

Black Economic Empowerment¹ **Anthony Butler (UCT)**

This article explores the origins and implications of SA's policy of black economic empowerment (BEE). Current "broad-based" empowerment strategy is a response to widespread criticism of the elite enrichment that purportedly marked the first phase of BEE. It aims to increase the ownership, management and control of businesses by black citizens, and especially by women. It also seeks to support skills and small business development, to make finance more readily accessible to black entrepreneurs, and to use "preferential procurement" by the state and its agencies to spread empowerment across the private economy.

The reality of post-1994 BEE has been controversial even for those who strongly support its underlying objectives. The president's brother Moeletsi Mbeki (quoted in Reed 2003) has described South Africa's business world as a comfortable and consumer-exploitative oligarchy. BEE, on his view, primarily represents a project of the white oligarchs "trying to deracialise their club by buying black members into their oligarchies". Even the head of the South African Chamber of Business, a strident supporter of business deracialisation, summarized the BEE process to date as "characterized in the main by crony capitalism, fronting, enrichment and debt-burdened deals" (Wakeford 2004).

Broad-based BEE (BBBEE) is immensely ambitious and is likely to be far-reaching in its consequences – intended and otherwise. It is, however, only one part of government's wider strategy to deracialise public institutions, provide employment and social benefits to the poor, accelerate land reform, and improve public service delivery. The spatial dimension of apartheid policy, prohibitions against asset accumulation and the systematic undermining of human capital through "Bantu Education" created deep-seated racial disadvantage. As Ramaphosa (2004: 74) has emphasized, wide empowerment initiatives are essential given the depth of the centuries of economic disempowerment they are intended to redress.

The first part of this paper offers a periodisation of black economic empowerment. It addresses the pre-1994 initiatives of the National Party government to build a black middle class, as well as the efforts of the South African Communist Party to ensure that nationalist rule would not simply change the racial composition of exploitative elites. I go on to explore the changing conceptions of BEE across the Mandela and Mbeki governments, explain how the current "broad based" policy emerged, and set out some of its potential implications.²

The evolution of black economic empowerment

Black empowerment under the National Party

The post-1948 model of Afrikaner economic empowerment has proved influential among many ANC activists. Afrikaners' long march towards equality of with English-speakers began in the 1920s when organized farmers pressed successfully for tariff protection, state research support, and direct subsidies (O'Meara 1983).

After the National Party's 1948 election win, Afrikaner nationalists turned to affirmative procurement, targeted state contracts, and employment creation in the parastatals. They also built ethnic insurance companies and banks, and transformed their language and their educational institutions into instruments of collective advance. Thabo Mbeki's imprisoned father highlighted the significance of Afrikaners' determination to establish "business enterprises which were to be the main pillars around which in the future large concentrations of Afrikaner enterprise were to take shape" (Mbeki, G. 1991, 23, cited in Herbst 2005).

While it seems strange to talk about empowerment in the context of the post-1948 National Party governments, black empowerment also originated directly in efforts to bolster the viability of the systems of segregation and Bantu self-government. After 1948 the National Party introduced a variety of new laws designed further to disempower black South Africans in the economy. The Natives Laws Amendment Act of 1952 narrowed the definition of blacks with the right of permanent residence in town.³ Meanwhile the 1953 Bantu Education Act,⁴ sought to establish that education was designed to provide black South Africans with the skills necessary to work in the homelands or to function only in menial or labouring jobs. It dramatically undermined science and mathematics teaching and interrupted the funding of the mission schools that had been centres of black educational excellence. Meanwhile the 1959 Extension of University Education Act⁵ prohibited black students from attending white universities, and mandated separate tertiary institutions for different population groups.

Where blacks were provided with new opportunities, these were designed to deepen racial segregation by encouraging black professionals and businesspeople to service black populations, and by bolstering the homelands provided for by the Promotion of Bantu Self-Government Act.⁶ The 1951 Bantu Building Workers Act⁷ permitted the training of black people as artisans in the building trade, but required that they must be employed in skilled work only in a black designated area. The Bantu Investment Corporation Act⁸ provided for the creation of financial, commercial, and industrial projects again in areas designated for black people. The Bantu Investment Corporation established by the act was mandated to promote economic development of Africans in African areas through the provision of finance and technical assistance. It was to be run by a white board of directors.

