

## **Black Economic Empowerment since 1994: Diverse hopes and differentially fulfilled aspirations.**

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The fuller participation of black South Africans in an economy from which they have historically been excluded has been a central aspiration of South African policy makers since 1994. This article explores the origins and implications of SA's policy of black economic empowerment (BEE). In addition, it investigates "hopes and aspirations" around BEE. Who possessed which aspirations and why? Which hopes were fulfilled and which were not? What can be discerned about South Africans' hopes for the future of BEE over the next decade, and to what degree can policy choices make these wishes more likely to be fulfilled?

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Government's 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 then-head of the South African Chamber of Business, a strident supporter of business deracialisation, summarized the BEE process in 2004 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 hopes and aspirations for black economic empowerment. It addresses the pre-1994 attempts of the National Party government to build a black middle class, and the parallel initiatives of big business in the late apartheid period. It goes on to explore the hopes of the South African Communist Party (SACP), in particular its wish to ensure that nationalist rule would not simply change the racial composition of exploitative elites, and the avowed goal of policy makers around Thabo Mbeki to create a “patriotic bourgeoisie”. The paper then explores the changing conceptions of BEE across the Mandela and Mbeki governments, explaining how the current “broad based” policy emerged, and setting out some of its potential implications.<sup>2</sup> I close with some considerations about the future of BEE.

## **The historical origins of aspirations about 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.<sup>3</sup> Meanwhile the 1953 Bantu Education Act,<sup>4</sup> 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 Act<sup>5</sup> 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.<sup>6</sup> The 1951 Bantu Building Workers Act<sup>7</sup> 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 Act<sup>8</sup> 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. As we shall see, 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).

### *Red-tinged dreams*

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 “commanding heights”, which was taken to mean 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.

When Cyril Ramaphosa was chaperoning the recently released Nelson Mandela in 1990, he convened a number of other meetings between business people and the ANC, recognizing the importance of engagement between the entrenched economic elite and the emerging political leadership. One of the most fascinating meetings was Nelson Mandela's first encounter with a business person after his release from prison. Predictably, the first man in the queue was the most powerful businessman in South Africa, Anglo American's Gavin Relly. Relly and his assistant Michael Spicer went to see Mandela at his Soweto home, at a meeting Ramaphosa chaired. Outside the house, a large contingent of journalists gathered excitedly, speculating, in the aftermath of Mandela's declaration in favour of nationalisation at Cape Town's city hall on the day of his release, that this must be the subject under discussion. In fact, the four men did not even mention this topic, but instead ranged over other issues including industrial relations. As Relly and Spicer left, one of the throng of reporters asked, "Are you anxious about nationalisation?" The calm and collected Relly commented, "Nationalisation will be subject to the test of time and circumstance."<sup>9</sup>

His confidence was based on Anglo's careful intelligence gathering and bridge building with the liberation movement. Relly's September 1985 journey to Lusaka, in defiance of the instructions of PW Botha and Harry Oppenheimer, had already showed him that OR Tambo, Thabo Mbeki, Mac Maharaj, and Pallo Jordan were patriotic moderates.<sup>10</sup> Relly also understood that nationalisation was an immense practical task, requiring carefully planned administrative and legislative programmes. He returned confident that the ANC's leading economic thinkers, such as Thabo Mbeki, had no practical strategy for turning the idea of state ownership into a credible programme of nationalisation.<sup>11</sup>

The collapse of the USSR went on to discourage even diehard proponents of nationalisation. Joe Slovo, SACP 'red devil' and public enemy number one, told a 19 July, 1990, radio audience that, "We do not believe that the transfer of ownership from a board of directors to a board of bureaucrats will solve our economic problem."<sup>12</sup> Essop Pahad, also a leading figure in the SACP at the time, told an interviewer in the same year that the SACP "doesn't have concrete economic policies as yet. What we have is a general understanding of what are the fundamental economic issues that have to be addressed ... The extent of the intervention must be determined by a whole lot of factors of which we are not even in control and on which we do not have information."<sup>13</sup>

Communist intellectual Jeremy Cronin reiterated this point a year later, observing that "if you take away from Anglo American a whole lot of the economy, and then give it over to a bunch of bureaucrats, the democratisation process, working power, is not being advanced necessarily at all by that. And I think this is what's happened in Eastern Europe and the Soviet Union ... workers have not been empowered, bureaucrats have."<sup>14</sup> UDF and COSATU activists'

radicalism about state ownership had also been tempered, in part by their meetings with business through the CBM. Trevor Manuel, who was shortly to become the NEC's economic policy head, carefully observed that "the South African Communist Party would accept the existence of a 'mixed economy'."<sup>15</sup>

Mandela later endorsed a tacit bargain about ownership between ANC and business. The liberation movement would protect private property and business freedom. In return, business would not obstruct transition, and would later move to redress the racial injustice that characterised the economy. Mandela even agreed to participate in meetings with the so-called Brenthurst Group, an informal panel of the half-dozen most powerful businessmen in South Africa, named after its meeting place – Harry and Nicky Oppenheimer's home.

