at the Inns by proxy of this or other lovers, she refrains from revealing her counter-arguments lest they be used against her should she herself switch sides. A consummate professional, she can argue any position. But it is her heart, her feelings, the underlying emotion, the reality of love, that remain uncertain and ineffable.

"Womans Constancy" is a commentary on law as fresh and pertinent today as the moment it was written. It raises at least three critiques. First, it suggests that law is gamesmanship, and the objective of the legal game is finding a rhetorical strategy that outwits and defeats an opponent. The Lady, like a sophisticated litigator, anticipates the opposing arguments so that she can devise "scapes." Then, she refrains from divulging the "scapes" lest they be used against her or lest her opponent develop a rebuttal. Similarly, in the world of trial practice, ideals such as equality or free speech are secondary to obtaining the outcome most desirable for a client. Ethically bound to be uncompromisingly partisan, a lawyer invokes ideals to promote self-interest. In practice, ideals are simply means to an end. We may hope that the ideals will be preserved in the neutrality of rules that hold self-interest at bay, but the rules often prove as grey and malleable as those the Lawyer invokes; no matter how strong and universal a rule appears, there always arises a factual circumstance and an advocate pleading for an exception.

The Lawyer's obligatory partisanship leads to the second character of law reflected in the poem—that legal argument begins from the desired result. Argument is always a rationale for a preconceived outcome. In the poem, the predetermined conclusion is that the Lawyer no longer loves the Lady. The Lawyer's challenge, like that of lawyers generally, is rhetorical—to develop an argument within the acknowledged system of discourse that justifies this result. Like practicing lawyers, he puts possible arguments to

the test. Although the law may, at times, pretend that its ultimate conclusions are “clear,” they are far from inevitable. In Donne’s day, the intractable conundrums of the moots drove home the indeterminacy and plasticity of the law.

Ironically, in an indeterminate system, such as law, working from predetermined result to the reasons for it may be the only way to think or argue effectively; only by examining alternative outcomes can one effectively comprehend and then compare alternative reasoning. As we sense from “Womans Constancy,” there is a disjunction between the result and even the best rationale one can pin to it. Indeed, it is an opposing lawyer’s job to identify such weaknesses or “scapes.”

The idea that argument consists of a foregone result in search of a reason can be seen from another perspective: that the language of reason is inadequate to the task of justifying any result. In “Womans Constancy,” the language of law and reason fall short of explaining the reality of love, its arrival and loss, its flowing current. Similarly, legal discourse fails to capture whole realms of experience. It is forever challenged to stretch beyond its established universe of terms to describe and classify human realities as protean and slippery as fleeting emotions. Did a defendant act intentionally, “recklessly” or only “negligently”? Have two people developed a relationship such that one has become a so-called “fiduciary” with all the polygenic qualities ascribed to such a being? Or perhaps the circumstances underlying the same human relationship give rise to the existence of a “contract” and its reciprocal obligations. In short, the law struggles to fit a complex world within its categories, and its categories, in turn, bend and flex to remain viable in a complex world. Inevitably, the categories reach a point of failure, where human experience does not quite fit into any one, where no explanation within the customary legal discourse really works. Just so, the Lawyer’s arguments fail to justify the end of an affair.

But the poem, as a poem, is a success. It succeeds, in part, because it reaches beyond the customary discourse of poetry, beyond, say, a Petrarchan paradigm, and finds metaphor in a foreign discourse, incorporating law for its own end. Neither the discourse of poetry nor law can survive if they remain too static and insular. A specialized language, whether poetic or legal, overcomes its moments of failure by finding new words and new metaphors, and perhaps, like “Womans Constancy,” borrowing and transforming another specialized discourse that is itself perpetually threatened with failure.

There is a common theory—a variant of the myth of progress—that the law changes to meet the needs of an advancing society. It generates new terms and new doctrines, so the story goes, to account for our growing

political conscience or the continuing improvement of our commercial and material infrastructure. To a twenty-first-century lawyer opening a sixteenth-century law book, the unfamiliarity and seeming obsolescence of so many legal terms appear to confirm this story. But at a fundamental level, as one penetrates the linguistic barriers, the basic problems of the ancient moots look typical again—conflicts over property, for example, its ownership, appropriation, possession, use, misuse or destruction. People have butted heads, just as they have loved, in much the same way for centuries. The language of law has changed not so much to keep pace with a continuing advance toward justice or with the acquisition of ever new technologies. Rather, the law redefines its terms and invents new ones in a Sisyphean effort to pin down or, perhaps, cloak an always ineffable reality. Both lawyers and poets forever confront the Lady's challenge: "To morrow when thou leav'st, what wilt thou say?"

Womans Constancy

by John Donne

Now thou hast lov'd me one whole day,
To morrow when thou leav'st, what wilt thou say?
Wilt thou then Antedate some new made vow?
Or say that now
We are not just those persons, which we were?
Or, that oathes made in reverentiall feare
Of Love, and his wrath, any may forswear?
Or, as true deaths, true maryages untie,
So lovers contracts, images of those,
Binde but till sleep, deaths image, them unloose?
Or, your own end to Justifie,
For having purpos'd change, and falsehood; you
Can have no way but falsehood to be true?
Vaine Lunatique, against these scapes I could
Dispute, and conquer, if I would,
Which I abstaine to doe,
For by to morrow, I may thinke so too.

Poetry at the Inns of Court

Arthur F. Marotti's *John Donne, Coterie Poet* (1986) explains the influence of Donne's social setting on his poems. As Marotti observes, Donne wrote major love lyrics at the Inns of Court and circulated his poems in

manuscript. The manuscript distribution indicates that at least one intended audience was the students, who, along with Donne, were engaged in the often-extravagant exercises in argumentation. They were receptive to—if not an inspiration for—the extended conceits and dialectic character of the poems.

Also, as Marotti, observes, the Inns served not only as a legal training ground but as a finishing school and way-station on a path of social advancement, often leading to endeavors outside the law. Like students today, those at the Inns enjoyed a degree of irreverent freedom before fully conforming to the strictures and mores of the establishment. This freedom allowed for a satiric edge in literary expression, as in the masques the Inns traditionally performed and evident, too, in Donne's poems.

Poetry was also part of the social milieu of the Inns. Among the more famous poets attending the Inns other than Donne were Thomas Campion, who entered Grays Inn in 1586, and John Davies, who entered Middle Temple in 1588.

Finally, as a reflection of their freedom and sophistication, Inns' students were known for amorous adventures. As Marotti notes, "The Inns-of-Court amorist is a stock figure in the literature of late Elizabethan England."

The law is reflected in Donne's love lyrics in various ways. Sometimes, as in "Womans Constancy," it surfaces in legal diction and concepts, occasionally couched in a rhetorical style derived from legal practice ("The Legacie," "Valediction to his Booke," "Loves Exchange," "Confined Love," "Loves Deitie," "Loves Diet," "The Will"). Sometimes it is reflected merely in a rhetorical style without any direct linguistic allusion to law ("The Flea," "Loves Usury," "Lovers Infinitenesse," "Aire and Angels," "Breake of Day").

Donne satirizes his own incorporation of the language of law within the language of love in his "Satyre II." There, the poet/lawyer Coscus is described as tossing:

Like nets, or lime-twigs, wheresoever he goes,

His title of Barrister, on every wench,
And woos in language of the Pleas, and Bench.

Even after Donne pursued a career in the Church later in life, the law continued to find a place in his various writings. After he rose to Dean of St. Paul's Cathedral in 1615, Donne put his legal learning to non-literary use, serving as a judge on several ecclesiastical courts.