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A Revolutionary Scholar: Drucilla Cornell in South Africa

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ABSTRACT: Drucilla Cornell engaged in scholarship and activism in South Africa for over a decade, and indeed she moved home from New York to Cape Town to participate more fully in the life and politics of the newly democratic country. This was not only a prolific period of scholarship and activism in her life, but also an inflection point in the country's nascent constitutional jurisprudence. In this article, we memorialize Drucilla's extraordinary contributions to the development of South Africa's constitutional order and of its legal academy. We situate these contributions in the broader set of concerns—about dignity and freedom, socialism and democracy, non-Western ideals, feminism, modernity, and the constitution of community—with which she had been engaged since the earliest days of her career. We include relevant anecdotes from her life in South Africa; not only her life as a scholar but also as a teacher, mentor, friend, and above all, a revolutionary activist.

KEYWORDS: Drucilla Cornell, ubuntu, South Africa, dignity, Kant, socialism

Introduction

Drucilla first visited South Africa in 2001, which marked not only the beginning of a prolific period of scholarship and activism in her life, but also an inflection point in the newly democratic country's nascent constitutional jurisprudence. It is difficult to think of more impactful examples of scholarship and advocacy than the multiple contributions Drucilla made to the development of South Africa's constitutional order and of its legal academy. In this article, we hope to recognize and memorialize just some of those contributions, and to situate

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them in the broader set of concerns—about dignity and freedom, socialism and democracy, non-Western ideals, feminism, modernity, and the constitution of community—with which she had been engaged since the earliest days of her career.

South Africa came to hold a special prominence in Drucilla's heart and mind; in some ways, she felt more at home here than in the United States, where she spent her final years. South Africa was important to her for two reasons. Drucilla described the first reason thus:

> South Africa was a particularly important destination to me, because it represented revolutionary possibility in a world that had seemed to have completely forsaken such possibility. . . . [T]o see revolutionaries . . . come to power in the government was truly exhilarating. (Cornell 2014, xi)

But the second reason, we hope to show, is that South Africa offered profound examples of—and profound challenges to—many of the major themes in her scholarship, which prompted her to develop (and in some cases revise) her ideas in ways she otherwise may not have. In this way, South Africa had as much of an impact on Drucilla's scholarship as did her scholarship on South Africa.

In discussing these reciprocal impacts, we include relevant anecdotes from her life in South Africa; not only her life as a scholar, but also as a teacher, mentor, friend, and above all, a revolutionary activist.

Her South African Life

We first encountered Drucilla at the University of Cape Town in our penultimate year of law school, when, as a visiting professor, she gave a lecture on Immanuel Kant's transcendental idealism. At that time—before Drucilla had taken us under her wing—we understood barely a fraction of her remarks. But several things were clear: that we were in the presence of a historically important intellectual figure, that her message was urgent, and that something big was about to happen to South African constitutional theory.

Drucilla moved to South Africa in 2007 to become the National Research Foundation (NRF) Professor in Customary Law, Indigenous Values, and Dignity Jurisprudence. To put this move in context, it is important to know that Drucilla was not an enthusiastic traveller. At home in New York, most of her life was lived within walking distance of her West Village apartment. This makes it all the more remarkable that she gave up her well-settled life, her friends, and her rich local academic community drawn from Rutgers University, New York

University, Columbia University, the New School, and other places besides, to relocate to South Africa in the name of joining the next phase of its revolutionary struggle: the struggle to realize socialism in one of the last places this still seemed like a near-term possibility. It is a sad irony that her time in South Africa was brought to an end by the financial crisis of 2008—the very expression of the economic system she had moved to South Africa to oppose—which prompted Rutgers to adopt a hiring freeze and recall her from extraordinary leave. She returned to the United States in 2010, though she returned to South Africa regularly and continued her intellectual engagement with it for the rest of her life.

Drucilla's work in South Africa was supported by the NRF and included funding for postgraduate work in Drucilla's research areas. We were lucky enough to be among the first beneficiaries of this funding. So began many years of working closely with Drucilla; at first as her students, then as research assistants and co-authors, and ultimately as friends and colleagues.

Drucilla was a committed teacher and mentor, as well as a rigorous and demanding scholar. Drucilla's writing is extraordinarily rich and lyrical, full of nuanced engagement with the most complex debates in Western (and in her later work, Africana) philosophy. But what truly distinguished her from so many other scholars was her ability to get in front of a room of working-class activists and first-year university students (always with a Diet Coke in hand and sometimes in the company of one of her favorite puppies, Chase) and, with colloquial language and vivid examples, distill complex ideas in a memorable and accessible way. One could not hear her speaking in these moments without feeling energized, without feeling smarter, and without feeling like a door had been opened. Drucilla was highly skilled in this kind of academic translation: one of her hallmarks as a scholar was her ability mediate conversation between Anglo-American and Continental philosophy, between European and Africana thought, and between the academy and the public.

As a teacher and mentor, Drucilla had a lucid sense of fairness, which was at times at odds with institutional rules. When we were law students at the University of Cape Town, the faculty had a policy that late submissions would result in a 5% deduction for each day the essay was late. During our final year, one of us submitted an essay four days out of time. The official penalty was an automatic 20% deduction off the final mark. When Drucilla lost her battle against this policy, she instead gave the essay 100%. This example illustrates Drucilla's commitment as a teacher, her laser focus on outcomes, and her loose relationship with bureaucratic rules (and hence her ability to chafe against institutions in a way that thrilled her students but sometimes irked her colleagues).

During our final year as law students in 2007, we co-founded and arranged an event called the Student Seminar for Law and Social Justice. We invited Drucilla to speak on the main panel, which otherwise consisted of white men. At the last minute we decided to move the panel from a more formal indoor setting to a fireside chat. Drucilla quietly let us know that this was a mistake: "Formality helps women," she said; informal settings reproduce rather than counteract existing social hierarchies. She apparently did not need the formality; she wiped the floor with these men anyway.

Drucilla really came alive in South Africa. We often got to experience a version of her that went beyond scholarship or the galvanizing of people around ideas. To spend time with Drucilla was to spend time with her dogs, which she referred to as the "individuals." She never found romance here, which disappointed her. But her life in South Africa was lived in color. She would go out dancing with one of us often. One of the dominant African languages in Cape Town, which is where Drucilla lived, is isiXhosa. She decided to take isiXhosa lessons so that she could communicate with local people in their language, as a sign of respect. (We are unable to report on how proficient she became.) South Africa also has a present rugby culture. Drucilla developed an affinity toward the game and was so invested in it—despite not knowing the rules—that she hosted a social gathering to watch the South African team play (and win) the World Cup final in 2007.