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.

### *Established business people's aspirations for BEE*

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, which had reached out to the ANC, not just in exile but also through systematic attempts to engage with the UDF and COSATU. 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 quietly appeared to accept the need for 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.

The hopes and aspirations of business people, however, were themselves various, and embodied a wide range of assumptions about the relationship between BEE and the interests of business. Some business people had been active in building relationships for almost two decades. The white business community had been deeply shaken by the events of June 1976. Many of them now feared that apartheid could end in ruin and it wanted action to cement black political stability. A memorandum from the Transvaal Chamber of Industries to the Prime Minister, five weeks after the uprisings began, captures this new sense of urgency:

“The thought most basic to our submission is the need to ensure a stable, contented urbanized black community in our metropolitan areas ... The emergence of a ‘middle class’ with Western-type materialistic needs and ambitions has already occurred in these areas. The mature family-oriented urban black already places the stability of his household uppermost, and is more interested in his pay-packet than in politics. Our prime point of departure should be that this ‘middle class’ is not weakened by frustration and indignity. Only by having this most respectable section of the urban black on our side can the whites of South Africa be assured of containing on a long-term basis the irresponsible economic and political ambitions of those blacks who are influenced against their own real interests from within and without our borders.”<sup>16</sup>

The most significant response from business was the establishment of the Urban Foundation. Irene and Clive Menell, from the Anglovaal dynasty, played a major

role in the creation and the operation of the Foundation, The events of 1976 created space for the philosophy of constructive engagement that the Menells embraced, and Irene was fired up by the uprising to “mobilise resources, existing resources, that were simply going to waste, and use them to address practical problems”.<sup>17</sup> Her inspiration was the “New Detroit” project from late 1960s Michigan, illustrating not only the imaginative hold of American racial politics for her class but also the prevailing misconception that systematic majority exploitation and oppression was not the issue.<sup>18</sup>

In July 1976, Clive and Irene Menell floated their ideas to Institutive for Race Relations director Freddie van Wyk and *Financial Mail* editor George Palmer. Together they hatched a plan. Anglo’s ‘do-gooders’<sup>19</sup> had a conference on urban housing planned for later that year, and Irene and Clive decided to hijack it. Through Harry Oppenheimer’s personal assistant, Nick Dermont, they sold the idea to Zach de Beer, the political strategist in the Oppenheimer inner circle, and then to the old man himself.<sup>20</sup>

Harry Frederick Oppenheimer was the most famous businessman of his day and by far the richest man in Africa. Only marginally in his shadow was Anton Rupert, the self-made giant of Afrikaner business. Oppenheimer and Rupert already partly embraced the Menells’ idea that high levels of poverty and limited social provision in peri-urban townships were ameliorable causes of social unrest. They decided together to convene a “businessmen’s conference on the quality of life of urban communities” in place of the scheduled urban housing conference in Johannesburg’s Carlton Hotel, on 29 and 30 November 1976.

More than two hundred prominent businesspeople attended, representing almost every sector of the economy. Alongside figures like Gavin Relly and Raymond Ackerman, there were also a number of black invitees: members of Soweto’s Committee of Ten such as Ellen Kuzwayo; familiar faces from the Menells’ circle such as Franklin Sonn; and also two Lutheran churchmen, one of whom was Tshenuwani Farisani, Cyril Ramaphosa’s mentor from Mphaphuli High School.<sup>21</sup>

The conference was not an exciting affair. As is conventional at such events, the final resolutions were already drafted at the beginning, and the outcome of deliberations was carefully fore-planned. The set speeches, however, offer a hilarious window on the white elite’s limited understanding of the character and scale of the challenges it faced, and so on the aspirations for the future of this community. One participant, for example, observed that “Soweto has got a beautiful stretch that runs from New Canada right up to the end of Kliptown”. Alluding to the famous lake in the elegant white suburb of Parkview, this speaker suggested “this could become the second Zoo Lake of South Africa”.<sup>22</sup> Professor David Dewar of University of Cape Town meanwhile presented an alarmist analysis of the growing “demographic preponderance” of blacks. And Laurence Schlemmer, an early but never altogether rigorous pioneer of opinion survey methodologies, reported on “development priorities in black urban communities” purportedly as seen through black people’s own eyes.

