

Professor A. S. Mathews (1930–1993)

Tony Mathews refused all his life to accept official lies. Like the child in the fable, he asked such revealing questions about the emperor's clothes that evidence of his nakedness could no longer be ignored.

It took considerable courage. When he gained prominence in the mid-60s, the authorities wielded new weapons — like 90 and 180-day solitary detention. Faced with worsening state oppression, most people kept silent, fearing they would be detained or worse. In addition, Professor Mathews's particular targets — the judges of the highest court in the country — were treated as being beyond even reasoned academic criticism.

Those were the worst of times for the Appellate Division. The government packed the court with its supporters, then insisted that its new servant was separate and independent. This created an aura of legal respectability for the state, with the court loyally upholding the legitimacy of every new inroad into civil liberties.

In 1966, Professor Mathews and a fellow Natal University academic, psychology professor Ronald Albino, wrote an incisive article on the new provisions for three and six months' detention without trial. They discussed the proven impact of lengthy solitary confinement and interrogation on detainees, then analysed key Appellate Division decisions related to these provisions. In the light of their findings, the two professors questioned the court's commitment to values like individual freedom.

Their questions cracked the carefully constructed fiction of Appellate Division independence and led to decades of debate on the duties of judges faced with unjust legislation. A more personal result was that for several years, a number of Supreme Court judges whom Professor Mathews had known socially refused to speak to him.

Where did Professor Mathews find his courage? Perhaps it was nurtured by revulsion at the injustices he observed as a child growing up in Louis

Trichardt. The racism and pro-Nazism of many townspeople gave him a life-long sensitivity to oppression and a commitment to human rights. Perhaps it was the influence of friends in the Liberal Party, which he served as a national executive member.

A passion for justice and human rights emerges in his books and articles, which his long-time friend, UCT politics professor David Welsh, says gave him an international reputation as a legal philosopher. The same passion inspired his work in setting up the Centre for Criminal Studies in Maritzburg.

Professor Mathews worked briefly as an attorney and was admitted to the Natal Bar, although he never practised. However, when the government began handing out 'honorary senior counsel' status to certain legal academics, he was overlooked. Some friends, like Wits law professor John Dugard, said the government had clearly never forgiven him for his role in challenging the judiciary. Others felt Professor Mathews would have regarded it as an attempt to 'buy him off' and would have been embarrassed by such a gesture.

He never lost his concern about the judiciary's role. He recently remarked that the courts had a new challenge: ensuring that social reconstruction did not conflict with the fundamental rights of the individual. 'With a new and legitimate government, it will be easier to give in to the curtailment of individual rights,' he said.

Another time, reflecting on the damage done by apartheid, he said the long-term impact of 'apartheid judges' on the common law was often overlooked. They had woven interpretations based on apartheid and security legislation into the common law. This damage could not be undone by simply repealing legislation.

The current consensus about the need for a bill of rights, a fair system of security laws and a judiciary committed to promoting the rule of law is in many ways his legacy to the country. Professor Mathew's death [in August 1993] means that he did not see them materialise.

However, his writing, teaching and example have been so influential that if any future rulers were to pass unjust laws or try to co-opt the courts, there should now be many voices to take up the cry that the emperor has no clothes.

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(Courtesy of the *Sunday Times*)



A. S. Mathews

(Photograph: Natal Witness)