Dignity and Critical Idealism

As Drucilla took us under her tutelage, our first lessons were focused on Immanuel Kant. It is difficult to overstate the role of Kantian ethics in Drucilla's overall philosophy. It is something she returned to in her writing over and over again, and indeed it was scarcely possible to have a dinner with her in which she did not refer in one way or another to the kingdom of ends.

Kant's philosophy is notoriously complex; here is how Drucilla saw it.[1] For Kant, the distinctive feature of humanity is our ability to direct our actions in accordance with goals that we consciously set for ourselves. These goals may be of different kinds. On the one hand, our goals may be directed at our conception of the good life: a view that each of us has about what makes our lives worthwhile. My own conception of the good life includes a commitment to learning, and so I adopt goals that help me to realize that commitment (say, reading a certain book this weekend). Negative freedom, for Kant, is the ability to resist immediate desires and impulses (say, going to the beach instead) in favor of actions (actually reading the book) that will achieve such goals. Crucially, however, each of us has a different conception of the good life, and the

ends we adopt are frequently contingent on that conception and the specific circumstances under which we find ourselves at any given moment, and to that extent may not be shared by others. These ends give rise to what Kant calls "hypothetical imperatives": principles of action that make sense to adopt only *if* one has a specific goal in mind.

On the other hand, our goals may be directed at what Kant calls a "categorical imperative": moral laws derived from reason alone and which bind all of us irrespective of our distinct conceptions of the good life and our distinct circumstances, and which all of us ought therefore to adopt. Kant formulates this imperative in several ways. According to one formulation, we must act so that we always treat ourselves and others as ends and never merely as means to an end (Kant 2018, 42, 45). Another formulation enjoins us to act as if we are legislators in a "kingdom of ends" in which we lay down universal laws for ourselves and others in a way that harmonizes our competing conceptions of the good life (Kant 2018, 46). Our ability to self-legislate in this way is what Kant describes as positive freedom, and it is what confers our dignity or infinite worth. Drucilla summarizes this relationship between freedom and dignity beautifully:

> Human beings, for Kant, have dignity precisely because we are the ones who are able to exercise freedom both in a positive and a negative sense. But it is through the positive sense of freedom in which we as rational beings subject ourselves to a law of our own making and represent ourselves as doing so that freedom confers dignity on all of us as persons. (Cornell 2009, 25)

Indeed, it is only by setting aside our impulses and lower order desires in the name of doing what is right that we can know, or at least imagine, ourselves to be free. To quote Drucilla again:

> For Kant, when we act as moral agents we lay down a law for ourselves: a law that allows us to act at least as if we were free from the constraints of the real world around us and had the power to determine ourselves in accordance with what "ought to be" and what we "ought to do" in such a world. (Cornell 2009, 25)

For Drucilla, then, the importance of this Kantian conception of freedom is that moral obligation does not limit that freedom (at least not in any straightforward way), as might be supposed by Isaiah Berlin's negative conception of liberty as the absence of constraint (Berlin 1959). Instead, by incorporating within its very definition a mandate to respect the dignity of all others—which

is to say, respecting them as co-equal self-legislators in the kingdom of ends—freedom is necessarily bounded by the conditions of its own exercise.

In her lectures, Drucilla would typically drive this point home with colorfully detailed examples of sexual harassment. The general tenor of these examples was that a man who walks around the workplace groping his women colleagues is not acting freely in the Kantian sense but is instead, as Drucilla would say, "acting like an animal." Conversely, when he chooses to respect the dignity of his co-workers, he does not thereby curtail his human freedom but instead expresses it.

As we describe below, there are many aspects of the South African constitutional order which attracted and sustained Drucilla's attention. However, we think it fair to say that its dignity jurisprudence is what first drew her in. Dignity is writ large in the South African Constitution, both expressly and implicitly. Expressly, it is enshrined in the very first section as a founding value of the new South Africa (Constitution of the Republic of South Africa, 1996, s 1.). It is protected in section 10 as a self-standing right: "Everyone has inherent dignity and the right to have their dignity respected and protected." Section 39(1) requires courts to promote human dignity when they give content to the rights in the Bill of Rights, and section 36(2) provides that limitations of rights can be justified only if they can be viewed as reasonable in a society committed to dignity. Dignity also shows up implicitly, for example in the horizontality provision in section 8, which imposes human rights obligations on private actors. Drucilla saw this section as embodying the Kantian injunction to respect the dignity of all others (Cornell 2014, 12).

Unsurprisingly, given its prominence in the constitutional text, dignity became a focal point for the Constitutional Court in its early jurisprudence as it searched for adequate ways to describe the fundamental injustice of apartheid. This excerpt from the *Prinsloo* case, jointly written by Justices Ackermann, O'Regan, and Sachs, demonstrates the point:

> We are emerging from a period of our history during which the humanity of the majority of the inhabitants of the country was denied. They were treated as not having inherent worth, as objects whose identities could be arbitrarily defined by those in power rather than as persons of infinite worth. In short, they were denied recognition of their inherent dignity. (*Prinsloo v Van der Linde and Another* [1997] ZACC 5, para 31)

What was perhaps most significant for Drucilla about the Court's dignity jurisprudence was its explicit reliance on Kant to interpret that ideal. Justice

Laurie Ackermann led this charge, and Drucilla's engagement with his judgements was a significant chapter of her first years in South Africa. We describe further aspects of this engagement below. For now, we point to two of Justice Ackermann's interpretive innovations to which Drucilla frequently returned.

The first was Justice Ackermann's interpretation of the right to dignity in section 10:

> It is significant that section 10 first proclaims that "everyone has inherent dignity" before entrenching the right of "everyone . . . to have their dignity respected and protected." This underscores, in my view, the recognition by the Constitution that human dignity is not merely a protected and entrenched right, but that the concept of human dignity is definitional to what it means to be a human—that all humans have inherent dignity as an attribute independent of and antecedent to any constitutional protection thereof. It is, I would argue, accepted as a categorical constitutional imperative. (Ackermann 2013, 43)

Justice Ackermann here interprets the section in expressly Kantian terms, and interprets the clause disjunctively, such that it recognizes dignity as an ideal attribute of the person along with a right to the recognition of that attribute. It is an interpretation which Drucilla herself adopted wholesale:

> Justice Ackermann has explicitly introduced Immanuel Kant into the South African Constitution as an important secular justification for the understanding that dignity is an ideal attribution of all persons, and therefore it follows that all persons have intrinsic equal worth . . . . Justice Ackermann has it exactly right when he connects dignity with equal worth through his understanding that the possibility of acting morally and ethically is always one that anyone of us can aspire to. As an ideal attribution dignity can be violated and can be the basis of equal worth; but dignity is not something that can be lost. (Cornell and Fuller 2013, 8–9; see also Cornell 2014, 153–4)