In its early years, the corporation granted a relatively small number of loans to Africans for the development of small-scale business in transport, retailing, cafes, butcheries, brickworks, and furniture manufacture. Bunting (1986) [1964] suggests these loans totaled a mere R2.5 million by the middle of the 1960s, as against some R300 million Rand invested in the white so-called "border industries" on the edges of Bantustans between 1960 and 1965. As Bunting (1986) observes, "the development of an African middle class in the urban areas is discouraged, with Africans told that they must look to their homelands (the Reserves) for their economic expansion". Indeed, according to MacDermott (1985) "in the first 15 years of its operation, the Bantu Investment Corporation, controlled by the South African Government, provided three times as much capital to white-owned enterprises in the Bantustans as to African-owned enterprises".

An increasingly moribund black business development policy was unexpectedly energized by the political upheavals of 1976. In the aftermath of Soweto, government recapitalized the Bantu Investment Corporation and increased homeland development subsidies in a new and more explicit empowerment policy. This policy was supported by white business initiatives such as the Urban Foundation and the Small Business Development Corporation. Both the National Party and its liberation movement enemies saw a black middle class as a deliberate bulwark against black radicalism and political unrest (Iheduru 2004, 4-5).

Across the following decade, the liberation movement in exile was unable to develop a coherent policy for post-apartheid black economic empowerment. There were two elements that did emerge albeit in rather unspecific form. The first was a commitment to nationalisation of what were seen as key sectors of the economy, mostly selected haphazardly from the major resources groups, heavy industries, and financial institutions. This aspiration to public ownership was largely undeveloped in policy terms -- there were no real attempts to map out the practical obstacles to such a nationalization programme or to the purposes it could in practice realise.

The second aspect of liberation movement business policy was essentially negative, and elaborated primarily by communist intellectuals. At the 1969 ANC conference, communists introduced into the ANC's *Strategy and Tactics* document the demand that "our nationalism must not be confused with the classical drive by an elitist group among the oppressed people to gain ascendancy so that they can replace the oppressor in the exploitation of the masses" (ANC 1969). The influence of this analysis can be felt three decades later in Nelson Mandela's (1997) promise that SA would never see "the formation of predatory elites that thrive on the basis of looting of national wealth and the entrenchment of corruption".

The SACP's long-range goal was what it understood as "international socialism", but its immediate strategic objective was to ensure that national liberation would not preclude the later realization of the socialist revolution. As Joe Slovo (1988) expressed it, "the real question" was how to achieve the "intermediate" stage of national liberation without "blocking the route onwards to the next destination". SACP intellectuals' concerns evidently stemmed from post-colonial liberation movements' inability elsewhere to avoid parasitic dependency on state resources and the suppression of erstwhile trade unions and communist allies.

BEE in the period of political transition

The vaguely anti-capitalist economic policy of exile and domestic opposition was translated into contested prospective economic policy programmes in the late 1980s and early 1990s in extremely difficult circumstances. ANC options were shaped by three aspects of the context of transition. First, the collapse of the Soviet Union and the unraveling of its economic model created a crisis of intellectual confidence across the socialist world, and particularly among communist parties like SACP that lacked indigenous intellectual capacity and had been dependent upon Moscow to provide theoretical guidance. In a second and related process, the new right policy revolutions of Reagan's American and Thatcher's Britain, and a resurgence of Austrian school and liberal economic thinking, helped to launch the "Washington

consensus” in international institutions. Economic liberalization, privatisation, reduced barriers to trade, a “rolling back of the state”, and fiscal conservatism were suddenly the order of the day for developing countries wishing to demonstrate commitment to economic orthodoxy.