The highlight of the event, however, was a breathtaking closing speech by Anton Rupert. The sage and businessman adopted an especially wide historical perspective on the Soweto uprising. He warned of an alarming deterioration in the overall trajectory of western civilisation, before lamenting the corrupting force of money in a West “seduced by wealth”. He then peered sagaciously into the future, condemned “burying one’s head in the sand”, and castigated those who hoped to hide from gathering storm clouds that were both around the corner and over the horizon. “This”, he sternly warned, “is how Knossos, the rich and civilized capital of ancient Crete, fell in a night to the invading Myceneans!” With a degree of insensitivity to the black members of his audience, he continued, “This is how Rome fell to the Barbarians!” Whites must refuse to be cowed by fear, he cautioned, “the fear of survival as a separate entity, the fear of being overrun by numbers, the fear of possible tyranny by an unenlightened majority resulting in one man, one vote once”.<sup>23</sup>

Turning to the practical implications of his analysis, Rupert observed that, “We cannot survive unless we have a free market economy, a stable black middle class with the necessary security of tenure, personal security and a feeling of hope for betterment in the heart of all our peoples.” He then spelled out the seven dimensions of the practical challenge: job creation, training, a living wage, greater commercial opportunities, extended home ownership, improved housing, and the provision of sporting and other amenities.

The way forward, he concluded, was “To establish an urban development foundation to accommodate and coordinate, on an ongoing basis, the private sector's endeavors at improving the quality of life in the urban black townships ... to encourage and assist as a catalyst the transformation of South Africa's urban black communities into stable, essentially middle-class societies subscribing to the values of a free enterprise society and having a vested interest in their own survival.”<sup>24</sup> These inspirational ideas were met with acclaim, and the Urban Foundation was born.<sup>25</sup>

Oppenheimer and Rupert chose as chief executive of the foundation a judge, Jan Steyn, from a famous family of Afrikaner leaders. Steyn coveted the position, writing a flattering letter to Harry Oppenheimer on 8 December that praised the old man for his “tactful yet courageous” chairmanship of proceedings and making it clear he wanted to work with the foundation in future.<sup>26</sup> Whether Steyn was the right man for the task was unclear. Rupert’s biographer describes how Steyn endured an “eye-opening” visit to Soweto, discovering to his consternation that there was only one cinema and one sports field, and so inadvertently revealing his unfamiliarity with the lives of most of his fellow South Africans.<sup>27</sup>

The Urban Foundation enjoyed quite widespread business support. Fund-raising was driven at national board level by Jan Steyn, and within five years the foundation was receiving funds from more than 150 businesses. Anglo American and De Beers, the great mining giants associated with Oppenheimer, were the biggest donors, but Anton Rupert’s Rembrandt group also contributed

handsomely. Mining houses Gencor and Barlow Rand, retailers Pick ‘n’ Pay and Woolworths, and financial houses Nedbank and Standard Bank were major long-term donors.<sup>28</sup>

South African subsidiaries of foreign companies were also major contributors, Ford giving R1 million over four years, British Petroleum and Shell donating almost as much, and Unilever and Barclays Bank making smaller but significant payments.<sup>29</sup> Steyn soon widened the search for funds, first making regular trips to London and New York in which the Foundation’s achievements and needs could be showcased. In 1979, the executive committee decided to establish an outpost of the Foundation in London -- “the Urban Foundation (London) Limited” -- and then a further office in New York. This initiative allowed tax advantages to accrue to donor companies in the UK, and was also purportedly designed to allow the UF to exert external leverage on Pretoria.<sup>30</sup> The reality was predictably quite different.

The London and New York offices were never effective fund-raising centres. Indeed, the UF continued to be dependent on local donors – and particularly on Anglo -- throughout its existence. The overseas offices were primarily lobbying instruments, and it was foreign companies and governments rather than Pretoria that were their target. The Anglo-funded big business lobby group the South Africa Foundation was already campaigning hard to deflect calls for economic sanctions to be imposed on Pretoria. Although it was not an official policy of the UF, what they lobbied for was increasingly indistinguishable from the SAF campaign. The London and New York UF outposts became instruments in a quiet attempt to discourage forced and voluntary disinvestment in South Africa by international big business. Correspondence with Steyn from British business leaders confirms that this was their central preoccupation.<sup>31</sup>

While the proponents of economic sanctions believed they could help change hearts and minds in South Africa, business was inevitably opposed on the grounds that sanctions would cost jobs, so damaging black rather than white interests. Irene Menell observes that “engagement”<sup>32</sup> was always rightly a cornerstone policy for dealing with Pretoria. This chimed with Oppenheimer’s own belief that engagement with capitalism, by its own devices, would ultimately unwind the scourge of apartheid.

