

LIFE

ACTIVE HEALTH • WORKING LIFE • THE BIG READ • TRAVEL & FOOD • BOOKS & TECH • ART & ENTERTAINMENT

THE MARK GEVISSER REVIEW

The wrong walk to freedom?

● In the SA Communist Party's centenary month, three radical thinkers identify 'the new apartheid', but disagree about what should be done about it



MARK GEVISSER

The New Apartheid, by Sizwe Mpfu-Walsh (Tafelberg)
Land Matters: South Africa's Failed Land Reforms and the Road Ahead, by Tembeka Ngcukaitobi (Penguin)
Prisoners of the Past: South African Democracy and the Legacy of Minority Rule, by Steven Friedman (Wits)
Red Road to Freedom: A History of the SA Communist Party, by Tom Lodge (Jacana)

How different this image is from the self-interest of last month's violence: not just the shadowy actors who kindled it to get Jacob Zuma out of jail and to work towards replacing a democratically elected government with a kleptocracy masquerading as "radical economic transformation" (RET), but the looters themselves – who took what they needed (or wanted) and sold the surplus to their neighbours. There may, of course, have been gangsters and thugs in Cape Town in July 1906, just as there were "comsotsis" in the 1980s' uprisings – and anyway, juxtaposing those events with last month's violence raises difficult questions about what constitutes "crime" in an unjust society.

But one of the tragedies of the recent riots is the soiling of the tradition of liberation movement protest that Lodge describes as "the great set pieces of anti-apartheid struggle". Another is the devastating confirmation, in the acts of desperation committed by so many, that the "road to freedom", red or otherwise, has not brought South Africans to an acceptable destination, 25 years after democracy.

For some contemporary critics, such as Sizwe Mpfu-Walsh, this is because we are on the wrong road. "Apartheid did not die; it was privatised", is his thesis, and the tagline of his new book, *The New Apartheid*.

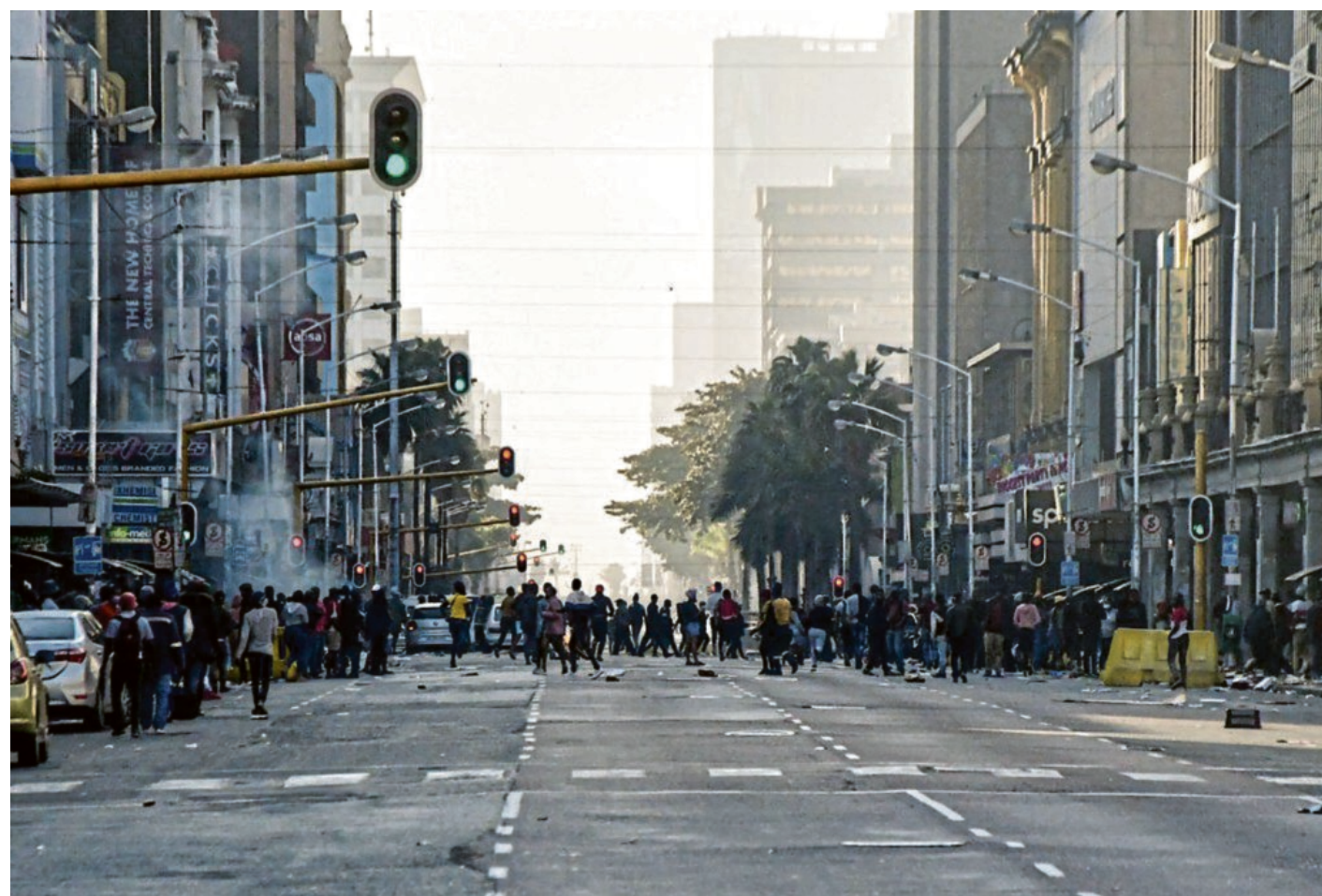
In the way our society remains deeply unequal, and most black people remain poor while those with the means – black or white – opt out of deteriorating public space and services, this is manifestly correct.