The third key contextual factor was the pivotal role of established white business as a driver of political transition. Business was convinced that sustainable growth in the 1990s would depend on rapid re-entry to international capital markets. It would also demand enhanced competitiveness of SA businesses that had stagnated behind tariff walls and sanctions. Gelb (2005, 369) has described the result as an “implicit bargain” between the ANC and big business that preceded the political transition. The liberation movement, according to this bargain, committed itself to orthodox fiscal policy, macroeconomic stability and the dismantling of barriers to the movement of good and money across SA’s borders. Meanwhile business pledged itself to pursue a process of “capital reform” that would open ownership and management of South African businesses to black citizens. Given that the transition was a negotiated process rather than a seizure of state power – far from a revolutionary destruction of state power -- the process of capital reform and deracialisation of the economy was conceived by both ANC and business as gradual and market-oriented.

Mandela’s empowerment: business development and employment equity

The post-1994 government was initially a “government of national unity” in which emphasis was given to continuity and confidence-building in economic policy. This continuity was signaled through the continuation in office of Reserve Bank governor Chris Stals and the appointment of a non-ANC banker as Finance Minister. To the degree that BEE policy was articulated at all, it took the form of employment equity policy, the first stages of deracialisation the state, efforts to take control of parastatal and regulatory institutions, and the nurturing of small and medium sized business. BEE across the wider private sector was deferred, and the private economy remained for many ANC members a hostile realm responsible for an “investment strike” and “malicious acts of capital flight” (ANC 2000, Section C). Nevertheless, ANC rhetoric concealed diverse approaches to private business -- as Mandela (1990) has observed, the ANC is a coalition in which some members “support free enterprise, others socialism. Some are conservatives, others are liberals. We are united solely by our determination to oppose racial oppression.”

There were some concrete initiatives under Mandela. A National Empowerment Fund was created to channel privatisation proceeds into emerging business. State and parastatal procurement protocols obliged suppliers to develop empowerment strategies. New agencies in the department of Trade and Industry (Ntsika and Khula) provided management skills and finance for emerging black businesses. This moderate business development strategy has continued and may be beginning to bear some fruit. As Radebe (2006) observes, the “developmental” approach to BEE through the fostering of small and medium sized businesses is once again fashionable.⁹ Nevertheless, in the mid-1990s, these initiatives were often perceived within the ANC as too limited. The ANC’s Mafeking conference in 1997 amended the *Strategy and Tactics* document of the liberation movement so as to reflect new thinking that the black middle class and black bourgeoisie – and not merely the

working class – were significant factors in the movement’s “national democratic revolution”.

In the year before this conference, government adopted the controversial Growth, Employment and Redistribution (GEAR) economic stabilization programme. Perceived by activists as a shift to the right, or even as a “neo-liberal” policy foisted upon the liberation movement by international capital, GEAR was responsible for a futile political back-lash against the structural constraints that capital imposes upon the state. In the ANC-aligned labour movement, in particular, the orthodox or even austere fiscal policy to which the cabinet committed itself was lambasted. The removal of import barriers and the exposure of unionised sectors such as textiles to international competition led to especially severe job losses in Cosatu member unions. All this occurred in the midst of a wider unemployment crisis.

Meanwhile, the voluntary process of black empowerment that had been gradually developing since 1994 was cruelly undermined by international events. Ramaphosa (2004, 73-8) explains that there was considerable BEE activity in this first phase. Deals were mostly financed through ‘special purpose vehicles’ (SPVs) established solely to facilitate the purchase of equity in an established target company. SPVs used shares as collateral against loans, and the 1998 emerging market crisis saw the banks rapidly wind most of them up. In this way, the emerging market crisis exposed the unsustainable financial structuring of most BEE deals and drastically reduced black ownership on the JSE. The 1998 crash reduced BEE ownership of total JSE market capitalization from 7 percent to perhaps 2.2 percent (Beall, Gelb and Hassim 2005, 693).

