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Justice Mokgoro advocates 'Ubuntu'



Associate Professor Makau Mutua, left, and Honorable Barbara Howe '80

The first black woman appointed to South Africa's Constitutional Court urged on Dec. 4 that interpretation of that country's newly created constitution should borrow from the traditional African social philosophy of "Ubuntu."

Justice Yvonne Mokgoro said that doing so would help incorporate concepts like "personhood" and "humanness," as well as concern for the social good.

Mokgoro, also the first woman named a professor of law in South Africa, spoke as part of a week-long visit to UB Law, where she taught a short course and met with students and faculty members.

While making it clear that she would not claim the last word on the subject, Mokgoro defined Ubuntu as an African world-view, or philosophy of life, that incorporates the values of personhood, humanness, morality, honesty and concern for the social good. Ubuntu, she explained, is a Zulu word that is difficult to define in abstract terms.

"It's one of those things that you know when you see it," she said.

Contrasting Ubuntu with aspects of both African customary law and apartheid that have traditionally been based in victimization, vengeance and exclusivity, Mokgoro argued that "the values of the new constitution and at least the key values of Ubuntu do seem to converge along with the values of the bill of rights, in particular."

Because it grows out of a historical scarcity of resources, said Mokgoro, Ubuntu values family obligations and the pooling of community resources. She warned, however, against the superficiality of seeing Ubuntu as anti-individual or as merely a social ideology. Rather, she argued, it ought to be viewed as "the

potential of being human."

The essence of Ubuntu, she added, can be found in a number of common African sayings, such as "A human being can only be a human being through other human beings," and "People live through the help of others."

The preamble to the new South African Constitution mentions and appears to recommend the values of Ubuntu, said Mokgoro. But she argued that while Ubuntu "has been increasingly adopted as the basis of a new corporate culture," the South African legal system is still struggling to create "a new indigenous law on the one hand, and a new jurisprudence on the other."

"The values of Ubuntu, I would like to think, can become central to this ... but we must harness it carefully, creatively," she said.

As an example, Mokgoro mentioned the Constitutional Court of South Africa's stand against the death penalty, when some of the justices specifically mentioned the values of Ubuntu in order to buttress their individual arguments. She characterized her comments as an attempt to elaborate and deepen those earlier references.

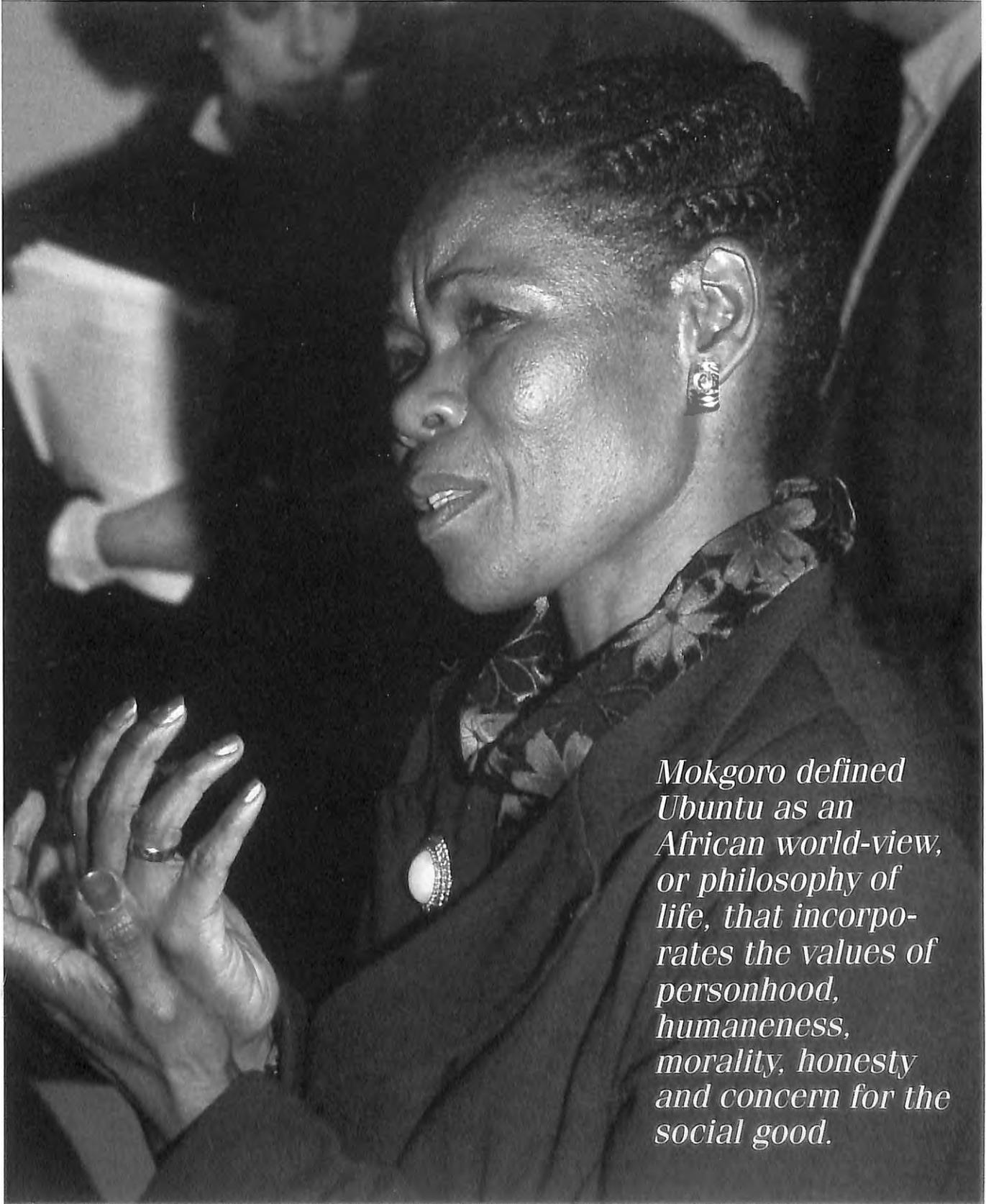
According to Mokgoro, the death penalty is one of the most divisive issues in South Africa. She predicted that the current government will not review the court's decision against capital punishment because it also views the death penalty as inconsistent with the constitution and with Ubuntu. However, she added, there will be another election in South Africa in 1999.

"We will just see, politically, how the election goes. There are many other issues that divide South Africans along political lines." ■

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Elizabeth S. Byrne '00, left, and Bryan J. Maggs '00



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PHOTOS: JOHN HICKEY