The second innovation was Justice Ackermann's interpretation of the right to freedom and security of the person in section 11. Here he took a similar approach, once again adopting a disjunctive reading of the provision:

> I would, in the first place, read "freedom" disjunctively from "security of the person" in section 11(1). . . . The right "to freedom" must be construed as a separate and independent right, albeit related to the

> right to "security of the person." (*Ferreira v Levin NO and Others* [1995] ZACC 13, para 46)

And once again he drew inspiration from Kant in language echoing Kant's kingdom of ends:

> Freedom and dignity are inseparably linked. To deny people their freedom is to deny them their dignity . . . . Viewed from this perspective, the starting point must be that an individual's right to freedom must be defined as widely as possible, consonant with a similar breadth of freedom for others. (Ibid., para 49)

Drucilla was more critical here: she charged that Justice Ackermann had conflated Kant's conception of negative freedom with Berlin's negative liberty (among the most severe fighting words in Drucilla's arsenal) (Cornell 2009, 22–29).[2] She forgave him only because she took him as "seeking jurisprudentially to do something very difficult," namely to defend a "residual right of freedom" and, more broadly, to "defend dignity as the grounding ideal, or *Grundnorm* of the Constitution" (Cornell 2009, 22–23, 27). More on the *Grundnorm* below.

It was these and other invocations of German idealism by Justice Ackermann that led Drucilla to organize a conference in his honor (the first, we believe, that she hosted in South Africa). Her star power drew the participation of academic heavyweights like Frank Michelman, Jeremy Waldron, and Allen Wood, whose contributions formed part of an edited collection celebrating Justice Ackermann's jurisprudence (Barnard-Naudé et al. 2009).

Drucilla's critical engagement with Justice Ackermann sparked a deep friendship between them. We were lucky to be included in the Kant reading group that the two of them began around 2007 or 2008. It was clear to us that their bond had merely begun with a shared love of Kant, and that it came ultimately to be based on a shared worldview and mutual intellectual inspiration.

Her writing and activism around dignity was not limited, though, to her friendship with Justice Ackermann. Beyond the *festschrift* for Justice Ackermann, Drucilla also produced several other works on the Court's dignity jurisprudence. These included a two-volume casebook and, with one of us, a book connecting that jurisprudence with Ronald Dworkin's late-career turn to Kantian dignity as the foundation of his own legal theory (Cornell et al. 2013; Cornell and Friedman 2016). Drucilla also successfully forged relationships with other justices of the Constitutional Court. Foremost among these were her relationships with Yvonne Mokgoro, Kate O'Regan, and Albie Sachs, who were all the subjects of conferences organized, or collections edited, by Drucilla.

Ever the egalitarian, her focus was not limited to judges. She also led reading groups for the clerks of the Constitutional Court, hosted, in a sign of her ingenuity, in the chambers of the Court itself. One of us was working there at the time (the other would join later) and may or may not have had a hand in this infiltration.

Socialism and Democracy

For Drucilla, the core principle of socialism is captured in the well-known slogan: from each according to her ability to each according to her needs. She had been committed to socialist revolution at least since her undergraduate days at Stanford University, and it guided her subsequent work as a union organizer. (For Drucilla's fascinating account of her radical youth and her unusual path to the academy, see Cornell 2020). Since then, the elaboration of and advocacy for socialism has underpinned almost everything she has written, including her work on dignity. "[O]ne of the oldest tenets of the socialist left," she writes, is "that dignity and its violation demand a transformative economic reconstruction of society, so that lives no longer be buried under systematic deprivation and degradation" (Cornell 2014, 58).

For some Marxists, socialism is opposed to democracy and respect for individual rights. Drucilla has long argued that they are inseparable: true political equality and full political participation are impossible without social and economic equality; and conversely, a worthwhile version of socialism could not be sustained (or its content even discovered) in the absence of democratic rights. The very first piece she ever published argued that rights of democratic participation were not only consistent with but demanded by Marxism (Cornell 1984). This early preoccupation with the connection between socialism and democracy continued through her more recent engagement with Rosa Luxemburg (Cornell 2018, 7; Gordon and Cornell 2021). Luxemburg, a socialist, and one of Vladimir Lenin's most forceful contemporary critics, was committed to radical democracy and in particular to rights of expression and association. As she memorably put it:

> Freedom only for the supporters of the government, only for the members of one party—however numerous they may be—is no freedom at all. Freedom is always and exclusively freedom for the one who thinks differently. (Luxemburg 1961, 69)

Luxemburg valued democracy not only for its own sake, but also because it is only through democracy—and the constructive criticism of government policy

it enabled—by which a community, in Drucilla's words, can "create new institutions and new forms of life that would be worthy of the name socialism" (Cornell 2018, 7).

For these reasons, Luxemburg—and with her, Drucilla—rejected Lenin's conflation of the will of the people with the will of the Central Committee of the Communist Party:

> [T]he remedy which Trotsky and Lenin have found, the elimination of democracy as such, is worse than the disease it is supposed to cure: for it stops up the very living source from which alone can come the correction of all the innate shortcomings of social institutions. That source is the active, untrammelled, energetic political life of the broadest masses of the people. (Luxemburg 1961, 62)

For Luxemburg, a dictatorship of the proletariat was a necessary—but temporary—evil on the path to democratic socialism.

Given the reputational harm that socialism endured in the 1980s and 1990s, especially after the fall of the Berlin Wall, Drucilla worried that many on the left had lost their faith in the possibility—and necessity—of its realization. It is little wonder, then, that she was drawn to post-apartheid South Africa, where she saw a potential realization of the democratic socialism that she, with Luxemburg, had envisaged.

As noted earlier, Drucilla was drawn to South Africa in part because of the special role accorded to dignity in the South African Constitution. However, dignity had long played a role in constitutional jurisprudence elsewhere. It had, for example, been enshrined in Article 1 of the German *Grundgesetz* since the end of the Second World War. Shortly after Canada's adoption of the Charter of Rights and Freedoms in 1982, the Canadian Supreme Court embraced dignity as a foundation of its human rights jurisprudence (*R v Oakes* [1986] 1 SCR 103). Indeed, Christopher McCrudden argues that dignity has become central to the human rights jurisprudence of both international and domestic tribunals around the world (McCrudden 2008). So we think that the role of dignity in the South African constitutional jurisprudence cannot fully explain Drucilla's magnetic attraction to the country, even if the Constitutional Court, and especially, Justice Ackermann, was uniquely engaged in an explicit and extended conversation with the German idealism so dear to her. South Africa's gravitational pull for Drucilla depended also on her encounter with the African philosophy of ubuntu and its embodiment in living customary law (discussed below), but also, in large part, on its revolutionary struggle having been won

by a party expressly committed both to socialism and to democratic constitutionalism.