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In part because of ignorance or persisting hostility to capitalism and capitalists, writers on the transition have yet to come to grips with the importance of business. Merle Lipton has traced business interventions most closely.<sup>33</sup> She observes that the relationship between capitalism and apartheid has been a complex and ever-changing one that is not well captured by the debate between liberals and Marxists about whether capitalism eroded or sustained apartheid.<sup>34</sup> She emphasises that business is not homogenous, and the interests and intentions of companies are varied and change over time. It certainly benefited

many businesses in the early decades of segregation and apartheid to have access to a cheap and controlled workforce. However, as the economy developed, some sectors began to require a skilled and permanent workforce, needs that militated directly against the apartheid policies of Bantu education and influx control. Moreover, apartheid constrained the size of the domestic consumer goods and services markets, and undermined the export performance of many companies. Over time there was a growing convergence of the interests of business in favour of reform, and hence a growing concerted pressure by some business organisations to have apartheid brought to an end.<sup>35</sup>

Lipton is rather generous to white business organisations. The Federated Chamber of Industries (FCI) and the Associated Chambers of Commerce (ASSOCOM) did sometimes come out openly against aspects of apartheid that imposed clear business costs, such as racial job reservation, the pass laws, segregated education, and restrictions on home ownership. And Harry Oppenheimer's Anglo American was of course prominent in "modernising" initiatives such as the Urban Foundation.<sup>36</sup> White business people were products of their time, however, and the incremental approach they adopted was mostly directly informed by their changing interests. They were rarely motivated to abolish apartheid on moral grounds, or capable of imagining a future in which social and economic life were not racialised. One analyst who went to work for the Urban Foundation in 1981, and was put to work arguing for the abolition of influx controls, was told that moral arguments were specifically prohibited and the case needed to be made on pragmatic grounds only.<sup>37</sup> There was correspondingly almost no effort by business to recognize the human rights of Africans or to secure a universal franchise.

The situation in 1976 was not dissimilar to that in 2007. Business was preoccupied with avoiding giving offence to government. One analyst who played a major role in bringing business and ANC together, Christo Nel, describes the early 1980s commercial world as "passive" and "singularly ineffective in doing anything". For Nel, business people were motivated primarily by their desire "not to antagonise government".<sup>38</sup>

Predictably it was Anglo American that took the lead in the 1980s. Despite growing disdain for the Urban Foundation within Anglo – and its limited legitimacy among black South Africans -- it had survived, perhaps enjoying protected status as Harry Oppenheimer's. However, it was clear that business needed a new mechanism to engage with domestic struggle activists. A new wave of activity was spurred in 1984 by a devastating piece of research conducted under the auspices the Unisa Business School's rather Orwellian-sounding Project Free Enterprise. This research demonstrated that most South Africans (perhaps unsurprisingly) had a jaundiced and ill-informed view of business, understanding it as a rapacious exploiter of ordinary black people.<sup>39</sup>

A second phase of Project Free Enterprise, launched in 1984 by then Barclays-South Africa Chief Executive Chris Ball, was charged with investigating what

needed to be done to “educate” the black workforce about the wholesome character and prudential advantages of free enterprise. Barclays SA was a wholly-owned subsidiary of Anglo American, and the involvement of Ball was almost certainly part of a wider strategy by newly installed Anglo chairman Gavin Relly to initiate contacts with the UDF using the giant companies network of subsidiaries.

Chris Ball engaged Christo Nel to take this work forward. By 1985, the analyst had sensibly concluded that it was impossible to educate people about the benefits of the capitalist system if they were in fact not deriving any such benefits from it. Some individuals within business organisations began to lobby for more open and comprehensive debate about the morality of the apartheid system. The president of the Federated Chamber of Industries (FCI) John Wilson, in particular, decided to take a clear stand against apartheid practices, and in 1985 launched a Business Charter of Human Rights. When Wilson intervened to oppose a specific instance of forced removals in the Brits area, however, and then argued publicly for the release of Nelson Mandela, the response by FCI’s member companies was devastating. Dozens of them simply resigned their memberships and withdrew their funding, leading the federation to collapse.<sup>40</sup>

Christo Nel was then approached by a small group of businessmen who asked him to arrange a meeting with what they termed the “legitimate black leadership”. This group significantly included Anglo’s political strategist Zach de Beer and Chris Ball from (Anglo-owned) Barclays-SA, as well Southern Life’s Neil Chapman, prominent financier Mervyn King, and well-known judge Anton Mostert. They provided Nel with a “slush fund” to finance the logistics of the meetings they proposed.

