Correspondence ... for Marlee Kline

Ruthann Robson

Dans le texte intitulé «Correspondence», l'auteure entretient avec Marlee Kline une correspondance imaginaire traitant des aspects personnels, politiques, féministes et juridiques du cancer.

Elle se demande si une théorie féministe ne devrait pas reconnaître «comme intolérable le régime actuel qui consiste à réglementer l'usage, la diffusion et la disposition de carcinogènes connus et suspects—plutôt que d'interdire tout simplement leur production». Pourquoi acceptons-nous cet état de fait sans nous révolter?

Notre maxime pourrait être tirée de la poésie féministe d'Adrienne Rich, féminisant la phrase célèbre de John Donne (Méditation XVII-«Pour qui sonne le glas») : «La mort de chaque femme me diminue.»

La mort de toute femme.

Chaque mort.

Notre texte fondateur pourrait citer certains éléments de la «théorisation» féministe de Marlee Kline: «Il ne suffit pas qu'une pluralité de voix de femmes soit entendue en droit. Il importe en plus que nos diverses voix soient comprises comme s'influençant l'une l'autre, dans l'intersection et dans l'interaction. Nous devons tenter de comprendre cette interaction, pour modifier notre travail antérieur à la lumière de cette connaissance et pour l'appliquer aux analyses de l'oppression des femmes que nous effectuerons à l'avenir.»

Perdre la voix d'une femme, c'est perdre la diversité, perdre la capacité de s'influencer et d'apprendre dans la réciprocité; c'est appauvrir notre analyse de l'oppression, c'est réduire la correspondance qui devrait nous soutenir.

Pouvons-nous utiliser nos voix de juristes non pour distinguer et rejeter et nous persuader que cela ne nous arrivera jamais ni à nous ni aux personnes que nous aimons alors que c'est déjà le cas?

Pouvons-nous utiliser nos voix de féministes non seulement pour mettre au point un programme en vue d'assurer notre égalité, mais aussi pour préserver nos vies comme telles?

In "Correspondence," the author re-imagines a correspondence with Marlee Kline, which considers the personal, political, feminist, and legal aspects of cancer.

She asks shouldn't a feminist theory recognize "that the current system of regulating the use, release, and disposal of known and suspected carcinogens—

rather than preventing their generation in the first place—is intolerable." Why do we not revolt?

Our slogan could be from the feminist poetry of Adrienne Rich: "Any woman's death diminishes me."

Every woman's death.

Every death.

Our foundational text could quote Marlee Kline's feminist legal theorizing: "[I]t is not enough that a plurality of women's voices is heard in law. It is also important that our diverse voices be understood to affect one another, to intersect and interact. We must seek to understand this interaction, to modify our past work in light of this knowledge, and to apply it to the analyses of women's oppression we attempt in the future."

To lose any woman's voice is to lose diversity, to lose the ability to affect and learn from each other, to impoverish our analysis of oppression, to diminish the correspondence that should sustain us.

Can we use our legally trained voices not to distinguish and dismiss and to convince ourselves that it will never happen to us or to anyone that we love when it already has?

Can we use our feminist voices not merely to develop a program to ensure our equality but also our very lives?

I never imagined I would write you a letter.

Not a real letter.

A real letter is a letter without official letterhead.

It does not ask you to evaluate the scholarship of one of my colleagues (I am on the tenure review committee).

It does not enclose an article I've authored (I have never been diligent about these mailings).

It does not express appreciation for your comments at a conference or for your hospitality when I visited your university or for an article you wrote that I am citing (I intend to write more of these letters than I ever do).

No, a real letter implies the more archaic meanings of correspondence: something precious, secretive, and perhaps even vaguely seditious.

A real letter is as honest as air.

In *The Aerial Letter*, Nicole Brossard writes that "at the heart of the aerial letter, certain zones appear clear, zones which we would otherwise register with difficulty."

I am most appreciative to S.E. Valentine, Susan Boyd, Margot Young, and the anonymous reviewers for the Canadian Journal of Women and the Law for their contributions to this piece.

Brossard seems to believe that reality can be shaped by writing. I have always hoped she is right.