She saw both ideals expressed in the Constitution. She was impressed, for example, by the Constitution's array of enforceable socio-economic rights: a right to housing, to education, to food and water, to healthcare. She was even more impressed by the Constitution's horizontality provision, which obligates private actors to respect each other's human rights. This not only challenged a traditional liberal view of human rights as applying only to the vertical relationship between the state and its citizens, nor did it merely embody the relations of reciprocal recognition and obligation which alone constitute Kantian freedom. In addition, horizontality was a mechanism for realizing the social and economic equality demanded by the socialist aspiration at the core of the substantive revolution in South Africa. According to this "substantive revolution and its rethinking of the notion of the nation state and society," as Drucilla put it, "horizontality is not only a coherent ideal, it is mandated by the very idea of what this revolution entails" (Cornell 2014, 12). In a constitutional regime grounded in the values of dignity and ubuntu, this all made sense to Drucilla: "Together, these two ideals can help us . . . grasp our debt to the millions who have fought and died for a communal way of living, which some have called socialism" (Ibid., 49).

Sadly, as detailed in the work of Sampie Terreblanche—a South African economist and friend of Drucilla's—the South African government has thus far failed to make good on the Constitution's promise (Terreblanche 2012). As Nelson Mandela's legacy became subject to critical re-appraisal—in particular, his having signed South Africa up to the demands of the Washington Consensus—Drucilla shared in the growing concern that the ANC had given up its commitment to socialism. For Drucilla, though, the struggle was not over. She argued that "both dignity and uBuntu demand nothing less than that we examine the reasons for the failure of the constitution to deliver on its promise for a better life for everyone" (Cornell 2014, 123). She drew inspiration from the rise of the Economic Freedom Front as a political party and the continued activism of civil society movements, which kept the possibility of socialism alive. Never one to give up, she quickly aligned herself with these movements and began engaging with their leaders. Even after her departure from South Africa, she maintained her connection to these movements and continued to supply them with a rigorous intellectual foundation for their demands for a transformation of the South African economy.

Law and Morality

Drucilla was a lifelong critic of legal positivism. The precise content of this theory is contested.[3] Once again, here is how Drucilla saw it: "Legal positivism argues that legal systems are self-enclosed hierarchies that generate their own elements and procedures as part of the mechanism of the self-perpetuation of the system" (Cornell 1992, 101). Arguably, this somewhat mischaracterizes legal positivism. Positivists accept that the law must ultimately ground itself in norms outside itself, and to that extent accept that it cannot be a self-enclosed, self-perpetuating system. What they deny, however, is that the law grounds itself in *moral* norms. Instead, they argue, following H. L. A. Hart, that the law grounds itself in *social* norms, namely the shared norms used by political elites to identify the legal rules of their community (Hart 1994). Drucilla was concerned to contest this separation between law and justice, and in particular to contest the claim that a legal system grounds itself merely in matters of empirical fact: matters of convergent official behavior, the attitudes of those officials toward that behavior, and so on.

She contested that claim for at least two reasons. First, she argued that the interpretation and application of legal rules necessarily involves an appeal to the justice of those rules—an appeal which may be more or less successful (Cornell 1992, 101). Drucilla was interested in what that appeal involved and in the nature of the justice so appealed to. In her extraordinary book, *The Philosophy of the Limit* (1992)—one of her earliest and best-known works—she explored these interests through the work of Jacques Derrida and the German idealists, contrasting their approaches while also arguing that they shared an ethical project, and thereby challenging "the identification of deconstruction with ethical skepticism" (Ibid., 100).

Second—as many positivists have themselves recognized—grounding the law in social facts alone fails to explain the law's normativity, i.e., the way that law is supposed to provide us with reasons for action. Why should anyone obey a law simply because a certain class of people decides that this is how things are going to work around here? How is the tax official's demand for my money any different from the demand of a highway gunman? (Hart 1994, 19–20). How is a legislature different from a council of mafia bosses? How, to paraphrase David Hume's famous claim, can we derive an "ought" from an "is"? (Hume 1960). For Drucilla, a legal system that does not transcend social facts to ground itself in principles of justice is not merely an undesirable legal system, nor merely a defective case of a legal system, in the sense that it lacks a feature found in central cases of legal systems. Rather, it lacks the special normative force that law ought to have if it is to be treated by anyone as a reason for doing anything.

In thinking about how law and justice might be reconciled in the new South Africa, Drucilla drew mainly on the work of two thinkers: Kant, of course, and Hans Kelsen, whose legal theory bears a distinctly Kantian influence.

Kant distinguishes between the realm of internal freedom (i.e., of ethics) and the realm of external freedom which he calls '*Recht*' or right. The internal realm (discussed above) is where individuals engage in uncoerced self-regulation of their own actions according to the moral guidance of the categorical imperative. *Recht*, by contrast, refers to a legal system that coercively restricts our actions, together with, as Wood puts it, "the natural or rational basis of any such system" (Wood 2009, 54–55).

The relationship between these realms is contested in Kantian scholarship. Wood thinks they are "fundamentally distinct spheres" (Ibid., 54). For Drucilla, "there must be a connection between the two. If there were no connection, there would be no moral ground for the realm of external freedom in which we coordinate our ends with one another" (Cornell 2014, 155). As Drucilla saw it, "the realm of external freedom . . . , at least for Kant, is understood as a subdivision of the moral," such that the concept of dignity that gives content to ethical directives must more or less give content to legal ones as well: "[t]he realm of external freedom or *Recht* in Kant always turns on the recognition of the respect for all others. This respect is always a demand of any system of right" (Cornell 2009, 19 [internal quotation marks omitted]). In this way, the "dignity of the person is what can potentially tie together the two legislations in Kant . . . because it points toward the ideal of freedom in which human beings can actually seek to harmonize their interest in an ethical community or nation state committed to justice" (Ibid., 21). In Drucilla's view, it is only by seeking to ground itself in dignity that law becomes *Recht* and thereby gains the normative force that makes it a reason for action. As we will see, Drucilla understood South Africa to be a *Rechstaat* in these terms.