Nel managed to connect with acting UDF head Murphy Morobe, who was in hiding, as well as treasurer Azhar Cachalia and president Albertina Sisulu. Other key UDF leaders, including Popo Molefe and Terror Lekota, were at that time being tried for treason. Through the services of their lawyer, George Bizos, Nel was later able to meet with them in their cells – the same dungeons in which the Rivonia trialists had been held -- and to secure their assent to a series of meetings. The UDF participants laid down a condition, however. Business leaders could not pick and choose who they wanted to meet. They had to talk to whomever the organisation delegated to the task.<sup>41</sup>

Nel also approached heavyweight COSATU leaders, including Cyril Ramaphosa, Sydney Mufamadi and Jay Naidoo. They were exceptionally cautious about the proposed meetings, however, and did not participate, possibly because of their potential to compromise them in the eyes of their members. It is also conceivable that they believed the meetings would expose them to police harassment for no meaningful purpose.

So it was that across 1986, a small group of businessmen, including Chris Ball and Neil Chapman, had a series of late-night meetings with Azhar Cachalia and

Murphy Morobe at the Harris's farm in Honeydew. By late 1986, a more substantial meeting was planned, and other UDF leaders, including Valli Moosa and Cas Cavadia, were becoming involved. However, the reticence of business leaders continued to be a stumbling block to meaningful talks. Christo Nel, on one occasion in late 1986 or early 1987, brought more than a dozen business people to the Indaba Hotel north of Johannesburg for a meeting with UDF activists, including president Albertina Sisulu. Before leaving to collect Sisulu, Nel explained to them that they were taking a brave step, because they would be talking to black leaders who were on the run and subject to banning orders. They would therefore be breaking the law. When he returned, only a handful of business people had stayed.<sup>42</sup>

Despite these difficulties, hundreds of small meetings, often one-on-one, continued between business, UDF, and trade unions. A major step forward came in 1987, when Christo Nel and others went on Frederik van Zyl Slabbert's mission to Dakar. The exile ANC leadership had been in contact with the UDF about the negotiations with business, and they were able at Dakar to give their stamp of approval to a continuation of this internal dialogue.<sup>43</sup>

By the end of 1987, the UDF leaders began to demand that businesses launch some more tangible initiatives. They demanded that the business participants constitute themselves into a formal organisation or a movement that would be able to engage in more formal discussions and commit itself to clear policy positions. Preparations were interrupted by the arrest of Moosa and Morobe later in 1987, and by a major intensification of the state of emergency in February 1988. Now almost the entire UDF leadership was in detention or subject to restrictions of one kind or another.

In August 1988, a meeting at last took place at the Broederstroom conference facility between around 25 business leaders, 15 sympathetic academics, and a substantial part of the internal black leadership - most of who were subject to restrictions. Azhar Cachalia, who with Nel was joint-facilitator, began the meeting by joking that, as a result of his restriction order, "I will be talking just to Christo Nel. If the rest of you want to listen in, that's up to you."<sup>44</sup>

The meeting divided immediately into two hostile camps: the black participants were all clear in their demands for majority rule in a unitary state, to be brought about with immediate effect, and their demands on the economy were almost universally socialist in orientation. Despite the fact that the business people were a self-selected fraction of the business class - those willing to break the law in order to talk to UDF leaders - they were simply unable to conceive of a South Africa governed by black people. Nel managed to overcome this "sense of impossibility" by encouraging the white participants to work through a scenario in which, by 2050, there would be a black president.

Nel also developed an intellectual framework to take the racial emotion out of the opposition between groups at the meeting. In his schema, there were two main

kinds of actors in South African (and at the conference). On the one hand, there was a large group of “revolutionaries” who were seeking the overthrow of the existing order. On the other hand there was a large contingent of “reformers”, who were seeking to change apartheid capitalism gradually. Nel argued that what was needed was a small group of “transformers”, who would be able to form a bridge between the revolutionaries and the reformers.<sup>45</sup>

On the last day of the conference, the black leadership demanded that the business people form themselves as a body, with the threat that otherwise there would be no further talks. Very few executives walked away. The caution of the group, however, was evident in disagreement over the name. When Business Movement for Democracy was suggested, there was the threat of a walkout. In the end the name Consultative Business Movement (CBM) emerged.<sup>46</sup> Although it started with only a dozen paid up members, the CBM quickly snowballed and within months more than a hundred businesses were signed up.