The first voluntary phase of empowerment therefore decisively failed to produce a sustainable and substantial increase in black ownership and control of SA business. Meanwhile, as Iheduru (2004) observes, the deployment of ANC cadres to business accelerated in the late 1990s. Black businesspeople began to press for a proactive strategy less dependent on the questionable good faith of white business. While the ANC had delivered its side of the implicit bargain with business, business had arguably not done so. The creation of a black stratum of owners and managers meant that it was “no longer possible to characterize big business as ‘white’, or to distinguish on racial lines between public positions of leading business figures or organizations”, on a positive view contributing critically “to underpinning the stability of the new political regime” (Beall, Gelb and Hassim 2005, 693). However, the rate of deracialisation of ownership had been disappointing. There was much anticipation in the light of Thabo Mbeki’s more radical rhetoric and the image of technocratic competence he cultivated that meaningful progress would be made after 1999.

Mbeki’s patriotic black bourgeoisie

Thabo Mbeki argued in one well-known exile essay that “non-racialism in politics has to be accompanied by non-racialism in the economy” (1994, 2). By the time he became state president, however, he was associated with the more specific argument that “as part of the realization of the aim to eradicate racism in our country, we must strive to create and strengthen a black capitalist class” (Mbeki 1999).

As explained earlier, this position probably owes something to the history of Afrikaner empowerment. Thabo Mbeki has also expressed sympathy for Malaysian empowerment. In 1970 the United Malays' National Organisation launched its historic programme to transfer equity from the 37 percent of ethnic Chinese who dominated the economy to the Malays and Indians who made up 50 and 11 percent of the population respectively (Daniel, Southall and Lutchman 2005, xxx). 20-year targets were set for the transfer of 30 percent of commercial and industrial enterprises. In an interesting parallel with Afrikaner empowerment, Mahathir bin Mohamed, Malaysian prime minister from 1981-2003, insisted that stakes in privatized state assets should not be given as "hand-outs" to the poor, but should rather be directed towards those capable of retaining and building upon them -- already wealthy Bumiputera (sons of the soil) (cited Herbst 2005).

The purported triumph of Malaysian empowerment is tarnished by the Malay elite's rent seeking behaviour and its dependence on government favours. Mahathir himself has lamented the Bumiputera policy's creation of empowerment speculators or "Ali Babas" trading in state contracts and licenses (Cargill 2005, 25). The ANC, moreover, is painfully aware that South Africa lacks the savings, skills, and foreign direct investment that fuelled three decades of rapid Malaysian economic growth.

The central case for creating a black bourgeoisie turns on the need to build effective communications between business and politics. It is reasonable to believe that a black elite can open up more honest and direct lines of communication between politicians and businesspeople, and nurture the confidence upon which long-term investment is based. In an analogy with the political deal-making of transition, Ramaphosa describes BEE as "another revolution... it is not grab and run -- it is taking place in as orderly a way as our political transformation... The ethos and culture of the negotiated deals that have a transformative component are remarkable" (quoted in Reed 2003, 11).

The 2001 BEE Commission

The empowerment process was re-invigorated by the 2001 report of the Black Economic Empowerment Commission (BEECom) compiled under the chairmanship of Cyril Ramaphosa. The need for a commission was first mooted at the Black Management Forum's November 1997 conference. Political pressure for a commission built in 1998 as collapsing deals slashed black JSE capitalization.

BEECom's quasi-official status allowed it to "think the unthinkable", proposing an investment for growth accord, the creation of a national procurement agency, and the appropriation of public sector pension funds. Such heavy state intervention threatened to promote unproductive deal making and to harden negative business attitudes.

At BEECom's intellectual heart, however, was a compelling rationale for "broad-based" empowerment, rooted in the report's understanding of the broad-based character of historical black dis-empowerment. The Broad-based BEE Act of 2003 that BEECom inspired brought together capital deracialisation, employment equity,

business development, preferential procurement, and skills enhancement -- and all in a framework of voluntary compliance flexible enough to accommodate the full diversity of SA businesses. Its key instrument is a “balanced scorecard” that measures every enterprise against wide-ranging criteria for broad-based empowerment.