Kelsen, meanwhile, offers a neo-Kantian solution to the problem of normativity (Kelsen 1945). That problem can be viewed as follows (Ibid., 115). The creation of lower order legal norms in some legal system (by a certain number of people in a legislative chamber voting a certain way) is valid typically because it passes certain tests enshrined in higher order legal norms. Those higher order norms convey their binding normative force downward. Those higher order norms can transmit force in this way because they, in turn, pass the tests set by still higher norms. But eventually one reaches the top of this pyramid, and there are no further legal norms which can transmit their force down the chain. From where do those ultimate legal norms derive their force? Why is the law binding?

Kelsen argues that we must simply presuppose the existence of a basic norm or *Grundnorm* which has not itself been authorized by any other norm, but which is itself sufficient to authorize all the lower-order positive norms of the legal system (Ibid., 111 et seq). The content of the *Grundnorm* is sensitive to the specific features of the legal system it authorizes, and so varies from system to system. It may, but need not, be a norm with moral content.

These two concepts—of the Kantian *Rechtstaat* and the Kelsenian *Grundnorm*—were the lenses through which Drucilla viewed the South African Constitution. But here again, she was heavily influenced by Justice Ackermann's thinking. Drawing on another aspect of Kelsen's work—his theory of revolution—Justice Ackermann distinguished between revolutions of two types. In one kind of revolution, which Drucilla would later describe as a "procedural revolution," a legal order and all its existing institutions are overthrown and replaced in a way which the legal order does not itself anticipate (Ackermann 2013, 43). According to Justice Ackermann, South Africa did not experience a revolution of this type: "There was no discontinuous legal fracture with the old legal order. The revolution was commenced by a parliamentary statute of that old order . . . and controlled by it, and the Constitutional Court was created by it" (Ibid., 43). Instead, South Africa experienced what he called "a substantive constitutional revolution" (Ibid.). For Justice Ackermann, South Africa had become a *Rechtstaat*. As he put it:

> the Constitution is not a formal constitutional document limited to protecting individuals against the unconstitutional exercise of public power . . . . The Constitution also establishes an objective normative value system that, as an underlying constitutional value for all areas of the law, acts as a guiding principle and stimulus for the legislature, as well as for the executive and the judiciary. (Ibid., 42)

This objective value order was based on the "inherent values of dignity, equality, and freedom," and to that extent, "the previous constitutional disposition was turned on its head, and the content of the new constitutional dispensation differed radically from the previous one" (Ibid.). Much of the legal furniture from the apartheid area remained, as did all of the law on the books; but, as Kelsen puts it:

> It is only the contents of these norms that remain the same, not the reason of their validity . . . . If laws which were introduced under the old constitution "continue to be valid" under the new constitution,

> this is possible only because validity has expressly or tacitly been vested in them by the new constitution. (Kelsen 1945, 117)

Drucilla took Justice Ackermann's reflections and ran with them. She argued that the substantive revolution in South Africa "demands the complete overthrow of the nonethical relations between human beings that lay at the basis of South African society, in the name of the great ideals of the new constitutional dispensation: dignity, freedom, and equality" (Cornell 2014, 8). She expressly framed the substantive revolution in the language of the *Grundnorm*: "The substantive revolution inverted the order of apartheid which denied the dignity of the black majority, by making the respect for the dignity of all others the *Grundnorm* of the entire constitution" (Ibid., 96). And she connected this revolution in the *Grundnorm* to Justice Ackermann's interpretation of section 10 of the Constitution (discussed above):

> [O]n this reading of dignity as an ideal attribution, when a judge uses dignity as a constitutional imperative[,] that . . . judge is not locked into a kind of formalistic reasoning that says, "we respect the Constitution because it is the Constitution." Instead, we respect the Constitution because it embodies the values and ideals of a substantive revolution as well as dignity as the *Grundnorm* of the entire Constitution. And it is these ideals and values of that revolution that give us respect for the Constitution. (Cornell and Fuller, 2013, 9–10)

Here Drucilla returns to the question of law's normativity canvassed above:

> Thus, if the Constitution ceased to strive to embody the ideals of freedom and equality that, at least in Kant, are inseparable from dignity, then it would no longer be worthy of respect as the supreme law of the new South Africa that has undertaken a substantive revolution. (Ibid., 10)

For Drucilla, then, the South African Constitution is binding—its dictates are reasons for action—precisely because it appeals to and strives to embody the ideal of dignity.

Individual and Community

Since her earliest work, Drucilla had been interested in the ethical and ontological relationship between individuals and their communities. She argued against a liberal conception of persons as already fully autonomous beings in the state of nature who thereafter sacrifice some of their innate autonomy to

political associations. At the same time, she cautioned against a certain kind of communitarianism which treats the individual merely as a means to communal ends and which subsumes individual identity within a homogenous nationalism. In this way, she sought to navigate both the promise and peril of group belonging.

Drucilla's explorations of community frequently began with G. W. F. Hegel. (They often ended with her grandmother: a working-class feminist German immigrant with whom Drucilla had a special relationship, and who lovingly enabled some of Drucilla's early experiments with anti-authoritarian politics. Drucilla's grandmother was often used as an example, or cited as inspiration, for some extended point she was making about Hegel, like the time her grandmother helped a young Drucilla print some Hegelian extracts that she could share with boys on a first date.) Three aspects of Hegel's philosophy were especially important to her. We briefly describe them here, since they are closely connected to her engagement with ubuntu, which we discuss below.

First, Hegel sought to develop a non-contractualist understanding of community which simultaneously protected the private sphere. The argument by which he reaches this understanding is famously complex, beginning with *The Phenomenology of Spirit* (Hegel 1977). There, he relies on a dialectical method to explore our "self-consciousness," by which he means, roughly, the capacity for second-order reflection on our desires and beliefs which Kant had called autonomy and in which he grounds our dignity.

In the well-known *Phenomenology* chapter on the "master and slave," Hegel describes an inchoate understanding of autonomy which reduces other selves to objects for our use and control. This turns out to be a limited autonomy indeed. Since objects (rocks, cars, computers) do not look back at us, we lose the opportunity (in today's parlance) to "feel seen"—to be affirmed or recognized—by another self-reflecting person, and thereby to achieve a deeper understanding of our own autonomy. In this way, not only the value but also the full realization of our capacity for self-reflection depends on the recognition of that capacity by one who shares it. Moreover, it depends on establishing and maintaining the conditions (not least the abolition of slavery) that foster the other's autonomy. Thus, as Drucilla puts it, "not only is self-consciousness a social achievement, it is an achievement fully realized only in a relationship of reciprocal symmetry and mutual codetermination" (Cornell 1988).[4] In this way, "the demand for the actualization of individual liberty is also a demand for a properly constituted community" (Ibid., 1217). From here, Hegel's dialectic explores how communal relations of reciprocal recognition must be realized

in increasingly sophisticated ways, resulting, in Hegel's famous phrase (and a favorite of Drucilla's), in "the I that is we and the we that is I" (Hegel 1977, §177).