The CBM instituted a national consultative process that ran actively for almost two years across 1989 and 1990. The format was intensive interaction between UDF and COSATU organizers and businesspeople, usually over a weekend, with the combination of formal inputs and informal socializing that was to prove so effective at breaking down barriers across the transition process. UDF and later MDM activists were almost always strongly anti-capitalist in orientation and many considered themselves to be Marxists. However, the businesspeople at least had in their favour that they were not the NP, and behind the radical rhetoric of the UDF and COSATU there was a good deal of pragmatism and willingness to engage with the concerns of the business people.<sup>47</sup>

This consultative process was significant in that issues fundamental to the future of the society were raised and discussed. One of these – the racial inequalities of ownership in the South African economy – allowed participants to develop the beginnings of what was later to become Black Economic Empowerment policy. Moreover, in the relationships that were built up between activists and businesspeople, networks were to begin to emerge that in later years were to turn into business relationships.

The process also allowed the biggest force in the economy, Anglo American, to enter into indirect interaction with the internal liberation forces. Anglo was initially very careful not to play a direct and obvious role in CBM. However, important CBM leaders such as Neil Chapman and Murray Hofmeyr were executives in Anglo subsidiaries. Anglo was happy to play a conservative game with the South Africa Foundation, a developmental role with the Urban Foundation, and now a more reformist (or ‘transformist’?) part with the CBM. When, in the course of 1990, it became clear that CBM was gaining ground, and that wider considerations about the future shape of business in post-apartheid South Africa were really on the agenda, Anglo’s Michael Spicer took up a position as deputy chair of the national consultative group of the CBM. Spicer was inevitably a key figure in shaping the deliberations and actions of the body

thereafter, and he remained the servant of his hero and mentor Gavin Relly.<sup>48</sup> Nel describes him as a “watchdog”. Other members of the committee joked that he was Cardinal Richelieu to Gavin Relly’s King Louis XIII.<sup>49</sup>

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Of all the events during the negotiations, one meeting in August 1991 has been the most widely reported. Alistair Sparks, in the prologue to his sparkling 1994 book *Tomorrow is Another Country*, tells the “tale of the trout hook”.<sup>50</sup> According to Sparks’ account, Cyril said the famous words: “Roelf, there’s only one way to do this,” pulled out a bottle of whisky (from his trousers?), and fetched some pliers. “If you’ve never trusted an ANC person before”, Sparks obliged Cyril implausibly to remark, “You’d better get ready to do so now!” Cyril wrenched the hook from Roelf’s finger with a single pull. Meyer then purportedly remarked, (imagine this), “Well, Cyril, don’t ever say I didn’t trust you.”

The true significance of Sparks’ story, however, is that the host, Sidney Frankel, was chairman of Frankel Pollak, the largest stockbroker on the Johannesburg Stock Exchange. When Meyer went to meet Ramaphosa at the trout farm, Frankel arranged the necessary transport for his family by calling up Sasol chairman Paul Kruger and requesting the use of one of the parastatal’s fleet of helicopters.<sup>51</sup> It was in the nature of Frankel’s position that he acted as a facilitator of relationships between foreign and domestic business investors and government. By 1987 Frankel was well-connected with the “left” in government – with people such as Gerrit Viljoen, Barend Du Plessis and Roelf Meyer – and he began to reach out to the UDF.<sup>52</sup> On one occasion, he recalls, PW Botha discovered that Barend Du Plessis was attending a Frankel Pollack conference, where he was talking to a senior UDF member. Botha had Du Plessis summoned to a telephone and instructed him to leave forthwith.

Frankel met Ramaphosa at one of his own investment conferences. The two men, in his recollection, made “an immediate connection” and soon became “best pals”. Frankel was not a liberal on the Anglo model. Indeed, cutting remarks were made at the time, and still are today, about his late and rapid conversion to the cause of non-racial government.<sup>53</sup> Once Mandela was released, and with Cyril in control of his diary, Frankel was able to bring the old man to the Johannesburg Stock Exchange. Designating himself “Comrade Frankel”, he telephoned Mandela towards the end of 1990 and invited him to visit the exchange for lunch. When Mandela and Frankel stepped onto the floor of the exchange together, trading stopped. At this time, Mandela was associated with the ANC’s commitment to nationalisation. Out of sight of Mandela, one of the brokers spat on the floor next to Frankel and called him a “Kaffir boetie”. After Mandela departed, Frankel received numerous abusive telephone calls, with one colleague telling him he was an “arsehole” to bring the ANC leader to the exchange.<sup>54</sup> Such remarks indicate that it is difficult to generalise about the hopes and aspirations of the commercial community about future black participation in the economy.