We were in New York or in Vancouver or possibly Toronto when we had our conversation about Nicole Brossard. Perhaps I asked you if you were familiar with the Québécois feminist writer. I was enamored of her innovation in form, which she labeled fiction-theory.² Once I had used it to write about falling in love. I returned to it when I attempted to write about my predicted death.³ It is that form which I adopt and adapt here.

Even if I imagined I would write you a real letter, I never imagined I would ask you to disavow the tools of legal analysis. Certainly, we could critique the law. And had. We had agreed and we had disagreed.

But this was different. I had an argument that would brook no dissent.

And I never imagined I would eschew fiction-theory or even the literary so thoroughly, especially when I so desperately sought to shape reality.

But you were the only audience and it was important to be as clear as possible. I know the turmoil of chemotherapy only too well. The official lists of side effects of the drugs concentrate on the more physical effects, but the slippage in the ability to think, to engage in abstractions, to communicate effectively can be searingly painful. It should not be underestimated.

Not for people like us. Feminist theorists. Law professors.

Intelligence has a distinct disadvantage in the universe of illness. It makes the platitudes unpalatable. I confess I read all the hope, healing, magnets, meditation, and mystical tracts I could find. Even in my chemical haze, the theories felt so shopworn, so juvenile, so silly.

Yet I relished a certain scenario: the doctors said the patient would be dead in six months and she was still alive. Two years, ten years, twenty years, later.

Even as I deployed my legal training to distinguish those cases from mine (I was already being treated at the best cancer care center in the world; I did not have a dream I was not already pursuing; I was not in an abusive relationship; I had a much more dangerous and rare cancer; I was not praying), I clung to one unassailable fact: doctors could be wrong.

^{1.} Nicole Brossard, *The Aerial Letter*, translated by Marlene Wildeman (Toronto: Women's Press, 1988) at 85.

^{2.} As Brossard explains it, (patriarchal) reality remains a fiction for most women, just as the reality of women is perceived as fiction. *Ibid.* at 75.

^{3.} See, for example, Ruthann Robson, "Notes on My Dying" (2001) 18 Creative Nonfiction 8-17; Ruthann Robson, "not// a story," in Victoria Brownworth, ed., Coming Out of Cancer: Writings from the Lesbian Cancer Epidemic (Seattle: Seal Press, 2000), 47-53.

I did not know what your doctors were saying and did not know your precise diagnosis. But I knew you could discern a multitude of facts that would discriminate between our situations, just as I could have. Just as I'd learned that every cancer is as unique and individual as the person it inhabits.

But I was certain that the correspondence between us need not be total to ensure the same conclusion.

My survival could be the precedent for yours.

Audre Lorde, theorizing about her own cancer experience, admonishes us to be visible to each other. She concludes that we must depend on each other for strength and sustenance, even in our diseases. She rejects the breast prosthesis on that basis.4

During my illness, I did not want to be visible. To be bald and ninety pounds and unable to walk without holding on to someone and bruised and pale marks one as a cancer patient. An object of pity.

Yet I did not want to be invisible.

I try to continue to teach and I try to go outside and I try.

I am in a store shopping for what I have been told will be my last winter holiday season, determined to purchase perfect gifts that will insure my loved ones remember me forever, when I am approached by a sprightly young woman who touches my frail aching arm and says something chipper like, "Oh, by next year you'll be all better. I was a wreck last year too."

I hate her.

She does not know what my doctors are telling me. She has not read my pathology reports, my research on my rare cancer, or my doctors' "notes to the file." She is alive a year later.

I can distinguish her case.

I hate her.

So I am aware of the riskiness of my letter to you.

I know someone who knows someone who is writing a book on the etiquette of dealing with the terminally ill. What to put in that gracious note. What to omit. There is probably a chapter on casseroles.

It would be nice, I suppose, to have avoided some of the awkward or ugly things that people said or did. Talking about me in the past tense. Telling me about their own pain surrounding their mother's painful death from cancer. Asking me if I had time before I died to do something for them.

Yet each of these insults, I thought even then, was trivial.

What I found outrageous was the silence of people who should have spoken. People who survived cancer—who survived anything—and did not tell me.

Audre Lorde, The Cancer Journals (San Francisco: Spinsters Ink, 1980), 61-2.