From this dialectic of autonomy follows the second aspect of Hegel's work which impressed Drucilla. For Hegel, the demands of justice cannot be known *a priori*, but only through reflection on the increasingly complex ways we might try to embody justice in our communal practices. As Drucilla described his view:

> Justice is freedom actualized. Justice for Hegel is not . . . an abstract external theory or the subjective opinion of the individual. Instead, relations of justice are themselves a social practice, embodied in the conception and in the institutional structure of a modern, bourgeois democracy. (Cornell 1988, 1188)

Thus, it is only by trying to do right by one another and reflecting on the shortcomings of those efforts that we can learn what justice truly requires of us.

Third, Drucilla was interested in Hegel's solution to the problem of normativity. In contrast to liberal social contract theory (even the Kantian version), in which the state, she says, "can legitimately defend its claim of obligation from its citizens only if such obligation can be justified on some theory of contractual consent," Hegel argues (in Drucilla's words) that the "state can legitimately demand the loyalty of its citizens only if it, in turn, has protected the conditions for the flourishing of individuality in and through the legally established relations of reciprocal symmetry" (Ibid., 1183). "In this sense," she says:

> the obligation to the state or community is fundamentally noncontractual. The individual is obligated to the state because it is the state or community that guarantees the limit to the sphere of private contract and that protects the very rights-bearing capacity essential to the maintenance of subjects capable of entering into reciprocally binding contractual relations within the private sphere. (Ibid., 1185)

Thus, for Hegel, the state can only demand obedience by striving to create a properly constituted community built on relations of reciprocal recognition.

We have called attention to Drucilla's reading of Hegel because of its striking similarities to the ethical ideal of ubuntu she encountered in South Africa, but also to highlight the ways in which the latter (to Drucilla's mind) improved on the former. Ubuntu refers to a humanist philosophy widely practiced in traditional African communities and known by that name in Southern Africa. It is a kind of shorthand for the expression "*umuntu ngumuntu ngabantu*," which means, roughly, that a person is a person through other people. Ubuntu, as

Drucilla conceived it, "is an activist virtue in which an ethical principle of humanness is brought into being and embodied in day-to-day relationships of mutual support" (Cornell 2014, 88). Unlike dignity, ubuntu is not expressly mentioned in the South African Constitution, but the Court has relied on it anyway. (See, for example, *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7 para 3). For Drucilla, this is yet more evidence of the attempt to ground the Constitution in ideals outside itself.

Like Hegel, ubuntu roots individual autonomy in relations of reciprocal recognition. It posits that "none of us can become a unique human being, individuated with our own road and destiny, without the constant support of others" (Cornell 2014, 69). For Kant (and liberal thought more generally), a person who is first conceived in individual terms becomes social only by taking on communal obligations in an imagined contract with others. In ubuntu, a person is first conceived in social terms—as already obligated to the networks in which they find themselves—and becomes an individual only by living up to those obligations and by being supported in the formation of their individual identity by their community. In Drucilla's words, "[t]here is a flow, back and forth, between the individual and others as he or she undertakes the struggle to become a person, always conceived ethically" (Ibid., 168).

Also like Hegel, ubuntu treats justice as something we come to know by trying to act on it and then reflecting on those actions: "what it means to be a human being is ethically performed, on a day-to-day basis, in a context, in which how we are supposed to live together is constantly evoked and at the same time called into question" (Ibid., 40).

Finally, like Hegel, ubuntu offers a non-contractualist answer to the problem of normativity. As Drucilla puts it:

> [E]ven the great Kantian hypothetical experiment in the imagination, in which we configure the conditions of the social contract rooted in the respect for all other human beings, still begins with imagined moral individuals. It is still individuals who agree to accept some form of coercion . . . . (Ibid., 167)

In ubuntu, by contrast, "[w]e are born into a social bond but it is not as if the social is something outside the individual. It is the network of relationships in and through which we are formed and whose formation is ultimately our responsibility" (Ibid., 167–8).

Although ubuntu overlapped with Hegel's philosophy in these ways, it also improved on it by countering some worries that Drucilla had about applying Hegel to post-apartheid South Africa. In the first instance, Drucilla wor-

ried about Hegel's potential to negate individual identity. In her earlier work, she had used Emmanuel Levinas and especially Derrida to resist a right-wing reading of Hegel which subsumes the individual within the community and thereby promotes a homogenous nationalism (Cornell 1992, chapters 2 and 3). In South Africa, however, she began thinking through this challenge using ubuntu and its embodiment in the living customary law of traditional communities in South Africa: a body of unwritten rules practiced by and unique to specific tribal or ethnic groups. These rules include not only what H. L. A. Hart would call "primary rules"—rules concerning, for example, who may inherit or who can be appointed as a leader of the community—but also secondary rules about how those rules are changed and adjudicated (Hart 1994).

In *Shilubana*, for example (a case in which Drucilla took great interest), a traditional community broke with recent practice to appoint a woman as their leader (*Shilubana and Others v Nwamitwa* [2008] ZACC 9). They argued that they were not only entitled to do so under the existing appointment rules as then understood by the community, but that they in any event had the power to develop their appointment rules to meet the Constitution's demand for gender equality. Although the community in *Shilubana* sought consistency with the Constitution, the case demonstrates the potential challenges that a body of unwritten legal rules poses to a positivist legal order based on the Eurocentric constitutional model of central authorities and written laws. Moreover, this alternative legal and political order, which exists within but potentially resists the dominant constitutional order, offers, as Drucilla saw it, a potent "political challenge to the traditional notion of the nation state" (Cornell 2014, xiv). In contrast to Hegel, this "tension between the new Constitution, the living customary law, and the democratic and ritualistic practices of specific communities and tribal affiliations disrupts the idea that the overlapping bonds and identities of South Africans can be ironed out into a field of homogenous individuals" (Ibid., 86). While Hegel's notion of a *Rechstaa*t could be read as erasing other forms of pre-national belonging, Drucilla argued that the continued recognition of these forms of belonging was crucial to any notion of *Recht* in South Africa.