Mpfu-Walsh is a young academic, podcaster and rap artist, and one of the most gifted writers of his generation: "Privilege is now policed by price rather than by prose," he writes; "fees" have replaced "laws" as the means of exclusion.

'IT IS TIME FOR SOUTH AFRICANS TO REALISE THAT THE NOBLE EXPERIMENT OF THE FIRST REPUBLIC HAS FAILED'

Later, he invokes rap to capture "the uneasy feeling of the 'postapartheid'", and the contradictory desires for spectacular wealth and revolutionary equality that mark it. Fists up, Bentleys out. I have read no finer description of the schizophrenia of the new elite, and specifically its latest dark iteration in the RET faction.

Reading *The New Apartheid* in the aftermath of last month's violence, I saw evidence of the book's refrain in the way private security companies and neighbourhood watches took the law



Spoilers: A tragedy of the riots last month is the soiling of the tradition of liberation movement protest./Gallo Images/Darren Stewart

into their own hands in the absence of the police. I saw it, too, in the way private shopping malls were the "town halls" – the central forums of communities – that needed to be breached or defended. And I saw confirmation of "the new apartheid" in the way life was so profoundly disrupted in townships and informal settlements while, for a middle-class suburbane such as myself, it went on as normal.

After dealing with the way apartheid space persists in SA, Mpfu-Walsh applies his thesis, with varying success, to "law", "wealth", "technology" and "punishment" – noting that further work will have to deal with health and education, two areas where "the new apartheid" is most profoundly visible.

It is his book's "generational mission", he writes, to define for other researchers this "new apartheid": "less potent, crude and obvious" than its predecessor, "but more durable, sustainable and concealed. Oppression is harder to identify because it thrives under cover of the constitutional order."

His proposal – he calls it a "provocation" – is that we "consider a new republic altogether": one with the kind of significant constitutional reform that would enable radical social reform and economic redistribution. "It is time for South Africans to realise that the noble experiment of the first republic has failed," he writes.

Mpfu-Walsh critiques the "constitutional triumphalism" that privileges the constitution as the lodestar of our democracy, describing it instead – this is not a new idea, among his generation – as the product of a capitulation by the ANC to the representatives of white capital. He insists that he believes "in constitutional democracy", but "I am simply not convinced that SA needs this and only this constitutional order forever."

This goes further than merely amending the constitution to make our system work better: it reaches for a new "order". In this way, Mpfu-Walsh's vision is both

disruptive and Utopian, for it imagines "a new liberation movement, fixed on the ideal of a second, true independence." This places him in the redemptive, vanguardist tradition of the freedom fighters Tom Lodge writes about.