The Generic Scorecard

<i>Element</i>	<i>Weighting %</i>	<i>Indicators include</i>
Ownership	20	Voting Rights Economic Interest Realisation Points
Management control	10	Board Participation Top Management Participation Bonus Points
Employment equity	10	EE reports
Skills development	20	Skills Development Learnerships Organisational Transformation Index
Preferential procurement	20	
Enterprise development	10	
Residual element	10	
<i>Total</i>	<i>100</i>	

Source: adapted from DTI 2006

Every element of the scorecard is clarified by ‘codes of good practice’ dealing with employment equity, skills, procurement, enterprise development, the status of transformation charters, and a framework for BEE rating agencies. Once these are gazetted – something that is due to happen before the end of 2006 -- the codes will be binding on all state and public entities, and will be applied in all decisions involving procurement, licensing, concessions, public-private partnerships and the sale of state owned assets.¹⁰ No private company can escape the codes, moreover, because the requirements of the procurement component will cascade down public sector supply chains.

Five key concerns about Broad-based BEE policy

Concerns about this policy relate to its overall feasibility, its direct economic costs, the character of the “empowerment state” it might produce, its implications for ANC unity, and the shadow of uncertainty that it casts over the country’s future.

Overall feasibility

For observers who believe there is no such thing as a free lunch, BEE is a mirage. The overall ownership targets for BEE suggest that a quarter of the private economy should be owned by black South Africans within a decade. Despite frenetic activity, we have so far seen something of the order of R200 billion committed to empowerment deals. Yet private sector assets total around R 5 trillion (R five thousand billion). It remains quite unclear how this massive scaling up can occur, especially given the continuing shortage of black capital.

The shortage of black capital is the key obstacle to successful BEE (Cargill 2005, 22). Black businesspeople lack capital and therefore must borrow it from third parties and often at high cost. They acquire high-risk equity using financial structuring that leaves them vulnerable in the event of economic downturn.

While today's transactions are bigger and more numerous than in the first phase of BEE -- mining licenses and the financial services charter precipitated large deals and the obligation to empower is now explicitly set out in sectoral charters and BEE codes -- it remains arguable whether the new generation of transactions will prove any more sustainable than their predecessors. Banks have re-entered the BEE lending market, but they now refuse to carry significant risks. Vendor companies increasingly "facilitate" transactions, providing loan guarantees, price discounts, or internal vendor financing at below market rates, an effective "subsidy" from established business to BEE investors (Cargill 2005, 23).

Financial structuring "innovations" promise more durable deals, reducing the direct debt obligations carried by the BEE investors, using option schemes or deferred shares to align the interests of all parties, or circumventing funders' wariness about accepting shares as security by buying into underlying assets. Continuity has been the hallmark of most recent deals, however, and the small number of companies that accrued unencumbered equity in the first wave of empowerment continue to benefit most from attractive vendor financing models. Finance for newcomers remains scarce, and deals continue to depend heavily on the appreciation of target companies' share prices. Vuyo Jack warns that "while 2005 was a great year for BEE deals, many companies paid high prices and used debt to finance these deals" (quoted in Jacks 2006).

BEE companies face escalating debt-service requirements across the terms of their debt. In most cases company earnings will be insufficient to cover interest and capital repayments, obliging them, as Cargill (2005, 23-5) observes, to sell down shares at the end of the term. The draft balanced scorecard introduces "realisation points" to ensure that the value accruing to empowerment actors is genuine. Points are to be awarded according to the degree to which BEE investments are "realised", measured in terms of the net value of the shares (current equity less current liabilities). Cargill argues that realization points would in effect oblige vendors to underwrite the success of their BEE transactions and to assume all investment and interest rate risk. Vendors already carry high BEE facilitation costs, and the additional underwriting and valuation expenses will raise the investment hurdle and so reduce overall investment.

Jack (2005, 30) observes that even ‘net equity’ is merely ‘paper wealth’, in that lock-in provisions usually prevent the sale of the shares, in order to prevent dilution of black equity that would lead to a loss of BEE credentials. The need for lock-in exposes the fundamental tension between vendors’ desire to maintain high black shareholding levels and empowerment shareholders’ yearning to sell shares to repay debt and realise value from their investments.