People to whom I had talked and who never mentioned their own ordeals. While I was ferreting for the possibility of survival in the most ridiculous of books, several people I knew—and one who spoke to me during my worst period—never told me their own stories of survival. I was not interested in the details. I could distinguish them. I was sure none would correspond to my own rare cancer, I only wanted the fact that they were alive to tell the tale.

So, I could not do otherwise than to write you a letter, to make what had happened to me visible to you a continent and a country away.

I will not divulge what you wrote me. Only that you did. Only that I knew how much energy even a simple note could cost you. How grateful I was! And how we began a correspondence.

I write little notes on cards, not expecting answers, but selecting my cards carefully. Until one has been diagnosed as dying one's self, it's difficult to appreciate the problem of correspondence cards. Images I once thought were simply artistic, I began to find ominous: Van Gogh's empty bed, Sargeant's reclining woman in white, Picasso's disfigurements.

Still lives with food are ugly to those who are incessantly nauseated.

I learn to appreciate botanicals.

Your cards, I note, are beautifully blank.

I write you that soon we will meet at another feminist conference, each of us brandishing our stylishly short hair. You might not recognize me, I wrote. But certainly we would have a great deal to talk about.

To continue our correspondence.

Perhaps to write something together.

Once we seemed to be the only women at the feminist conference with long hair. We talked about this, obliquely, provoked by someone confusing the two of us. How silly, we thought, pushing the hair off our shoulders. We were both women and white and both had long hair, but there the correspondence had ended.

I write to you to recommend books. A few of these are narratives of survivors; I prefer the humorous ones to the didactic ones. I praise *Time on Fire* by Evan Handler. He is young, funny, honest, and his diagnosis seems similar to yours. He is very male and I find many of his realities perplexing, but hell, he survives.

Later, I write you about novels. Cheery ones that are not insipid. I've learned how difficult it is to avoid the gratuitous cancer death or some medical mishap that

^{5.} Evan Handler, *Time on Fire: My Comedy of Terrors* (New York: Henry Holt and Company, 1996).

blooms in the pages of contemporary fiction. I want to protect you from such treachery.

Now, I would like to write you this:

Today I started Margaret Atwood's new novel, Oryx and Crake.⁶

I've just finished Ruth Ozeki's novel All Over Creation.

Never would I have included these in my correspondence to you that would be delivered to your hospital room. Never would I have wanted to read these books when I believed every book I read might very well be my last.

Both are dismal. Both are clarion calls regarding the compromise of our genetic heritage by corporate interests. The inevitable—the authors seem to argue—illnesses that will afflict human kind.

Illness that has already afflicted some of us.

Both novels could be said to be heirs to *Silent Spring*. As she was finishing her book, Rachel Carson hid her own cancer for fear that it would discredit her findings that DDT harmed not only insects, but birds and mammals, including humans. 9

Audre Lorde writes that we are pressured to mask our cancer to prolong "the false complacency of a society which would rather not face the results of its own insanities." ¹⁰

What I did not write to you was how I saw us as results of society's insanities.

What I did not ask you was if you speculated about what provoked the cancer cells to colonize your body.

I wondered if you had a theory, just as I have a theory—which some would say is closer to fiction—about causation.

Is there a Canadian version of *Palsgraf*?¹¹ It's the classic case taught in American law schools on negligence and causation. In the 1920s, Helen Palsgraf was standing on a platform of the Long Island Railroad Company, preparing for her trip to Rockaway Beach. Two guards of the company attempted to assist someone else who was running late for the train, causing that man's package containing fireworks to become dislodged and explode. The explosion caused some scales on the platform to fall on Ms. Palsgraf and injure her.

The revered American jurist Benjamin Cardozo authored the majority opinion, declaring the railroad not liable for negligence because there must be a strict

^{6.} Margaret Atwood, Oryx and Crake (Toronto: McClelland and Stewart, 2003).

^{7.} Ruth Ozeki, All Over Creation (New York: Viking, 2003).

^{8.} Rachel Carson, Silent Spring (Boston: Houghton, Mifflin, 1962).

^{9.} Linda Lear, Rachel Carson: Witness for Nature (New York: Henry Holt and Company, 1997).

^{10.} Lorde, supra note 4 at 61.