The Red Road to Freedom helps us appreciate, today, the legacy of SA communism. Through the early work of comrades such as James La Guma – the primary architect of the notion of a "native republic" – the Communist Party fused class struggle and racial struggle in a unique and appropriate way, encoding not only nonracism but antiracism into SA's DNA. But the SACP also entrenched Marxist-Leninist organisation in the ANC, exposed during Cyril Ramaphosa's testimony at the Zondo commission last week.

The principles of "democratic centralism" endure through the workings of the ANC deployment committee, now in the service of cronyism and rent-seeking rather than ideological mission.

The notion of "the National Democratic Revolution", now empty ANC branding, was in fact an SACP innovation, from its landmark 1962 programme, "The Road to South African Freedom". This "revolution" would liberate black Africans politically before a later "transition to socialism".

The SACP remains committed to this "two-stage" process, but now that it is both "mass-based" (you no longer need to be recruited and vetted) and entrenched in power, it has ceded its "vanguardist" role, writes Lodge: it no longer leads with ideological clarity.

Rather, it is young intellectuals of the Fallist generation who articulate the need to move to the second phase – Mpfu-Walsh's "new republic" – even if they do not use Marxist theory.

Recent books by two older SA radical thinkers offer a similar diagnosis of the "new apartheid", but solutions that acknowledge continuity rather than propose rupture:

the lawyer Tembeka Ngcukaitobi and the academic Steven Friedman.

Both begin their books with a famous aphorism from the novelist William Faulkner: "The past is not dead. It's not even past."

Friedman, a seasoned and steadfast veteran of the Left, writes that "outsiders will win inclusion only if the elite and the society set out on a new path". Ngcukaitobi, perhaps the greatest South African lawyer of his generation, writes that "by hallowing the constitution" through the mindless singing of its praises, "we have hollowed out its true meaning". But in these very words – "true meaning" – he diverges from Mpfu-Walsh. Like Friedman, he understands the way the constitution was a messy and necessary compromise rather than a shining consensus – and both of them see not just value but solutions in this reality.

While Mpfu-Walsh sees the constitution as shiny new clothing dressing old colonial bones, Ngcukaitobi understands it as "a guide for political action" – one that needs to be dusted off and put to work. While Mpfu-Walsh presents the contorted syntax of the constitution's property clause as evidence of too much compromise, Ngcukaitobi shows how the ANC did not capitulate, but hammered out the best possible bargain.

He argues, convincingly, that section 25(8) gives the state all the power it needs to expropriate without compensation: no amendment is needed. And even if it is amended, there will be no meaningful land justice without the political will (on this, he and Mpfu-Walsh agree).

"The constitution is the wrong target," Ngcukaitobi writes. "Postliberation politics and the adoption of market-friendly policies have failed the constitution's ambitious socially redistributive and inclusive goals." But the "legal constraints to governmental power" contained in the current formulation are necessary: what has slowed land justice down is not this, but "design flaws in

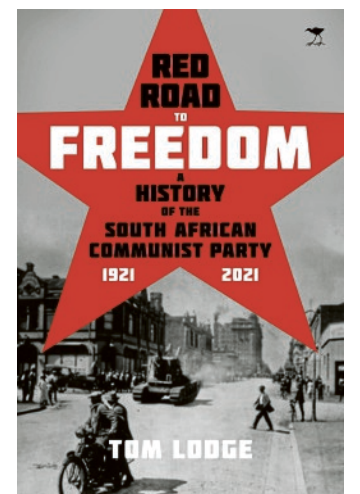
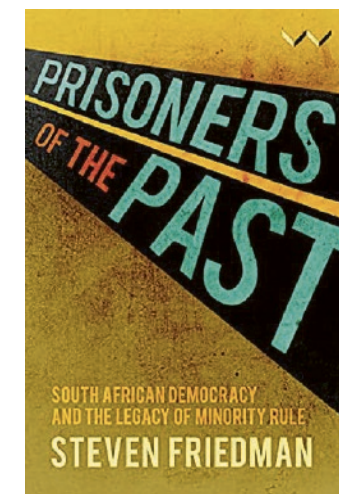
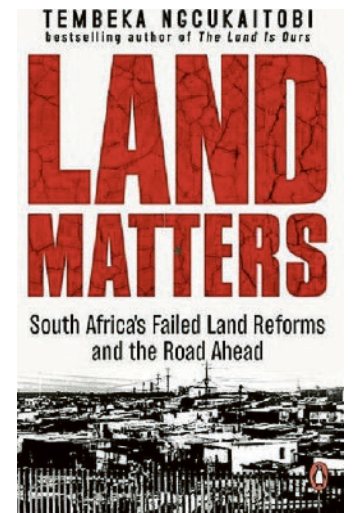
legislation, inefficiencies of the land administration system, endemic corruption and the misapplication of the constitution" – a document which was "designed to be open-ended and transformative".