All of these considerations point to the need for a massive downscaling of expectations around BEE. Even if economic conditions continue to be favourable to empowerment transactions, only a modest fraction of the hoped-for ownership transformation of the private economy will occur over the next two decades. Moreover, the significance of such transfers is questionable. Ownership change may be largely financial smoke and mirrors that does not bring significant substantive change at all. Reg Rumney observes that “it is quite easy for any white company to abide by the legislation and still not comply with the spirit of BEE... Legislation won’t work on a problem of this scale” (quoted in Reed 2003). In addition, even a real and unencumbered 25 percent shareholding may not in fact confer any real power over the activities of that company. A minority shareholder has very few formal legal rights and cannot compel action from an executive board.

Direct economic and business costs

While business agrees that BEE is essential, it often argues that current models are far too costly. Vendor companies have to “facilitate” transactions, providing loan guarantees, price discounts, or internal financing at below market rates. “Realisation points”, as we have seen, ensure that the value accruing to empowerment actors is genuine, but results in vendors assuming disproportionate risk which they will then price.

It is difficult to see how the overall potential impact of BEE on economic growth could be calculated. Nevertheless, government’s 6 percent growth target is already obstructed by an inadequate savings rate of around 12 percent of GDP. The transfer of shareholdings to black South Africans may eventually tie up as much as R450 billion (Cargill 2005) of resources. There is an evident tension with government’s overall medium term project to identify and reduce impediments to accelerated growth. Cronin (2005) for this reason complains that “different consortia, alliances and personalities [are] all competing for slices of existing action” rather than “galvanizing a national development effort”.

Some critics fear that the ownership scorecard will create a swathe of dysfunctional empowerment partnerships. Jack (2005, 27-30) distinguishes three partnership models, the most desirable of which are “operational partnerships” allowing vendors to “build meaningful relationships with black individuals who are operational within the industry”. “Broad-based” partnerships, by contrast, such as development trusts, union funds, or employee share schemes, usually lack any economic rationale, are tied to vague beneficiaries, are administratively costly, and bring benefits only over an inordinately long period. “Influential partners”, Jack’s third variety, usually operate through diversified investment holding companies, and their key asset is political influence. As we shall see, such partnerships based around influence pose

special challenges. Nevertheless, as BEE activity accelerates, it is broad-based and influential partnerships that will predominate. While such an outcome is far from ideal, it reflects the reality that capital is the priority for black entrepreneurs and operational experience will simply have to come later for most of them.

BEE will also discourage some of the foreign investment that might otherwise compensate for the savings shortfall. Government's much-vaunted flexibility towards multinational corporations demands that MNCs justify their case -- for example in terms of a need to protect intellectual property -- and also requires them to deliver compensatory "equity equivalents". Most important, international business may fear the lack of any clear BEE time frame. Investors cannot confidently predict that 10 years hence empowerment obligations will not be renewed or even dramatically intensified.

Domestic and foreign businesses alike are presumably not reassured by attacks on the very idea of "BEE costs". Two of the most "empowered enterprises" in SA today, Eskom and Telkom, are rightly celebrated for their achievements in employment equity, preferential procurement, and business development. Nevertheless these scorecard darlings are associated for private business with escalating administered prices, abused monopoly powers and cowed regulators. Political sensitivities have made it impossible to learn lessons – positive as well as negative – from these empowerment pioneers.

One further concern is that BEE may result in an explosion of "fronting". Black managers will be employed but discouraged from participating in the operations of the business. Meanwhile "benefit diversion" will leave broad-based black partners penniless. Wakeford (2004) observes that fronting is likely to migrate down the supply chain to small and medium sized companies where it will be harder to detect, because "fat and underperforming" big-business will try to hide its own poor ownership, skills, and employment equity performance by boosting empowerment procurement ratings.

The codes of good practice oblige verification agencies to identify and report on fronting, The DTI's South African National Accreditation System will in theory withdraw accreditation from agencies that do not comply, but it remains to be seen how effective the comfortable new oligopoly of BEE Verification Agencies (Abva) will prove to be in this – or any other – of its mushrooming responsibilities.

There are numerous other scorecard controversies: enterprise development is poorly understood by business; the status of foreign and small businesses remains murky; corporate social investment seems an inefficient vehicle likely to promote benefit diversion and high facilitation costs. Business generally complains that broad-based BEE is altogether too intrusive and places a heavy regulatory burden on business.