^{11.} Palsgraf v. The Long Island Railroad Co., 162 N.E. 99 (N.Y. 1928) [hereinafter Palsgraf].

correspondence between the act of wrongdoing and a duty owed to the plaintiff in particular.

Without this notion of proximate cause, "life will have to be made over." 12

I understand that in order to prove my case, there would have to be a direct correspondence between the pesticide poisoning I endured sixteen years before and my diagnosis with a rare and incurable cancer.

My pesticide poisoning was medically documented: I was hospitalized several times with extreme fevers, intense nausea, and dizziness. As soon as I recovered, I would return to my job with a rural legal services office in the middle of sugar cane fields as the crop-dusting planes buzzed overhead. Within a few days, I'd be back in the hospital. Until one of the tests in the barrage of tests I endured isolated a high concentration of a particular pesticide.

I transferred to an urban legal services office.

Later, I became an academic, living in different cities, different states, on different coasts.

Any law student could quickly analyze the proximate cause issues. How many millions of intervening unforeseeable events in those sixteen years?

As Susan Steingraber illuminates, finding the corresponding causes for cancer in humans is exceedingly difficult. Cancer has a long gestation period. People are mobile. Cancer has multiple causes. People have multiple exposures. Most devastating is this: there is no control group.¹³

There are no unexposed populations.

If the danger is everywhere, then it is nowhere.

The forgotten dissenting opinion in *Palsgraf* provides a different perspective: "Everyone owes to the world at large the duty of refraining from those acts that may unreasonably threaten the safety of others." ¹⁴

Imagine applying this to the railroad companies of the 1920s.

Imagine applying this to the varieties of contemporary industries that produce carcinogens.

"Life will have to be made over."

The refusal to change is not dictated by reality, but by theory.

As the dissenting opinion in *Palsgraf* explains it: "What we do mean by the word 'proximate' is that, because of convenience, of public policy, of a rough sense of

^{12.} Ibid. at 100.

^{13.} Sandra Steingraber, Living Downstream (New York: Vintage Books, 1997).

^{14.} Palsgraf, supra note 11 at 103 (Andrews, J. dissenting).

justice, the law arbitrarily declines to trace a series of events beyond a certain point. This is not logic. It is practical politics."¹⁵

Imagine if politics were not so "practical."

Imagine if justice were not so rough. If we were not its victims.

Once, again at some conference or another, we exchanged a joke about John Rawls and his *A Theory of Justice*. ¹⁶ Or, if not a joke, some witticism or another, no longer remembered.

But that is not the reason John Rawls's obituary makes me furious.

I seethe at the age of his death: eighty-one.

I am reduced to screaming on your behalf: where is the justice? the fairness? where is equality?

I would like to construct an argument here about gender and privilege.

I understand such arguments. I have made such arguments on behalf of clients. I have made such arguments in law review articles. I teach my students to make such arguments.

But the argument here does not seem obvious.

What is the equal protection classification?

Consider this: Pesticide residues in food peaked in the 1960s and 1970s and those of us whose formative years correspond to those decades received more pesticides in our childhood diets than any children before or since. The recent decisions to consider the higher vulnerabilities of infants and children when setting tolerance limits are not retroactive.¹⁷

I am thinking of Lynda Hart, a theatre and performance professor, born in 1953, dead of cancer. 18

I am thinking of Sarah Pettit, an editor at *OUT* and *Newsweek*, born in 1967, dead of cancer. 19

I am thinking of Mary Dunlap, lesbian and feminist theorist, attorney, and civil rights activist, born in 1948, dead of cancer.²⁰

I am thinking of all the women I know who I cannot footnote.

A woman with whom I had a thirty-year correspondence and met only once.

^{15.} Ibid. at 103.

^{16.} John Rawls, A Theory of Justice (Cambridge, MA: Harvard University Press, 1971).

^{17.} Steingraber, supra note 13 at 169.

^{18.} See the Lynda Myoun Hart Memorial issue (2002) 13(1) Women and Performance: A Journal of Feminist Theory.

^{19.} See Paul Schindler, "Sarah Pettit is Dead at 36," Gay City News (24-30 January 2003) at 3.

