

Book Review: Free Country: Selected Lectures and Talks by Sydney Kentridge QC

by Blog Admin

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This collection of lectures and talks by Sydney Kentridge QC includes memorable and often moving accounts of his experiences as an advocate practising in South Africa under a legal system which not merely permitted racial discrimination but required it and in which, for political cases, many of the protections essential to a fair trial had been abolished. Wider topics addressed include the ethics of advocacy, freedom of speech, the rule of law and the selection of judges. Ruth Houghton believes the collection will appeal to those interested in freedom of speech and constitutional law.

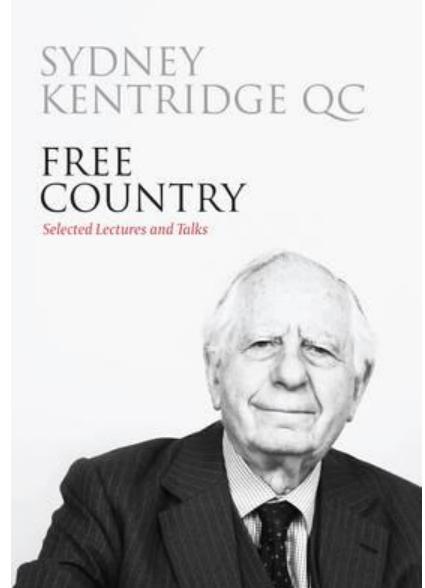


Free Country: Selected Lectures and Talks. Sydney Kentridge QC.
Hart Publishing. November 2012.

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'Free county, Chief', the punch line to the anecdote Sydney Kentridge QC tells at the end of his opening address at the 2007 Bar Conference in London. When John Foster QC said those words to the Lord Chief Justice he summed up, neatly, the independence of the Bar and the legal profession.

Sydney Kentridge QC, a highly respected advocate, has represented three Nobel Peace Prize holders; Nelson Mandela, Archbishop Tutu and Chief Albert Luthuli. Spanning 30 years of practice, Kentridge has collected snapshots from his work as an advocate in Apartheid South Africa and the UK. Judging from some of the lecture titles this collection could pose as a how-to-guide for aspiring advocates; 'Law and Lawyers in a Changing Society', 'The Ethics of Advocacy', 'A Barrister in the Apartheid Years'. It is, however, more than that. Kentridge's lectures debate the rule of law and freedom of speech with an overriding lesson on the independence of the judiciary.



The lectures are permeated with a troubling anxiety, the role of the advocate in the credibility of an oppressive regime. Mr Joel Carlson, a South African attorney thought his work was 'assisting the [Apartheid] regime to present an overall image, at home and overseas, of judicial integrity and a fair legal system'. Kentridge rejects this, emphasising his duty to his clients who required representation. Developing the role of the advocate, Chapter 5: 'The Ethics of Advocacy' is an elaborate explanation of the cab-rank rule. A hollowed principle of the Bar, Article 601 of the UK Bar Code of Conduct states a barrister cannot refuse a case 'on the ground that the nature of the case is objectionable to him'. Kentridge presents it as being both a shield and a weapon. During the Apartheid in South Africa the cab-rank rule became a life-line; defence barristers, such as Kentridge, relied on the rule's protection as it enabled them to take on political cases.



The South Africa that Kentridge describes had the potential to undermine safeguards in place for advocates. Kentridge, talking about government lawyers, said they '[...] would take on those cases without, apparently, any qualm of conscience'. Principle 18 of The Basic Principles on the Role of Lawyers states that lawyers shall not be identified with their clients or their clients' causes. Naturally, given the context, these lawyers have been condemned, but in doing so the safeguards in place to support defence counsel against oppressive regimes are weakened. These moral dilemmas are more troubling because they are not

artificial. In a book that staunchly defends independence, this example demonstrates that the codes of conduct cannot always provide adequate answers.

Judicial independence is a recurring theme throughout the lectures. Sir Gerard Brennan said of judicial independence that it 'is not proclaimed in order to benefit the Judges; it is proclaimed in order to guarantee a fair and impartial hearing an unswerving obedience to the rule of law'. However, Kentridge's personal anecdotes show that there is an overlap with the personal benefit to the judge and the protection of the rule of law. In Chapter 7: 'A Judge's Duty in a Revolution', Kentridge recounts the case of *Madzimbanuto*. His aim is to show how the interference with judicial independence led to the judiciary giving recognition to an otherwise unlawful government. Alongside these constitutional implications he also highlights the personal effects, noting the resignation of Judge Fieldsend. Reminding the reader that the judiciary is not only an institution, but one made of people, the independence of the judiciary 'depends first on the integrity of the judges', which he challenges throughout the chapter. The highly personalised account differentiates Kentridge's discussion on the rule of law from other academic works.

Kentridge's lectures, though repetitive in their themes, are harrowingly applicable to today's constitutional reforms and debates, such as the debate on the Bill of Rights and the expansion of the special advocate procedure. Secret evidence and Terrorism laws are addressed in Chapter 10. The book is scattered with words of warning and Kentridge noted, some twenty years earlier that 'one should not expect too much from even an entrenched bill of rights'. In light of the ongoing debate about the dangers to civil liberties that secret evidence poses, perhaps Kentridge is too blunt when he denies these challenges as 'nonsense'. But Kentridge approaches British constitutional debates moulded by his experiences in South Africa, and invites the reader to get a sense of perspective.

Somewhat irksome are the out-dated theories and approaches to human rights in the book. As a journey through the history of South Africa, it is not surprising that in parts these approaches are buried within Kentridge's speeches: "It is surely right that Western countries, if their professions are sincere, should use what influence and power they have to persuade other countries of the value of these rights and to induce them to recognise and protect them".

With due respect to Kentridge, as he alluded prior to this statement, it is now accepted that 'inducement' is no longer an effective means of human rights protection as it connotes Western imperialism. Throughout these historical lectures that are shaped by experiences in the late 1970s, the reader is offered a trajectory to the present day on discussions on civil liberties.

Appealing to a reader interested in constitutional law, the relationship between the state and the individual and civil liberties, this refreshingly personal selection is highly thought provoking. Reeling from the depiction of an awful past, the reader is left to ponder the changes to evidence and rights that the British Government now seek to implement. Kentridge QC leaves the reader asking what it truly means to be in a 'Free Country'.

Ruth Houghton is currently studying for an LLM at UCL. In 2011 she graduated from The University of York with a degree in English and History and subsequently completed the Graduate Diploma in Law at The University of Birmingham. Her current research focus is on the UN Human Rights Council with a particular interest in theories of democracy and politicisation. [Read more reviews by Ruth](#).