The empowerment state

There is also cause for concern about the character of the emerging empowerment state. Cronin (2005) has lamented that "established and emerging capital have succeeded in exerting considerable dominance over the state". The state might

become the slave of narrow interests, rather than government's hoped-for "developmental state" forging transparent and economically productive relations with business. BEE policy can disguise the growth of patronage relationships between officials and entrepreneurs. It could ultimately lead every business to believe it must have a state patron in order to land government contracts or to secure licenses.

Industrial policy could become a life support system for politically well-connected companies. Given a drastic shortage of empowerment finance, public sector and parastatal pension funds might be drained in support of risky investments. Government departments might increasingly act at the behest of individuals rather than in the national interest. Intelligence systems and diplomatic capital might be put at the disposal of companies with high-risk foreign investments simply because of their close relationships with ministers or officials.¹¹ Major infrastructure investments – in power generation and transmission, nuclear energy, or new-generation rail systems – might be still more often secured by golf-course handshakes rather than by social and economic cost-benefit calculations.¹² The key financial beneficiaries will continue to be established businesses, but with politically connected black empowerment partners bought into Moeletsi Mbeki's "white oligarchs" club.

Collateral damage to fragile regulators is another concern. The 2001 battle for the third cellular license between Cell C and Nextcom first demonstrated that regulatory institutions, individual regulators, and peripheral institutions such as the public broadcaster can become casualties in battles between well-connected empowerment groups. Oil and armaments transactions have provided further possible negative pointers, their scale, technical complexity, and secrecy making them the world over a first choice for entrepreneurs seeking to secure nest eggs or build war chests. Here BEE vehicles were allegedly the instruments of personal enrichment, and media houses and the public broadcaster were purportedly used to tarnish rivals and to destroy the careers of scrupulous officials and regulators.

We have also seen the issue of "revolving doors" dramatized by the deal-making of former communications DG Andile Ngcaba. The circulation of talented individuals between state and business is desirable, of course, bringing mutual understanding and aiding the internal transformation and corporate culture of both sectors. Nevertheless, confidentiality requirements and new regulations ensuring appropriate time delays are urgently needed. Exit to the private sector is infinitely preferable to the routine acceptance of conflicts of interest between officials' private and public activities – a scourge that is widespread today and that itself requires dramatic and urgent attention.

An ANC mortgaged to capital

A fourth set of critics worry about the implications of empowerment for the integrity and stability of the ANC. Capitalism structurally limits the ability of owners and managers to act in the interests of the oppressed. Influence will move more pervasively in the opposite direction, and it is arguable that business empowerment has already wrought radical changes within the ANC. Highlighting deals involving

Manne Dipico, Popo Molefe and Valli Moosa, Msomi (2005) even asks if the ANC might not already be “mortgaged to private capital”. Procurement scandals have meanwhile raised the spectre of alleged “retro-kickbacks” to party funds.

Empowerment vehicles have already been implicated in the alleged abuse of preferential procurement to bring kickbacks to party funds, and in the purported interference of business in the presidential succession process. BEE mechanisms can also cloak spreading patronage and corruption. South African Communist Party intellectuals worry that SA is following the road of some other post-colonial states in which liberation movement elites have thrown off colonial oppression only themselves to become parasites looting state resources. Yet in truth there are profound divisions, notably generational ones, across the tripartite alliance. Cosatu General Secretary Zwelinzima Vavi has recently spoken of the “crass materialism” of many union leaders, who “use their positions to negotiate shares” and join the “conveyor belt” between “business and its political representatives in the liberation movement”.

Cronin observes that “political tensions within the state and ANC leadership are ‘resolved’ (i.e. managed) by allowing some to be ‘deployed’ into the private sector. However, the converse of this is that the leading financial and mining conglomerates are increasingly reaching into the state and the upper echelons of the ANC and its Leagues – actively backing (betting on) different factions and personalities, and seeking to influence electoral outcomes and presidential succession” (Cronin 2005).