^{20.} See Henry K. Lee, "Obituary, Mary Dunlap—S.F. Police Watchdog, Rights Advocate," San Francisco Chronicle (22 January 2003) at A18.

A woman who had the same diagnosis as mine.

A woman who had the same birthday as I did.

Women, who as girls may have run after the truck spraying DDT to control mosquitoes, dancing in the white mist. Who dutifully ate their pesticide-laden vegetables. Who played in the stream, the ditch, the gutter, the river, the ocean. Who breathed the air.

Dead of cancer: pancreatic, breast, lymphoma, leukemia, sarcoma, kidney, ovarian, thyroid.

Rawls's notions of justice are grounded in social conditions, but diseases are too often considered random acts of nature.

Certainly, access to health care is a profound and troubling issue within the realm of social justice.

Certainly, class, race, gender, sexuality, geographic location, and disability all affect access to the best possible health care.

And certainly, such conditions affect exposure to health hazards. (If I can contract pesticide poisoning from simply driving through the fields, what about the farmworkers, most of them migrant workers?)

Yet when the patient is a privileged and professional white woman, what can we say?

We assume she is receiving optimal care.

We ascribe bad consequences to bad luck.

A tragedy, we say.

An individual and unavoidable tragedy.

For Rawls, health is a primary good, like intelligence and imagination, but although its possession may be influenced by the basic political structure of society, it is not so directly under its control.²¹

This is one reality, one fiction-theory.

But Audre Lorde's reality seems more pertinent. She declares that as feminists, we cannot afford to look the other way and consider the incidence of cancer as private or personal.²²

Lorde is referring to breast cancer. Amongst cancers, breast cancer has been most frequently taken up as a feminist issue. Although, as Barbara Ehrenreich has

^{21.} Rawls, supra note 16 at 62.

^{22.} See Lorde, supra note 4 at 61.

argued, it is more feminine than feminist, with an emphasis on surviving the disastrous consequences that treatment has upon one's looks.²³

The correspondence between femininization and infantalization is also evident. As Ehrenreich reports, the teddy bear market for breast cancer survivors and supporters flourishes, as do tote bags distributed at prestigious breast cancer treatment centres that provide women not only with perfumed body cream but with candy and crayons.²⁴

But for those of us with non-gendered cancers such as leukemia, or my own cancer, which disconcertingly disproportionately affects men, theories of gender equality and equity have little purchase.

We have both criticized Catherine MacKinnon,²⁵ but—you might like the irony of this—I am beginning to think she was right in censuring equality for making men the measure of all things.²⁶

There is no control group.

Equality is not the only problem. The constitutional provisions of both of our nations that seem to guarantee us "life" and "liberty," protect us only from governmental action.²⁷

From what Robin West labels a "progressive perspective," rather than a liberal one (such as that of John Rawls), it is the concentrations of private power that must be "targeted, challenged, and reformed by progressive political action."

In this context, the South African constitution seems a model, providing that "(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health; (2) State Parties to the present Charter shall take necessary measures to protect the health of their people and ensure that they receive medical attention when they are sick."²⁹

^{23.} Barbara Ehrenreich, "Welcome to Cancerland," *Harper's Magazine* (November 2001) at 43 and 46.

^{24.} Ibid.

^{25.} See Marlee Kline, Race, Racism, and Feminist Legal Theory (1989) 12 Harvard Women's Law Journal 115; Ruthann Robson, Lesbian (Out)Law: Survival under the Rule of Law (Ithaca, NY: Firebrand Books, 1992) at 67-9.

^{26.} Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989) at 232, 244-5. MacKinnon's argument is situated within gender equality; she is arguing that gender hierarchy, not gender differentiation, is the problem. I am contemplating an extension of her argument beyond equality theories.

^{27.} See US Const. Amend. V; US Const. Amend. XIV (14th); and section 7 of the Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11. Section 7 of the Charter also protects "security of the person."

^{28.} Robin West, Constitutional Skepticism (1992) 72 Boston University Law Review 765.

^{29.} Constitution of South Africa, art. 16.

While such a provision is arguably economically unfeasible regarding the provision of health services to the ill, especially given the South African AIDS pandemic,³⁰ more troubling to me is the conjunction and disjuncture between "take necessary measures to protect" health and ensure the receipt of "medical attention."

