

ANTHONY MATHEWS

FREEDOM
STATE SECURITY
AND THE
RULE OF LAW

DILEMMAS OF THE
APARTHEID SOCIETY

JUTA

Freedom State Security and The Rule of Law

—*Dilemmas of the Apartheid Society*—

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To my wife Mary and my daughter Sarah.

Introduction

The black people of South Africa for the most part encounter the security system as a brutal and repressive institution designed to frustrate the attainment of their legitimate social and political aspirations. The ruling whites perceive that same system to be their country's salvation from evil forces bent upon the destruction and take-over of the society in its present form. These immediate perceptions are being overshadowed, slowly but steadily, by the realisation that the 'law and order' machine has generated, and is now setting at large, forces that could engulf and destroy the personal security and aspirations of the members of all groups within the society whether black or white, ruling or dominated, majority or minority. The security system, in brief, has been transformed into an institution destined to serve the interests of *none* of the social segments of our society, and probably to undermine them all.

To those accustomed to taking a longer view, these dark consequences are a predictable outcome of the systematic demolition of the rule of law by security-law measures enacted during the past four decades. In effect, these measures enthroned a system of state lawlessness which has been countered by growing anti-state lawlessness, and been responsible for a great deal of anarchic violence as well. Most South Africans now living have neither experience nor understanding of the rule of law which the security establishment has undermined with methodical deliberation in the pursuit of its objectives. As a first task this study therefore seeks to explain the institution of 'government under law' that has been so disastrously destroyed in South Africa. Various approaches to the rule of law are presented in Part I and the most persuasive and sensible of them defended and adopted to serve as a principle of criticism and reform. This is followed in Part II by an exposition, made as readable as possible, of the legislation that has substituted executive dictatorship for legally limited and controlled administration. The story that unfolds there is of the displacement of constitutionalism by ministerial fiat as the principal mode of government in South Africa.

Part III is evaluative and begins by applying the requirements of the rule of law to internal security enactments. This is done in a comparative setting, with Israel (excluding the occupied territories) and Northern Ireland being the chief and contrasting examples. The effect of the comparison is to throw into relief the grossness of South African deviations from the rule of law and to question the asserted law-and-order function of the security system in South Africa. In the ensuing political analysis, the primary function of that system emerges and may be described, in fairly neutral language, as a sophisticated institution of political control. A security system so conceived and applied cannot be

other than a disaster in terms of moral and political legitimacy. This lack of legitimacy is the chief reason for the system's manifest failure to guarantee the peace and stability that it was ostensibly enacted to bring about. Finally, and probably most controversially, an attempt is made in Part III to devise an alternative security system that will accommodate the requirements of the rule of law, the reality of social conflict, and the demands made upon the machinery of law and order by programmes of change. As a defence against potential critics, the reformed security system offered in Part III is presented only as the best that can be hoped for in the circumstances of our society.

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November 1986

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