ANC secretary general Kgalema Motlanthe (2005) has argued that “the central challenge facing the ANC is to address the problems that arise from our cadres' susceptibility to moral decay occasioned by the struggle for the control of and access to resources. All the paralysis in our programmes, all the divisions in our structures, are in one way or another, a consequence of this cancer in our midst.” Any legal and regulatory framework for BEE may be exploited for private gain unless there are more successful ANC initiatives to police the activity of its own cadres. It remains an open question whether a liberation movement already changed by its interaction with economic power will continue to be able to steer empowerment in a benign direction.

Such challenges, of course, are not caused by broad-based BEE, but empowerment vehicles can be used as masks behind which patronage and corruption can spread. It is positive that the current empowerment framework does not seem inadvertently to provide any new vehicles for the abuse of public or political office. Indeed it will hopefully spread more widely the burden that currently falls to the ANC of managing the abuse of public authority.

Conclusion: the costs of uncertainty

Empowerment remains a political and moral imperative that holds out the hope of a dynamic economy built upon the full participation of South Africans of all races. We should be realistic, however, about the limits of government power. Black economic advance will be driven primarily by the actions of individuals. Black entrepreneurs

will look to exercise their new-found freedom to make deals. Established businesses will meanwhile seek out the skills and connections that black partners can bring, and many of them will hunger for access to government contracts and the ear of powerful decision makers. A successful BEE policy will be one that encourages more intense interaction between black business, established capital, and the state, but that also establishes clearer rules to manage such relationships. By so doing it will create a more transparent and plural politics of competing interests.

Beyond the four sets of concerns we have considered about the potential costs of BEE there lies a final largely unarticulated worry. The first voluntary phase of empowerment failed to produce a sustainable increase in black ownership and control when the 1998 emerging market crisis led banks to wind up BEE financing vehicles. Black entrepreneurs have again borrowed at high cost, and deals remain vulnerable to higher interest rates or a slowing economy. If the current generation of transactions proves no more sustainable than the last, we will see another dramatic reversal of the project to bring a degree of racial equity to ownership patterns. Today, however, a far wider range of broad-based beneficiaries, an over-borrowed new middle class, and more numerous politically connected empowerment partners, will suffer the consequences. Any resulting political turbulence might generate a counter-reaction against a market-friendly and voluntary BEE programme. It might therefore bring disturbing consequences for SA businesses, and for the wider social progress that is ultimately dependent upon a flourishing private economy. Uncertainty about the future of the BEE project is already damaging to the development of the longer time horizons and business confidence that are prerequisites for the achievement of government's pressing economic and developmental goals.

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¹ 31 July 2006 draft. Not for citation. Parts of this argument have appeared in different form in *New Agenda*, June 2006, and in *Business Day*, 12 June 2006.

² The final version of this paper will explore these implications in greater detail.

³ Section 10 notoriously limiting this to those born in a specific town with 15 years residence in it, those with 15 years continuous employment, and those who had worked for 10 years for the same employer.

⁴ Act No 47 of 1953.

⁵ Act 45 of 1959.

⁶ Act No 46 of 1959.

⁷ Act No 27 of 1951.

⁸ Act No 34 of 1959.

⁹ Finance minister Trevor Manuel announced a new system of tax breaks for small businesses and an overhaul of business development institutions in his budget speech of 2006, a speech that included very few references to wider BEE policy.

¹⁰ The “generic scorecard” will purportedly complement the various sectoral “transformation charters” already negotiated or under negotiation. It seems more likely that these latter are now dead in the water because they are unlikely to pass the test of substantial compatibility with the new codes.

¹¹ Eskom has served as an instrument of South African external policy since 1994, for example, and it has been understandable and largely desirable that the state has reciprocally acted as an instrument of Eskom Enterprise’s foreign policy (which in many respects is more ambitious than government’s). It would be quite undesirable, however, if South African intelligence systems and political capital were routinely put at the disposal of mining companies with high-risk investments in sub-Saharan African countries.

¹² Muller (2006) observes that we are trying too hard “to create internal opportunities for our new economic elite”. He speculates that the east coast transmission line that would have averted the Cape’s current power crisis would not have been delayed if it did not threaten the profitability of a new BEE power generator in Eastern Cape.