This need to respect and maintain the identity of subnational groups is mirrored in respect for identity *within* those groups. Thus, although it is common to think of ubuntu as a strongly communitarian philosophy, Drucilla treats ubuntu as altogether rejecting the individual/community binary which has dominated European philosophy. While communalism may reject individuality, ubuntu does not. It thus recognizes the individuals that make up the collective; it seeks to deepen the respect for the individuated human being,

which necessarily requires respecting their dignity. Drucilla often argued that respect for dignity operates on two levels: a person's individual dignity, and their dignity as a member of the community. Ubuntu reconciles these aspects of dignity by protecting individuality within the context of the community. For this reason, Drucilla argues that ubuntu "is irreducible to our own liberalism/communitarian debate, because uBuntu carries with it a strong commitment to individuation and the realization of each person's capabilities, even if understood as a social project" (Ibid., 40). Ubuntu's demand that we uphold our obligations to others "is not altruism or sacrifice, because the other side of it is that others must live up to their obligation to us" (Ibid., 69)."We are all served," she says of ubuntu, "by living in an ethical community. So it is in our interest, understood in a particular way, to act ethically" (Ibid., 112).

Second, while Hegel's explanation of how an idealized "we" might be embodied in a modern democracy continued to be significant in her thinking, she objected to the idealization of community in post-apartheid South Africa:

> In the postcolony, and certainly in a country like South Africa, where *Sittlichkeit* and the ethical relation were radically shattered by the brutal realities of colonialism and apartheid, clearly the appeal to a "we" is a future aspiration, rather than an invocation of the actual existence of an ideal community such as in Hegel. (Cornell and Friedman 2016, 82)

In ubuntu, "ethical relatedness . . . is not some ontological shared reality, but something we struggle to bring about together" (Cornell 2014, 69–70).

Finally, Drucilla harbored a more general concern about overreliance on European thinking in a postcolonial context. While Hegel's dialectic "yields a form of constitutionalism, it is not a form that would be adequate to a constitution in the global South . . . because there are complex forms of belonging in African nation-states to which the Euromodern Constitution cannot be faithful" (Cornell and Friedman 2016, 59). Thus, although ubuntu overlapped with Hegel (and, as we show below, with thinkers like Kant and Luxemburg), she thought it would be perverse to allow these European philosophies to dominate our theorizing of African constitutionalism. Drucilla viewed ubuntu as a distinctly African justification for creolizing the new constitutional order, a justification with which Black South Africans were far more likely to identify than with any appeal to Kant or Hegel.

Beyond Hegel, ubuntu offers striking intersections with some of Drucilla's other longstanding concerns discussed above. First, ubuntu encapsulated Kant's concept of dignity (although in different terms):

> uBuntu clearly does not defend human dignity in the same manner as does Immanuel Kant, but what is important here is precisely that uBuntu can and does defend human dignity. Thereby it provides a powerful African basis for the acceptance of dignity as the *Grundnorm* of the constitution. (Cornell 2014, 90)

Second, the living customary law—not only in its nature as a dynamic, unwritten source of law, but also in its grounding in the ethical ideal of ubuntu—challenges the separation of law and justice which she associated with legal positivism. As a central tenet of the living customary law, ubuntu operates as a principle of adjudication, which demands an engagement with the law that steps away from a formal application of legal rules and instead places at its center the subject of the law: the human person (Ramose 2005). It also operates as an ethical demand in which the law must constantly seek to ground itself.

Third, ubuntu's demand to establish networks of mutual support entails a commitment to socialism. More than this, ubuntu's nature as a lived ethical ideal captures Luxemburg's idea that the true content of socialism can only be discovered by democratic experiments among the people.

Fourth, ubuntu's reconciliation of individual and community presents a solution to the longstanding debate within Western feminism, in which feminism is conceived alternately in terms of justice (namely, liberating women from socially-imposed burdens of marriage and motherhood) or care (which emphasizes the value of the situations of care in which women frequently find themselves). (For Drucilla's discussion of this debate and ubuntu's contribution to it, see Cornell and Van Marle 2005). For Drucilla, ubuntu offered a solution to this conflict because it treats justice and care not as opposites but as integral to one another. As she puts it: "uBuntu offers a notion of freedom that is different from the main definitions of freedom that feminists in the West have taken for granted," in that it "take[s] certain socially prescribed performances as necessary to self-realization" (Cornell 2014, 129). At the same time, "[w]e can only act caringly toward an individual, in terms of uBuntu, if we also treat them with dignity and aspire to a just relationship with them" (Ibid., 112). Importantly, too, Western feminism had ignored the intersection between gender and race. In a piece with Karin Van Marle, Drucilla described the debate which erupted in the United States when African feminists argued that they "were simply being ignored and the questions of anti-black racism and racism against all people of color had to be confronted if there was to be a meaningful alliance between women of color and white women" (Cornell and Van Marle 2005). For Drucilla, ubuntu bridges the cleavage because as an ethic, it inher-

ently rejects racism. Ubuntu is inclusive both at the level of the individual and that of the community.

Finally, ubuntu intersected with another theme in Drucilla's work, which was her expanded reconfiguration of modernity and who or what it might include. In her earlier work, she offered a ground-breaking reading of modernity that would include Derrida as one of its foremost thinkers.[5] Or, to put it another way, she offered a reading of Derrida's ethical thought which treated him as continuing, rather than breaking from, the legacy of modernity. This approach to modernity is echoed in her work on South Africa, where she sought to position ubuntu as a modern ideal and African customary law as a modern legal system. As for the former, she stressed that "African modernity is *sui generis*, and therefore ideals like uBuntu, and the whole body of work that has come to be known as Africana philosophy, is thoroughly modern" (Cornell 2014, xiv). As for the latter, she argued that "it is a serious error to designate the living customary law as pre-modern. It is as modern as the other sources of law in South Africa" (Ibid., 140). Drucilla saw the relegation of the living customary law to pre-modernity as both racist and violent; it signaled the subordination of African people into a normative order established and maintained by Europeans.

Drucilla's work on ubuntu demonstrates her activist approach to scholarship. Early on in her time in South Africa, she formed the "Ubuntu Project," which was later funded through her NRF chair. There were three aspects to this project. First, the project funded ethnographic work to understand the meaning and significance of ubuntu in South African communities. Second, the project hosted regular conferences, frequently attended by Justices of the Constitutional Court, and generated a large body of philosophical and legal scholarship (like the volume she produced in collaboration with one of us) (Muvangua and Cornell 2012). Third, the Ubuntu Project was conceived not only as a research project but also as an advocacy organization. Drucilla rejected the idea of the Ubuntu Project as a neutral, objective research program. Instead, the project advocated for the recognition of ubuntu in the law of South Africa (or, as she preferred to say it, recognizing law in the ubuntu of South Africa). In this way she became, in her own words, "an advocate for the reconstitutionalization of uBuntu, well aware of how such constitutionalization would change the meaning of uBuntu if it were legalized on that level. It would also be a step in 'indigenizing' the South African Constitution" (Cornell 2014, xii).