With a background in the labour movement, Friedman goes further.

Because we live in such a divided society, we must dispense with the myth of a social consensus and embrace the kind of compromise bosses and workers know only too well. If you want to get everyone in a society such as ours to agree, he writes, you will have "to suppress difference": a "world without conflicting interests or values would not be Utopia" but one in which "self-expression would be so stifled that human life would lose much of its meaning. New orders can change some realities which governed the old, but not all of them".

Given this dialectical understanding of change, the only way forward is through the kind of hard bargaining and inevitable compromise that underpin industrial relations.

Using the visionary work of Harold Wolpe from the early 1990s, Friedman argues that "a negotiation process which recognises power relationships and seeks to shift them is a far



likelier route to change than adopting policies and laws which wish them away." (Tom Lodge also resurrects Wolpe – who had managed to escape arrest at Rivonia in 1964 – as one of the most creative and influential thinkers of the SACP: he challenged party orthodoxy about the two-stage revolution, noting how difficult it was to disentangle race from class).

Both *Land Matters* and *Prisoners of the Past* are about much more than the constitution: Ngcukaitobi provides an illuminating narrative of land dispossession and (failed) restitution, and Friedman uses political theory to explain how we are stuck in old grooves. Mpfu-Walsh, too, considers the law as only one realm of "the new apartheid".

But at the core of all three of their books is an attempt to grapple with how this country's law connects the old order to the new one, and what should be done about it.

Mpfu-Walsh readily acknowledges that a "slide towards authoritarianism" might be the dangerous consequence of revisiting the constitution, and would like to ensure that the rights of migrants, religious minorities, and LGBTQ people remain defended.

But by suggesting that "property rights should only be exercised in so far as they do not limit historical land justice", and that the courts should have the right to override any private contract deemed unfair, he challenges some fundamental principles undergirding liberal constitutional democracy. These include the guarantee of predictability that "the rule of law" provides, and the protection of the rights of individuals against the exercise of state power.

He may well say "bring it on": that we need a more collectivist understanding of dignity and equality, a more commandist

approach to transformation, than liberal democracy provides. Even if I accepted this philosophically, I fail to see its prospects, in this place and at this time. I see far more possibility in the way Ngcukaitobi and Friedman understand the constitution: as a legal and moral framework that should not be tampered with in any way that might threaten fundamental rights – rights that both enable and safeguard the hard bargaining necessary to bring about change.

There is a catch to this, ably captured by Friedman. Such bargaining cannot even begin until "the parties agree that change – and compromise – are needed". Change only occurs "when there is pressure for it", or when "a sense of crisis" provokes the key players into recognising that "a new departure is needed". This happened once before in SA: in the late 1980s and early 1990s, when "all the key interests recognised that change was necessary and a loud debate (in effect, an informal negotiation) began" on how this should happen.

How much more of the chaos and desperation that we saw in July is needed to create a similarly productive sense of crisis rather than the political paralysis in which we find ourselves – or the kind of populist foment that might nullify our rule of law?

In their book *Cape Town in the 20th Century*, the historians Vivian Bickford-Smith, Elizabeth van Heyningen and Nigel Worden note that the 1906 riots gave "a fleeting glimpse" of the poverty of Cape Town's residents, broadening debates about poverty and prompting some legal reform and new philanthropy. Last month's events offered more than a "fleeting glimpse", but they are already receding from the broader public view.

They demand radical, and thoughtful, solutions.



Bread riots: During the 'hooligan riots' of August 1906 the young James La Guma, stimulated by his discovery of socialism, was in the thick of the action. /Cape Town in the 20th Century, Vivian Bickford-Smith et al, New Africa Books, page 34.