Barbara Ehrenreich names it the "Cancer Industrial Complex," an industry that "with one hand doles out carcinogens and disease and with the other, offers expensive, semi-toxic pharmaceutical treatments." As an example, she discusses AstraZeneca, which, until a corporate reorganization in 2000, was a leading producer of pesticides, including acetochlor, classified by the United States Environmental Protection Agency as a "probable human carcinogen." AstraZeneca remains the leading manufacturer of the breast cancer chemotherapy treatment tamoxifen as well as the sponsor of "Breast Cancer Awareness Month."

Don't get me wrong. I am desperate for a cure for cancer.

A cure I would like to be retroactive.

But a feminist approach to cancer cannot be limited to finding a cure.

A feminist legal theory of cancer must at least include positive constitutional rights to a "healthy environment"—a right ensconced in at least thirty-two constitutions in Africa,³³ but not in the constitutions of the United States and Canada.

Perhaps constitutional amendments would provide a textual basis for "making life over," changing reality, sharpening justice, challenging private power. Or at least making the argument.

I am distraught as I write you this: Today in the newspaper I read about the uproar that the United States Environmental Protection Agency has caused by the revelation that it is valuing the lives of the elderly less than the lives of younger persons when it performs its cost-benefit analysis for environmental regulations.³⁴ The life of a person younger than seventy is worth US \$3.7 million, while the life of a person older than seventy is worth US \$2.3 million.³⁵

Senior citizens are outraged to have their lives discounted by 37 per cent.

^{30.} The South African Constitutional Court struggled with this issue in *Treatment Action Campaign* (TAC) v. Minister of Health, 2002 (4) B.C.L.R. 356 (T), in which the court held that the government was obligated to provide an anti-viral drug to HIV-positive mothers and their newborns.

^{31.} Ehrenreich, supra note 23 at 52.

^{32.} Ibid

^{33.} See Carl Bruch, Wole Coker, and Chris VanArsdale, Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa (2001) 26 Columbia Journal of Environmental Law 131 at 143.

^{34.} Katherine Q. Seelye and John Tierney, "E.P.A. Drops Age-Based Cost Studies," *New York Times* (8 May 2003) at A34.

^{35.} Ibid.

They make arguments of equality.

They want to be valued the same as any other person.

Surely, John Rawls is worth as much as anyone else?

But we should be outraged about this monetary valuation of life, not the mere difference in millions of dollars between groups.

That our lives are being calculated by our governments and a certain number of us are expendable in the interests of corporate profit is the travesty.

That our governments tolerate our deaths in the name of economic growth.

Instead, shouldn't a feminist theory recognize "that the current system of regulating the use, release, and disposal of known and suspected carcinogens—rather than preventing their generation in the first place—is intolerable."³⁶

Why do we not revolt?

Our slogan could be from the feminist poetry of Adrienne Rich: "Any woman's death diminishes me." 37

Every woman's death.

Every death.

Our foundational text could quote your own feminist legal theorizing: "[I]t is not enough that a plurality of women's voices is heard in law. It is also important that our diverse voices be understood to affect one another, to intersect and interact. We must seek to understand this interaction, to modify our past work in light of this knowledge, and to apply it to the analyses of women's oppression we attempt in the future." 38

To lose any woman's voice is to lose diversity, to lose the ability to affect and learn from each other, to impoverish our analysis of oppression, to diminish the correspondence that should sustain us.

Can we use our legally trained voices not to distinguish and dismiss and to convince ourselves that it will never happen to us or to anyone that we love when it already has?

Can we use our feminist voices to develop a program not merely to ensure our equality but also our very lives?

^{36.} Steingraber, supra note 13 at 268. Steingraber names this approach a "human rights approach."

^{37.} Adrienne Rich, "From an Old House in America," in Adrienne Rich, *The Fact of a Doorframe: Poems Selected and New 1950-1984* (New York and London: W.W. Norton and Company, 1985) at 212, 222.

^{38.} Kline, supra note 25.

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Dear Marlee: I imagined our correspondence would now be reaching for the theoretical and practical and feminist and legal understandings of our ordeals.

Dear Marlee: I thought we would have the chance to write this article together.

Dear Marlee: It is not enough to say—like so many others—I miss you.