*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.<sup>55</sup> 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.

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. Now that these have been gazetted, the codes are in theory 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.<sup>56</sup> 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.

When the codes of practice were at last gazetted in April 2007, a principle of "once empowered, always empowered" was included. This means that when empowerment shareholders sell their stakes, accrued points are retained by the company. As Vuyo Jack (2007) explains, there are two sides to the debate over this principle.

"The original approach taken in the BEE codes ownership provisions, accepted by the cabinet last year, is that if black shareholders sell their shares in a company, it loses BEE ownership points. The rationale for this provision is that the government wants to encourage long-term ownership of companies by black people. What companies do to ensure that they retain black ownership is to institute lock-in clauses preventing black people from selling their shares to non-black people." Government's enthusiasm for this approach was based on a desire for black people to acquire "unencumbered ownership of enterprises on a sustainable basis in the long term."

The problem with their approach, however, is that "there is limited liquidity for black shareholders even after the lock-in period expires because they have to sell to other black people [and ] The lack of significant black capital limits the option of other black people buying black shareholders' stakes. This creates a secondary

market for black shares, which will inherently trade at a deep discount due to lack of full liquidity.” It is for this reason that the “once empowered, always empowered” principle made a late surge, with empowerment magnates such as Ramaphosa arguing that they should be allowed to realise gains. “The solution”, Jack observes, “would be to allow liquidity by allowing black people to sell their shares without taking away BEE points from the firms after such exits. This view is compatible with the short-term and speculative view of black ownership ... The shortcoming of this approach is that it sees black ownership as an event and does not necessarily espouse the long-term view of black ownership of companies” (Jack 2007).

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.<sup>57</sup> Major infrastructure investments – in power generation and transmission, nuclear energy, or new-generation rail systems – might be still more often secured by golf-course hand-shakes rather than by social and economic cost-benefit calculations.<sup>58</sup> 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.

### *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 widely shared aspiration for BEE over the next decade is that it will progress rapidly enough that the need for an intrusive government policy framework will to some degree fade away. There is currently very little reason to believe that such hopes will be realised, however. It is conceivable, on the other hand, that as BEE becomes a more established aspect of conventional business practice, that the greatest potential threats it poses will be reduced. The state may be more vulnerable to manipulation by special interests when the participation of politically connected black people in business is so limited. Once all established business are substantially also partly black businesses, it may become easier to assert the ground rules of open competition for government business and a more pluralist politics of policy influence by business. 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.

Given that the achievement of substantial empowerment goals is so uncertain, and that severe risks that surround the practical application of the policy, hopes for the future also rest on two sites of policy innovation: the ANC and the public service. There are undoubtedly ways in which the malign aspects of BEE can be curtailed. In particular, it cannot be sensible to continue to permit extensive conflicts of interest to continue when individuals serve both as public servants and as directors of private businesses that are doing business with the state. It

remains unclear whether government will take decisive action to limit the current proliferation of such commercial relationships, for example by enforcing a strict policy on revolving doors and a professional public service whose employees are expected not to engage in outside business. Government is shortly expected to announce its new thinking on all of these issues.

Equally important is the need for the political management of BEE within the ANC. On the one hand, it would seem to be essential that the party head office itself does not become a trading site, where procurement and policy influence can be exchanged for party funds. ANC policy committees should be more scrupulously insulated from the business interests of NEC members. And rules of conduct for party members, curtailing the abuse of party positions for personal gain, could hopefully be enforced more rigorously through party disciplinary rules. A subcommittee of the NEC is currently stalemated over proposals to introduce changes of these kinds.

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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<sup>1</sup> 23 April, 2007, 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.

<sup>2</sup> The final version of this paper will explore these implications in greater detail.

<sup>3</sup> 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.

<sup>4</sup> Act No 47 of 1953.

<sup>5</sup> Act 45 of 1959.

<sup>6</sup> Act No 46 of 1959.

<sup>7</sup> Act No 27 of 1951.

<sup>8</sup> Act No 34 of 1959.

<sup>9</sup> Michael Spicer, author's interview.

<sup>10</sup> Sidney Frankel, author's interview.

<sup>11</sup> Michael Spicer, author's interview.

<sup>12</sup> This interview is archived on the O'Malley website at <[www.omalley.org.za](http://www.omalley.org.za)> [29 January 2007].

<sup>13</sup> Essop Pahad interview with Pdraig O'Malley, 24 August 1990.

<sup>14</sup> Jeremy Cronin interview with Pdraig O'Malley, 26 August 1991.

