

Mathews, A.S., LAW, ORDER AND LIBERTY IN SOUTH AFRICA. Berkeley, California, University of California Press, 1972, xx, 318 p.
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The main focus of Professor Mathews' study, "Law, Order and Liberty in South Africa", is upon the complex of extreme repressive legislation which is termed "internal security legislation". Repressive laws are no novelty in South Africa. White privilege and economic advantage have consistently depended on black subjection and regimentation. The racial laws designed to achieve this have been in the past so framed that basically the liberty of white members of the society was not circumscribed. Faced however with increasing black resistance to inequality, the regime has unleashed a flood of legislation which in its ferocity has removed even the relative freedom and legal immunity hitherto enjoyed by the whites, in keeping with their traditionally favored status. The author characterizes the present situation as follows:

For the white members of the South African society, basic rights are in many instances precarious privileges which they may exercise so long as they are not in fundamental opposition to the ruling party. (p. 292)

The full impact of the "security laws", however, falls on the black majority, and only incidentally on those few whites who avowedly support or are perceived by the regime as supporting fundamental black aspirations.

The details of these "security laws" are expounded at length in the book, and the author provides a searching exposition of the enactments which have consolidated authoritarian rule and under which the regime has assumed virtually unlimited police powers. The main laws reviewed are the Suppression of Communism Act and the companion Unlawful Organizations Act, various Detention Without Trial laws, and laws enacting specific "political crimes". The most far-reaching of these "security laws" is the Terrorism Act of 1967, which, *inter alia*, unequivocally spells out police powers to hold any person under secret incommunicado detention indefinitely, and establishes the virtually limitless crime of "participation in terroristic activities".

Professor Mathews methodically explains the manifold provisions

of these statutes, listing the penalties to which opponents of the regime can be subjected, both judicially and extra-judicially. The extra-judicial punishments include severe restrictions on movement, including house arrest, bans on communicating with others, curbs on association, employment, speech and publication, and, in fact, on most forms of human relationship. The most drastic extra-judicial punishment, is, of course, indefinite detention, which has been notable for the extensive testimony of police torture, and the known deaths of 18 detainees.

None of these sanctions are subject to court challenge or judicial scrutiny, and those affected are neither entitled to a hearing nor to demand the reasons for the official actions against them.

Judicial punishment follows upon a formal trial, but the possibility of avoiding judicial punishment on "security charges" is severely limited by the breadth of the crimes created by statutes such as the Suppression of Communism Act and the Terrorism Act.

Thus the crime of promoting the objects of communism rests on a definition of the doctrine as including "any system which aims at bringing about any political, industrial, social, or economic change within the Republic by the promotion of disturbance or disorder, by unlawful acts or omissions or by the threat of such acts or omissions, or by means which include the promotion of disturbance or disorder, or such acts or omissions or threat."

As the author comments:

...any programme which challenges the apartheid policy of the government by means which include a breach of laws (for example the pass laws) will make those who take part in it, or who advocate it, criminally liable for having furthered the aims of communism. (p. 99)

The main offense under the Terrorism Act -- participation in terroristic activities -- is similarly constituted by "any act". Once the prosecution has established the commission of an act, the defense is obliged to prove (the onus being on the defendant) beyond reasonable doubt that he, or she, did not intend any of twelve listed categories of results. These categories

include "embarrassing the administration of the affairs of the State." As the author observes:

The fact that any act, whether lawful in itself or not, may be the foundation for a prosecution means that any human activity, including speech or writing, could be a terroristic act.

The offense carries discretionary capital punishment and a minimum sentence of five years imprisonment (none of which can be suspended).

As stated, Professor Mathews has stressed that this modern security legislation strikes not merely at the disenfranchised black majority, but also threatens privileged whites as well. In fact, this might be said to be the message of the work, which pleads for the gradual grant of ameliorated conditions to the black majority.

The latter have never enjoyed "liberty" and have always been subject to a complex of "law and order" measures regimenting their lives. The present security legislation sweeps away certain standards which had hitherto been maintained, even for blacks, such as habeas corpus, but for the non-white majority the change brought about by the new legislation is rather of degree than of kind. This, however, is likely to escape all but the most careful readers of Professor Mathews' book.

A section of the work of special interest in the context of this review is entitled "Legislation concerning Africans and African Areas". In this part the author touches on the laws relating to "security" which have specific reference to Africans and operate exclusively in African areas. The most significant of these are the Transkei Regulations which were enacted in 1960 -- under decree powers conferred by a 1927 Statute -- and which are still in force today. These regulations include the oldest of the existing detention without trial provisions, operative now for over twelve years. The regulations also impose "an iron control over meetings", generally outlawing meetings of more than ten persons. All those who convene, hold, allow, or participate in such meetings may be subject to heavy penalties.

Also penalized are statements or acts likely to have the

effect of interfering with the authority of officials or government appointed chiefs and headmen. Professor Mathews observes:

The apparent purpose of the prohibition is to throw a mantle of infallibility around the State and all its officials...and to exact from the population the unquestioning obedience to authority that is enforced in military establishments. (p. 244)

Boycotting an official meeting, threatening anyone with inconvenience, refusing to obey a chief or headman, treating a chief or headman disrespectfully or failing to show to him respect or obedience, are all made criminal offenses under the regulations. Furthermore, authorized chiefs may compel a person to remove himself, his household and his belongings, and thereupon demolish without compensation, the affected person's dwelling.

Chiefs are also vested with power to try cases involving breaches of the regulations, including cases involving subversion of their own authority, and to impose punishment beyond their normal jurisdiction. Professor Mathews comments:

The abrogation of rights and liberties authorized by the regulations would be extreme even if they were strictly limited to periods of genuine unrest. Their application for ten continuous years in the Transkei puts a serious question mark against the 'self-government' experiment which has been introduced there. (p. 247)

Professor Mathews does not include any analysis of the role of chiefs and headmen in maintaining "Law and Order" in Black areas, nor any evaluation of the Bantustan policy in the general scheme of preserving "security". This is a significant omission and points to the need for a serious legal study in this area, particularly with the accelerated establishment of fragmented Bantustans, including in the international territory of Namibia.

A final comment must be made on the author's own perspective. (The work is actually one of a series called "Perspectives on

Southern Africa"). His emphasis on the extreme aspects of the authoritarian order has already been noted. With regard to the future, the author expressly rejects a policy of granting of immediate democratic rights and liberties to all, favoring, as mentioned, instead a gradual extension, under white control, of political rights to blacks. Thus, although protesting against many features of South African "law and order", and despite risking official disfavor (or worse) the author still shares prevailing white apprehensions over granting unrestricted liberty to blacks.

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