

members of the Council lacked the support of the people. What was essential was an organisation through which the Indian people could express its views. The revival of the Natal Indian Congress fulfilled this long felt need.

The Natal Indian Congress is committed to the realisation of a democratic society in South Africa. It believes that only a government based on the will of all its people will be able to bring peace and racial harmony. In this regard our organisation has sometimes been criticised for restricting its membership to Indians although it advocates the democratic and non-racial idea.

PRACTICAL AND REALISTIC

The restriction of the members of Congress to Indians is not due to any racialistic or sectional beliefs. It is our belief that at this stage it is practical and realistic to limit our members to Indians. Because of Government policy, the different races in South Africa have been separated and have lived apart for a number of years. In view of this it would be difficult and unwise, at this stage, to form an

organisation representing all the races. It is unlikely that such an organisation would get massive support from the different races.

Although our membership is limited to Indians, we have always made it clear beyond any ambiguity that our aim is to create a society in which the idea of liberty, equality and justice will prevail.

Our rôle therefore is to inspire the Indian people to strive for a united democratic South Africa. The grievances of the Indian people are linked with the grievances of all the other oppressed people. It is the duty of Congress to drive home to the Indians that their problems cannot be divorced from the problems of other oppressed races. South Africa belongs to all who live in it. Congress will co-operate with the organisations of all other oppressed peoples and all democrats in its struggle for liberty and justice. Constant co-operation with people or organisations of other races will no doubt pave the way for the creation of a democratic organisation consisting of human beings and not a particular racial group.□

THE RULE OF LAW

(A review of Law, Order and Liberty in South Africa,

by A.S. Mathews)

by Edgar H. Brookes



Prof. A.S. Mathews

Professor Mathews, whose name will be known to many readers of "Reality" has in his "Law, Order and Liberty in South Africa" written a legal classic. This work, the result of full and painstaking research, will be studied for many years to come. It is divided into three parts. The first is an attempt to define what is meant by the Rule of Law. The second is a full study of South African internal security legislation. The third is an attempt to assess the rôles of freedom and order in a democratic society on the basis of the two previous studies.

Of these three parts, incomparably the most valuable is the second. It is not that the first and the third sections are poor. On the contrary they are most stimulating and thought-provoking; but they deal with theory, and it is possible for a liberal thinker to differ from Professor Mathews on theory. The second deals with facts, on which no man can challenge

Professor Mathews' reliability. The facts are given in full, legal cases are quoted and examined, and the results are devastating. Part II shows South Africa up as perhaps the most controlled country in the world, certainly in the world, of parliamentary democracy. This is what Professor Mathews says (p.300-1) :-

“The key measures of the South African security programme are in form indistinguishable from other laws. There being no time limit on their operation, they have become part of the regular law. True security laws are always temporary because their aim is to eliminate crisis, not to perpetuate it. In his discussion of emergency dictatorship, Clinton L. Rossiter says: ‘The only reason for its existence is a serious crisis: when the crisis goes, it goes.’ The South African legislation does not look forward to the end of the emergency; it assumes that the emergency is permanent. The following description of crisis rule in totalitarian societies is applicable almost without qualification to the present situation in this country: ‘Yet it is only in totalitarian régimes that a continuous state of emergency is maintained, a sense of permanent revolution, a belief that there is a continual desperate struggle against traitors within and aggressors without, which is often maintained quite artificially, though seemingly is a device of government essential to such régimes’ The reason why the emergency is permanent in South Africa is that the government is committed to maintain, not eliminate, the deficiencies in the social system.” This is one of the most important statements in a work packed with important statements.

CLARIFIES TERM

In Part I of his book, Professor Mathews endeavours to clarify the meaning of the term “Rule of Law”. In a series of arguments fascinating to students of jurisprudence and political science, he strives to work out an explanation which will be thoroughly satisfactory in a legal context. He points out the deficiencies in Dicey’s classical pioneering analysis of the subject, but does full justice to the value of his exposition. He criticises the Delhi statement of the International Commission of Jurists, which attempted to include economic justice in its exposition of the Rule of Law. Not everyone will agree with his criticism but it is worth reading, for he is anxious to strengthen loyalty to the Rule of Law and feels that to turn it into a programme of human rights may weaken its case among many lawyers. He convincingly disposes (p.3) of definitions which leave the Rule of Law purely formal without any analysis of the kind of law which is to rule. This reviewer, at least, feels that he rejects the idea of natural law (p.1) in a somewhat cavalier fashion, and he makes no mention in his bibliography of the one South African book which has something to say for it (“Civil Liberty in South Africa” by E.H. Brookes and J.B. Macaulay). Still, as he has read Jacques Maritain’s “Man and the State” he ought not to be without adequate information on the subject. It would seem that he is anxious to exclude all such interpretations of the Rule of Law as may introduce social, political or ethical theories and to find a definition which is, however

clear and compelling, purely legal. This definition he gives in Chapter V.

PROBLEM OF MEANS

In Part III of his work, Professor Mathews faces the problem of the means whereby a South Africa accepting the Rule of Law is to be built out of the autocratic and security-ridden South Africa of the present time. He rightly rejects John Stuart Mill’s theory that a uniform nationality is needed for the full success of free institutions, citing Britain, Canada and Switzerland as examples to the contrary (p. 304) – but he feels that the divisions of South Africa go so deep that some degree of caution is necessary in carrying out a full programme of democratic rights and liberties (p. 309). At this stage he begins to deviate from orthodox liberalism. He says: “Many liberals have too readily accepted the belief that the extension of rights, if accompanied by constitutional guarantees, will of itself guarantee the successful working of free institutions. It is an assumption of this chapter that the social groundwork for a transfer of power must be carried out prior to, or simultaneously with, far-reaching political changes.” This is to commit himself to the Booker T. Washington view that social and economic advance will win the franchise, as against W.E. Burgadt Dubois’ view that only the possession of the franchise will make full economic progress possible. Most American blacks would support the latter view.

Despite these criticisms many of us will accept the view that the vast political changes which are needed will achieve maximum results if they are introduced by stages. But he goes on to say (p. 310-11): “The advocates of the integrated society might concede that the development of some separate states within a federal framework could possibly offer a limited fulfilment of some black aspirations whilst simultaneously tempering white fears.” **This dangerous attitude has also found expression in the Second Report of Spro-cas. We may agree to use the “homelands” policy as a method of hoisting separatism with its own petard, but an argument which would align liberal thinkers with verligte nationalism rather than the Progressive Party demands at least careful examination.**

Notwithstanding this criticism, the fact remains that we have here a major work of legal learning of which liberal thinkers will be proud and for which they will be thankful. The ruthless nature of South Africa’s security legislation, which does tend to equate opposition with subversion, demands from us all greater knowledge, clearer thinking and more resolute determination, and these Professor Mathews’ book will help us to build up within ourselves and in others.□