<sup>15</sup> Trevor Manuel interview with Pdraig O'Malley, 6 August 1990.

<sup>16</sup> Memorandum from the Transvaal Chamber of Industries to the Prime Minister of the Republic of South Africa, 29 July, 1976.

<sup>17</sup> Irene Menell, author's interview.

<sup>18</sup> Irene Menell, author's interview.

<sup>19</sup> The phrase is Irene Menell's, author's interview.

<sup>20</sup> David Pallister, Sarah Stewart and Ian Lepper, *South Africa Inc.: The Oppenheimer Empire*. 2<sup>nd</sup> edition. London, Corgi, 1988, Chapter 5.

<sup>21</sup> Tshenuwani Farisani, author's interview, Sandton Johannesburg, 24 November 2006.

<sup>22</sup> Quotation from unattributed participant, conference publicity materials, untitled and undated, National Archive, Cape Town, A2562 J/5.

<sup>23</sup> Ebbe Domisse, *Anton Rupert: A biography*. Cape Town, Tafelberg, 2005, p. 238.

<sup>24</sup> Domisse, *Anton Rupert*, pp. 238-41.

<sup>25</sup> Businessmen's Conference on the Quality of Life of Urban Communities, 'Resolutions', 29 November 1976. National Archie, Cape Town, A2562, V/2.

<sup>26</sup> Jan Steyn, letter to Harry Oppenheimer, 8 December 1976. National Archive, Cape Town, A2562 B/7.

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- <sup>27</sup> Dommissie, Anton Rupert, p. 239.
- <sup>28</sup> National Archive, Cape Town, A2562 I/7.
- <sup>29</sup> National Archive, Cape Town, A2562 I/7.
- <sup>30</sup> National Archive, Cape Town, A2562 D/10.
- <sup>31</sup> National Archive, Cape Town, A2562 D/7.
- <sup>32</sup> Irene Menell, author's interview.
- <sup>33</sup> Merle Lipton, 'The role of business under apartheid', in Hans Erik Stolten, ed., *History Making and Present Day Politics: The meaning of collective memory in South Africa*. Uppsala, Nordiska Afrikainstitutet, 2007, 292-305. For a short statement of her original position, see Merle Lipton, 'Capitalism and apartheid', in John Lonsdale, ed., *South Africa in Question*. London, James Currey, 1988, pp. 52-63.
- <sup>34</sup> Anthony Butler, *Democracy and Apartheid*. New York, Macmillan, 1998, pp. 30-53.
- <sup>35</sup> Lipton, 'Capitalism and apartheid', pp. 58-60; 'Role of business', pp. 294-7.
- <sup>36</sup> Lipton, 'Role of business', p. 293.
- <sup>37</sup> Ann Bernstein, author's interview, Cape Town, 5 April 2007.
- <sup>38</sup> Christo Nel, author's interview, Hout Bay Cape Town, 2 April 2007.
- <sup>39</sup> Christo Nel, author's interview.
- <sup>40</sup> Christo Nel, author's interview.
- <sup>41</sup> Christo Nel, author's interview.
- <sup>42</sup> Christo Nel, author's interview.
- <sup>43</sup> Christo Nel, author's interview.
- <sup>44</sup> Christo Nel, author's interview.
- <sup>45</sup> Theuns Eloff, author's interview, Stellenbosch, 13 December 2006.
- <sup>46</sup> Christo Nel, author's interview; Theuns Eloff, 'The business community ten years after apartheid'. Paper delivered at the After Apartheid conference, August 2006, Cape Town. See also Consultative Business Movement, *The Consultative Business Movement: 1998-1994. A submission to the Truth and Reconciliation Commission*. CBM, Johannesburg, 1994.
- <sup>47</sup> Theuns Eloff, author's interview.
- <sup>48</sup> Michael Spicer, author's interview, Parktown Johannesburg, 24 October 2006.
- <sup>49</sup> Christo Nel and Theuns Eloff, author's interviews.
- <sup>50</sup> Sparks, *Tomorrow*, pp. 3-4.
- <sup>51</sup> Sidney Frankel, author's interview.
- <sup>52</sup> Sidney Frankel, author's interview.
- <sup>53</sup> One senior banker who asked not to be quoted recalled Frankel using foul language to turn down a request to support bursaries for black South Africans to visit the United States in the late 1980s.
- <sup>54</sup> Sidney Frankel, author's interview.
- <sup>55</sup> 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.
- <sup>56</sup> 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.
- <sup>57</sup> 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

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disposal of mining companies with high-risk investments in sub-Saharan African countries.

<sup>58</sup> 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.