

HONORARY GRADUATE

Anthony Stuart Mathews

The South African legal system has been seriously compromised by apartheid. When laws denying equality before the law and individual liberty were first enacted they were vigorously challenged by judges (notably Schreiner and Centlivres) and the legal profession. After L C Steyn became Chief Justice in 1959 and the impact of political appointments to the Supreme Court bench became felt, the voices of dissent within the legal profession became muted. This was particularly true of the universities, as legal academics turned to the politically safe areas of private and commercial law. Notions of equality, liberty and fairness, upon which the Roman-Dutch common law is founded, were in danger of becoming abrogated by neglect. At this point a solitary voice from Natal - that of Anthony Stuart Mathews - began to question not only the laws but those who were entrusted with their application - the judges. In a substantial body of scholarly writings on the security laws and their judicial interpretation, he challenged the subservience of the legal profession and academic lawyers to the apartheid legal order. Inspired by his writings, other legal academics joined him in questioning the laws and those who applied them. The values of our legal heritage were reaffirmed and the nucleus of a human-rights culture created, which today offers hope for the Rule of Law in a post-apartheid society. The implementation of this ideal is beset with obstacles, but as South Africa embarks upon this course, it is appropriate to honour a person whose intellect and courage have made it more likely that decent legal values will survive the apartheid regime.

Anthony Mathews, now 61 years of age, was educated at the University of Natal, where he received the BA, LLB and PhD degrees. After practising as an attorney he joined the staff of the Law Department of the University of Natal, Pietermaritzburg in 1959. In 1965 he was appointed as Professor and Head of Department at the Durban campus, a post he held until 1983. He also served as Dean of the Faculty of Law in Durban for 12 years. In 1983 he returned to the Pietermaritzburg campus as James Scott Wylie Professor of Law, a post he still holds. In 1990 he became Director of the Centre for Criminal Justice attached to the School of Law of the University of Natal, Pietermaritzburg. He has served his university with distinction and loyalty as head of department, dean, member of the Senate executive committee and member of Council. He has held visiting positions at the universities of Harvard and Cambridge (UK) and the Florida College of Law, and has lectured extensively in North America and Britain.

Anthony Mathews played a major role in the work of a number of organizations which fought repression and racial discrimination during the apartheid years. He served on the national executives of the Liberal Party, the South African Institute of Race Relations (1973-78) and Lawyers for Human Rights. In 1980 he was elected National Vice-President of the South African Institute of Race Relations. In 1971 he delivered the prestigious Alfred and Winifred Hoernlé Memorial Lecture of the Institute. He devoted much of his energy to building up the Society of University Teachers of Law, and in 1974-75 he was elected President of that body.

Although Mathews has devoted much of his life to the advancement of justice through community organizations, he is best described as a scholar rather than as an activist. Today he is widely respected as one of South Africa's leading legal academics. His interests in law are catholic and encompass the fields of public law, private law, and commercial law. He has published on a wide range of subjects and made a major contribution to the development of legal education.

Mathews first achieved national prominence in 1966 when he and Ronald Albino, Professor of Psychology at the University of Natal, published an indictment of the recently enacted detention-without-trial laws, which, after exploring the harmful effects of custodial interrogation and long-term solitary confinement, questioned the commitment of the Appeal Court to the value of personal liberty in a number of decisions requiring an interpretation of these laws. 'We have to face the fact', wrote the authors, 'that some South Africans may have lost faith in the courts. The line of cases discussed ... does not present a picture of judges fired by ideas of individual liberty or personal sanctity. There is no assertion that the judges are partial or

that they lack integrity. What does seem to have been lacking in these cases is an imaginative grasp of the implications of solitary confinement and of Western ideals of individual freedom.' ('The Permanence of the Temporary - An Examination of the 90- and 180-day Detention Laws' (1966) *South African Law Journal* 16.) This scholarly and well reasoned article caused a furore in legal and political circles, because at the time conventional wisdom held that the South African Appeal Court was beyond reproach - a view that was carefully nurtured by the Government as it sought to legitimize its security apparatus by judicial endorsement. The publisher of the *South African Law Journal* was threatened by the Government, and Chief Justice L C Steyn responded by condemning Mathews and calling for a neutral approach to the judicial function.

The scene was thus set for a twenty-year dispute between those who believed that members of the judiciary were legally empowered and morally obliged to express their disapproval of the laws of apartheid in the judicial decisions and those who maintained that the interests of justice were best served by judicial abstention and a value-neutral approach to adjudication. For many years Mathews was one of the principal intellectual leaders of the former school. This at the time when criticism of the security laws carried with it personal risks. He published three books - *Law, Order and Liberty in South Africa* (in 1971), *The Darker Reaches of Government* (in 1978) and *Freedom, State Security and the Rule of Law: Dilemmas of the Apartheid Society* (in 1968) - and numerous papers in which he advocated a more dynamic formulation of the Rule of Law, open government and access to official information, the adoption of a security system compatible with the Rule of Law, and a value-oriented approach to judicial interpretation. These writings, which were widely acclaimed for their scholarship and their courage, served to discredit the repressive security system and contributed substantially to an amelioration of the security laws in 1982 and to the repeal of many of them in 1991.

In 1990 Anthony Mathews became the first Director of the Centre for Criminal Justice at the University of Natal, Pietermaritzburg. Situated at the core of violent conflict in South Africa, this socio-legal research centre has concentrated on policing. The operations of the police force, attitudes towards the police force and the reform of the police force have been the principal focuses of attention. Today the Centre for Criminal Justice and the Goldstone Commission co-operate closely in an effort to bring an end to violence in Natal. Despite its geographical situation the Centre has succeeded in remaining impartial and independent, which has enabled it to work with the police, the African National Congress and the Inkatha Freedom Party.

Mathews has a close association with the School of Law of this university. He has acted as external examiner in Jurisprudence for many years, contributed to the *Annual Survey of South African Law* and other publications emanating from the School of Law, and maintained strong intellectual ties with colleagues in shared areas of interest. In 1973 he delivered a paper on 'Universities and the Social Problems of the Day' as part of a series of lectures organized by the Senate of this university which was subsequently published by the University of the Witwatersrand Press under the title *The Rights and Responsibilities of Universities in Contemporary Society*.

In his writings Mathews has advocated the values of tolerance, fairness and respect of individual dignity. His life has mirrored these values. He challenged the authority of the state when others preferred neutrality and abstention. But ultimately he set in motion an intellectual opposition to the apartheid legal order which may serve as a foundation for a decent legal order in South Africa. How fitting it is that the University confer the highest honour in its bestowal on a person of such distinction.