In this regard, Drucilla came to understand the importance of historically Black universities as a site of political activism and transformation in South Africa. For this reason, the later years of the Ubuntu Project were focused on the University of Venda, where a series of conferences was held. When the con-

ference was cancelled one year due to nationwide student strikes in the wake of the Rhodes Must Fall movement, Drucilla's suggestion, which was forcefully argued but ultimately voted down, was to repurpose the conference into a march alongside the students. This was but one example of her scholarly activism and her desire to connect with grassroots revolutionary movements.

Her work on ubuntu also reveals Drucilla's admirable capacity to reinvent herself. As she put it: "[i]t was only once I was working on the ground in South Africa . . . that I came to see the need to begin a long process of education into Africana philosophy. There is no way I could come to grasp the significance of uBuntu in South Africa without completely reeducating myself" (Ibid.). Moreover, the project required "rethink[ing] some of our deepest assumptions about research, objectivity, theory, and what it means to be a theorist in the collective struggle to fight against the erasure of indigenous values imposed by colonialism" (Ibid., xiii). These personal reflections underscore the extent to which South Africa was a turning point in Drucilla's scholarship. In the wake of the brutal police murder of George Floyd in the United States and the Rhodes Must Fall movement in the United Kingdom and South Africa—both of which have forced a renewed public engagement with decolonization—Drucilla offers an inspirational example of how white scholars can take seriously their obligation to engage with indigenous philosophies and communities.

In this regard, it is worth mentioning another South African Constitutional Court case, *AZAPO*, which was of great interest to Drucilla (*Azanian Peoples Organization (AZAPO) and Others v President of the Republic of South Africa and Others* [1996] ZACC 16). This case was concerned with the creation of the Truth and Reconciliation Commission (TRC), an institution empowered to grant amnesty to apartheid agents who testified honestly about their crimes, and which was critical to the negotiated peace settlement between the apartheid government and the ANC. *AZAPO* involved a challenge to the constitutionality of the TRC's amnesty power by families of those who were murdered or tortured during apartheid. Drucilla defended certain aspects of the Court's decision to uphold the amnesty power, but some of the Court's reasoning drew her criticism. The problem with letting white people off the hook, she said, "at least if one takes uBuntu seriously, is that one cannot engage in the repair that restores an individual person or group to their ethical connectedness to other human beings. So it is a loss in a profound sense, ethically, to be released of one's responsibility for wrongdoing" (Cornell 2014, 72). To us, this passage perfectly unites Drucilla's philosophical views about ethical community with her vigorous embrace of political activism during her time in South Africa. Against the background of historical and ongoing suffering that white communities have inflicted on

Black ones, Drucilla felt she could only reconnect with her own humanity by taking responsibility for that suffering and working to counteract it. In this regard, Drucilla again offers a stunning personal example for how white people in general, and white scholars in particular, can practice a more ethical relation to the communities in which they find themselves.

Conclusion

In 2004, before she moved to South Africa full time, Drucilla spent several months training with a *sangoma*: a shaman-like traditional leader, recognized by various Southern African tribes, who is skilled in healing, divination, and ritual. In her role as the *sangoma*'s assistant she officiated queer polyamorous marriages, supported the *sangoma* in performing last rites at funerals, and witnessed many spiritual practices besides (Lewis and Charen, 2013). This was a profoundly influential and moving experience for Drucilla; and certainly, for a well-to-do, middle-aged, single mother from New York's West Village, an unexpected one. It speaks to the radicalism of her academic practice and her desire to understand and be part of all aspects of South African culture.

Drucilla later became engaged with same-sex *sangoma* associations, which she took to exemplify the politically progressive elements already present within traditional communities. One of her most famous contributions to feminist theory is the "imaginary domain": the right to a "psychic and moral space in which we, as sexed creatures who care deeply about matters of the heart, are allowed to evaluate and represent who we are," a space which resists the socially-imposed "conception[s] of good, or normal, sexuality as a mandated way of life . . . [that] stifle our choices of how we want to live out our sexuality and express our love" (Cornell 1998, x; see also Cornell 1995). It is little wonder, then, that she was so taken by the story of Nkunzi in particular, a queer *sangoma* who was identified as a woman at birth but whose primary ancestral spirit was a man, who possessed her and shared her life with her and against whose misogyny she struggled daily. Drucilla wrote extensively about Nkunzi's engagement with her ancestor and its role in her self-understanding of her sexuality and inter-generational ubuntu (Cornell 2014, 141–7). (For Nkunzi's own account of her story, see Nkabinde 2008). For Drucilla, ancestral possession is a rich notion: it captures the fraught decision of whether to accept or try to change the difficult parts of our psychological inheritance; as a component of ubuntu, it demands an engagement with our debt to those who came before even as it engages our responsibility for those yet to come; and above all, it offers the possibility of a life beyond life, of remaining part of a community as a source of inspiration and guidance long after our earthly bodies forsake us.

As we grapple with the unfathomable loss of Drucilla's passing over into the world of the ancestors, it is at least some comfort to us to think that she will someday inhabit a young scholar or activist as their primary ancestral spirit. We hope they will be ready; they are not going to know what hit them!

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NOTES

1. For concise statements of her interpretation of Kantian dignity, see Cornell and Fuller 2013 and Cornell 2009, 24–7. See also Cornell 1987 and Cornell 1985. For Kant's own discussion of these matters, see principally Kant 2018.
2. For Justice Ackermann's comparison between Kant and Berlin, see *Ferreira v Levin NO and Others* [1995] ZACC 13 para 52.
3. The tenets of legal positivism, and Drucilla's views on it, are complex and debatable. In the first instance, two theorists on whom Drucilla frequently relies—Kant and Hans Kelsen—are usually identified as positivists. See Waldron 1996 and Raz 2009. Moreover, positivists have lately denied a general separation between law and morality, defending only the narrow claim (which Drucilla does not obviously dispute) that an unjust law is still a valid law. See, for example, Gardner 2001. These matters are beyond our scope here.
4. Drucilla emphasizes that this is not only an ethical relation for Hegel, but an ontological one: "Mutual codetermination is not just an ideal; it is the reality of who we are as members of the state" (Cornell 1988, 1191).
5. Derrida was Drucilla's good friend and the godfather of her daughter, Sarita. Drucilla organized several important Derrida conferences at Cardozo Law School in the early 1990s, which are widely thought to have influenced his turn toward the ethics of deconstruction.

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